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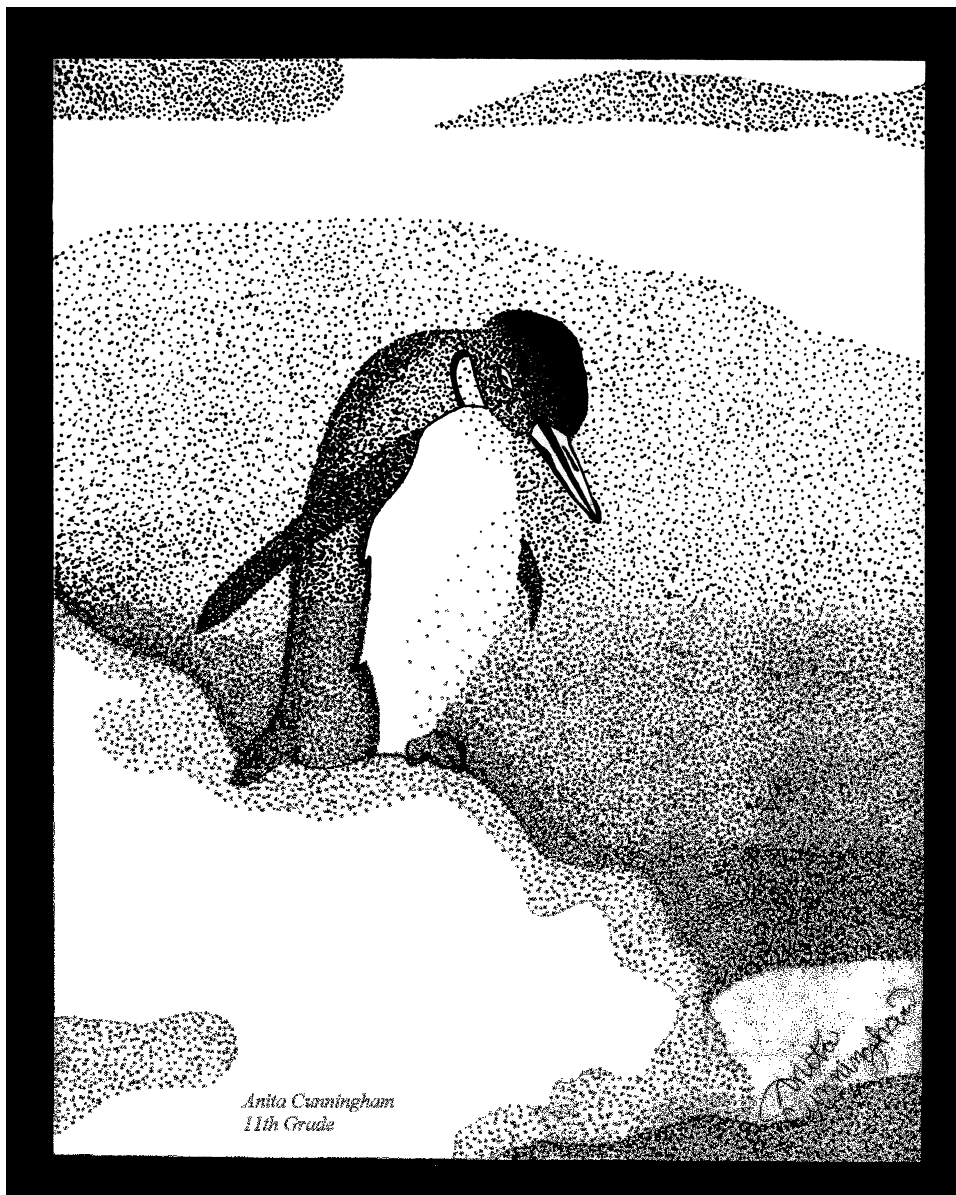
# TEXAS REGISTER

*Volume 32 Number 44*

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*Pages 7777 - 8060*

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*Anita Cunningham  
11th Grade*

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# 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 October 19, 2007

Appointed to the Texas Diabetes Council for a term to expire February 1, 2011, Don Yarborough of Garland (replacing Judith Haley of Houston whose term expired).

Appointed to the Texas Diabetes Council for a term to expire February 1, 2011, John Griffin of Victoria (replacing Rick Hayley of Corpus Christi whose term expired).

Appointed to the Texas Diabetes Council for a term to expire February 1, 2013, Neil Burrell, DPM of Beaumont (replacing Leonore Katz of Plano whose term expired).

Appointed to the Texas Diabetes Council for a term to expire February 1, 2013, Melissa Wilson, MD of Corpus Christi (replacing Margaret Pacillas of El Paso whose term expired).

Appointed to the Texas Diabetes Council for a term to expire February 1, 2013, Curtis Triplitt, PharmD of San Antonio (replacing Lawrence Harkless of San Antonio whose term expired).

Appointed to the Texas Diabetes Council for a term to expire February 1, 2013, Timothy Cavitt of Spring (replacing Terrence Fluharty of Austin whose term expired).

Appointed to the University of Texas System Board of Regents for a term to expire February 1, 2013, Printice L. Gary of Dallas (replacing Rita Clements of Dallas whose term expired).

Appointed to the University of Texas System Board of Regents for a term to expire February 1, 2013, Paul Foster of El Paso (replacing Cyndi Krier of San Antonio whose term expired).

Appointed to the University of Texas System Board of Regents for a term to expire February 1, 2013, James Dannenbaum of Houston (replacing Judith Craven of Houston whose term expired).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2011, Stephen Balas of Eagle Lake (replacing John Matthews of Eagle Lake whose term expired).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2013, Rebecca Armendariz Klein of San Antonio (replacing Charles Moser of Brenham whose term expired).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2013, Robert Steiner of Bastrop (replacing Robert Long of Bastrop whose term expired).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2013, Franklin Scott Spears, Jr. of Austin (replacing G. Hughes Abell of Austin whose term expired).

Appointed to the Lower Colorado River Authority for a term to expire February 1, 2013, Brenda Adair of Blanco (replacing Connie Granberg of Blanco whose term expired).

Rick Perry, Governor

TRD-200705120



# THE ATTORNEY GENERAL

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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>.)

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Request for Opinions

**RQ-0636-GA**

**Requestor:**

The Honorable Homero Ramirez

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78042-0268

Re: Whether a county and the school districts located within the county may participate in a joint venture to develop and sell rights to the natural resources located in county school lands (RQ-0636-GA)

**Briefs requested by November 20, 2007**

*For further information, please access the Web site at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200705130

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: October 24, 2007





# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 10. DEPARTMENT OF INFORMATION RESOURCES

#### CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

##### 1 TAC §201.1

The Department of Information Resources (department) proposes to amend 1 TAC §201.1, concerning definitions, to delete the definition for "project." The definition is no longer necessary and is proposed for deletion, because the rule to which it relates, §201.19, concerning the establishment of quality assurance guidelines for projects in Texas state agencies, is being repealed and replaced by new rules concerning project management practices.

Dustin Lanier, Director of Policy, Planning and Measurement for the department, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state and local governments as a result of amending §201.1 to delete §201.1(22).

Mr. Lanier has also determined that for each year of the first five years the proposed amendment is in effect the public will benefit from the clarification provided by the amendment. There are no anticipated economic costs to individuals or small businesses.

Comments on the proposed amendment of §201.1 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, 300 West 15th Street, Suite 1300, Austin, Texas 78701, renee.mauzy@dir.state.tx.us for 30 days following the publication of this proposed amendment.

The amendment is proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

No other statutes are affected by this amendment.

##### *§201.1. Definitions.*

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

(1) **Albers equal area conic projection**--A map projection developed by Albers in 1805 and commonly used in mapping of the United States by the U.S. Geological Survey. While some distortion is inherent in all map projections, a characteristic of the albers equal area conic projection is that scale distortion is minimized.

(2) **Application**--A separately identifiable and interrelated set of information resources technologies that allows a state agency to manipulate information resources to support specifically defined objectives.

(3) **Board**--The governing board of the Department of Information Resources.

(4) **Data processing**--Information technology equipment and related services designed for the automated storage, manipulation, and retrieval of data by electronic or mechanical means, or both. The term includes:

(A) central processing units, front-end processing units, miniprocessors, microprocessors, and related peripheral equipment such as data storage devices, document scanners, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other than memory typewriters, and equipment and systems for computer networks;

(B) all related services, including feasibility studies, systems design, software development, and time-sharing services, whether provided by state employees or by others; and

(C) the programs and routines used to employ and control the capabilities of data processing hardware, including operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(5) **Datum**--A smooth mathematical surface that closely defines the mean sea-level surface of the earth throughout a certain geographic region of interest (such as North America). Accurate ground positional measurements must be made with reference to a specific datum appropriate to the region.

(6) **Department**--The Department of Information Resources.

(7) **Geographic information system (GIS)**--A system of computer hardware, software and procedures used to store, analyze and display geospatial data and related tabular data in a geographic context to solve complex planning and management problems in a wide variety of applications.

(8) **Geospatial data(set)**--Data which describes some aspect of the earth's surface (or near-surface regions), or which can be identified with a specific location on or near the earth's surface. A geospatial dataset employs a defined, earth-based coordinate system which allows its use in a geographic information system.

(9) **Geospatial dataset enhancement**--Substantial alteration of a geospatial dataset which increases its usefulness through the addition of attribute (tabular) data fields, improvements in spatial accuracy, or extension of geographic coverage.

(10) **Geospatial dataset maintenance**--Addition to, or alteration of, a geospatial dataset as part of a routine business process.

(11) Geospatial metadata--A description of the characteristics of a geospatial dataset, recorded in a standard format. Characteristics include data content, quality, purpose, condition, format, spatial coordinate system, availability, etc. The Federal Geographic Data Committee has defined a formal content standard for digital geospatial metadata for use by federal agencies.

(12) GeoTIFF--A TIFF-based image format for geo-referenced raster imagery.

(13) GIS map product--A geographic representation, in paper or electronic format, displaying features from one or more digital geospatial datasets. Small scale images that are clearly intended only for graphic illustration within a larger publication are not considered to be GIS map products.

(14) JPEG--A standardized image compression mechanism. JPEG stands for Joint Photographic Experts Group, the original name of the committee that wrote the standard.

(15) Imaging systems--Information resources technologies with video, scanning, and computer graphics capabilities (including raster formats) which are used to capture, process, create, output, store, and/or archive images, excluding process-control systems for medical diagnostic applications.

(16) Information resources--The procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.

(17) Information resources services--Services provided under contract to a state agency by an individual or firm, or by a consultant or professional engineer under Texas Government Code, Chapter 2254, the Professional Services Procurement Act, and Texas Government Code, Chapter 2254, Consulting Services, which includes: studying agency's existing information resources; advising on necessary changes or additions to the information resources environment; performing information resources feasibility studies; information resources training; or recommending, managing, converting, designing, procuring, developing, documenting, programming, testing, implementing, or installing new information resources, including systems development methodologies and disaster recovery capabilities.

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

(19) Interagency application--An information resources project implemented or used by multiple agencies.

(20) Lambert conformal conic projection--A map projection developed by Lambert in 1772 and commonly used in mapping of the United States by the U.S. Geological Survey. While some distortion is inherent in all map projections, a characteristic of the Lambert conformal conic projection is that shape distortion is minimized.

(21) Map projection--A systematic representation of all or part of a surface of a round body, especially Earth, on a plane.

~~[(22) Project--A program to provide information resources technologies support to functions within or among elements of a state agency, which should be characterized by well-defined parameters, specific objectives, common benefits, planned activities, a scheduled completion date, and an established budget with a specified source of funding.]~~

(22) [(23)] Raster--A data structure for representing spatial data. The raster data structure divides a region of space into a regu-

lar, two-dimensional grid. Each cell in the grid has an associated data value. A common use of the raster data structure is to represent imagery in a digital format. In this case, the data value for each cell represents the color exhibited by that part of the image.

(23) [(24)] Risk--The possibility of an act or event occurring that would have an adverse effect on the state, an organization or an information system. Risk involves both the probability of failure and the possible consequences of a failure.

(24) [(25)] Risk analysis--Risk analysis is the evaluation of planned project events and deliverables in regards to various factors to consider the possibility or probability of failure and the consequences of such a failure. Risk analysis will yield an identification of the areas of greater and lower risk.

(25) [(26)] State agency--A department, commission, board, office, council, or other agency in the executive or judicial branch of government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by the Texas Education Code, §61.003.

(26) [(27)] Statewide application--An information resources project implemented or used throughout state government.

(27) [(28)] Survey product--A map, report, letter or other document produced by a registered professional land surveyor while engaged in the practice of land surveying.

(28) [(29)] Telecommunications--Any transmission, emission, or reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems and includes all facilities and equipment performing those functions that are owned, leased, or used by state agencies and branches of state government.

(29) [(30)] Telecommunications services--Intercity communications facilities or services. "Telecommunications services" does not include single agency point-to-point radio systems or facilities or services of criminal justice information systems.

(30) [(31)] TIFF--Tagged Image File Format. A public domain raster image file format.

(31) [(32)] Wide area network--A network that interconnects geographical boundaries (such as buildings, campuses, cities, regions, and/or states) which has a total distance (first node to last node) of two or more miles and might be connected using common carrier services.

(32) [(33)] World file--A file that accompanies a specific raster image file and that contains georeferencing information that can be used by certain GIS software to correctly display the raster image in an earth-based coordinate system.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705077

Renée Mauzy

General Counsel

Department of Information Resources

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 475-4700



# PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 352. QUALITY ASSURANCE FEE

### 1 TAC §§352.1 - 352.9

The Health and Human Services Commission (HHSC) proposes amendments to §§352.1 - 352.9, concerning the quality assurance fee for the Intermediate Care Facilities Mental Retardation (ICF/MR) program.

#### Background and Justification

These rule proposals establish the quality assurance fee for facilities in the ICF/MR program. HHSC, under its authority and responsibility to administer and implement rates, is updating the quality assurance fee rules by revising the quality assurance fee percentage to reflect the maximum 5.5 percent fee allowed under the federal Tax Relief and Health Care Act of 2006 (TRHCA), P.L. 109-432, Section 403, which amended Section 1903(w)(4)(C) of the Social Security Act (42 U.S.C. 1396b(w)(4)(C)). This law takes effect on January 1, 2008. The 5.5 percent maximum allowed for ICF/MR facilities in the TRHCA represents a 0.5 percent reduction in matchable ICF/MR quality assurance fees. The effect of this law is that contracted ICF/MR providers will pay less in quality assurance fees to the state than they currently pay. In addition, this proposal updates administrative procedures relating to the quality assurance fee, removes outdated language, and updates references to reflect that the Department of Aging and Disability Services (DADS) has administrative responsibility for the quality assurance fee.

#### Section-by-Section Summary

The proposed amendment revises §352.1 to:

Remove from subsection (b)(1) extraneous language currently also included in §352.2(1) in the definition of facility.

Replace in subsection (b)(2) references to the "Commission or its designee" with references to DADS, which is the agency responsible for the administration of the quality assurance fee.

Remove subsection (c) because Chapter 252 of the Health and Safety Code was amended by the 79th Legislature to remove an embedded expiration date, making this subsection obsolete.

Rename the section to better describe its contents.

The proposed amendment revises §352.2 to:

Add a paragraph defining DADS and renumber subsequent paragraphs.

Replace in the newly renumbered paragraph (2)(C) the reference to the "Texas Department of Mental Health and Mental Retardation (TDMHMR)" with a reference to DADS.

Clarify in the newly renumbered paragraph (3) that gross receipts are defined as accrued payments and not as cash received.

The proposed amendment revises §352.3 to:

Remove subsection (a), which is outdated, and renumber the succeeding subsections accordingly.

Revise the rule to reflect that the quality assurance fee is 5.5 percent of a facility's gross receipts effective January 1, 2008.

Remove an outdated date; replace references to the "Commission or its designee" with references to DADS; add language to require that quality assurance fee reviews are conducted every

12-months; add language to allow DADS to make adjustments to ensure that the quality assurance fee equals 5.5 percent of each facility's gross receipts; and add language to indicate that, for entities controlling more than one facility, quality assurance fee reviews are conducted at the entity, rather than the facility level.

The proposed amendment revises §352.4 to:

Replace references to the "Commission or its designee" with references to DADS, which is responsible for the administration of the quality assurance fee.

Revise subsection (a)(2) to require annual reports of gross receipts instead of semi-annual reports.

Revise the due date for submitting amended monthly patient day reports in subsection (b)(2) from 10 calendar days following the filing of the report to 20 calendar days after the last day of the month for which the report was filed.

Revise the due date for submitting amended reports to gross receipts in subsection (b)(3) from 10 calendar days "following" filing the report to 10 days "after" filing the report.

Revise the due date for submitting the monthly patient day report in subsection (c)(1) from 20 calendar days after the last day of the month to 10 calendar days after the last day of the month.

Revise subsection (d)(1) to indicate that facilities must report money paid to the facility by private-pay residents and for bed-hold fees during each state fiscal year by October 31 each year and to indicate that DADS will use this information, along with the Durable Medical Equipment and Applied Income amounts on file with the Claims Management System, to determine total gross receipts.

The proposed amendment revises §352.5 to:

Replace references to the "Commission or its designee" with references to DADS, which is responsible for the administration of the quality assurance fee.

Delete paragraph (3), which is outdated.

Add new subsection (a) and re-designate paragraph (4) as subsection (b) such that subsection (a) is a list of facility requirements and subsection (b) is not a part of that list.

The proposed amendment revises §352.6 to:

Replace references to the "Commission or its designee" with references to DADS, which is responsible for the administration of the quality assurance fee.

Indicate that DADS monitors facilities' records but does not audit them.

Indicate that HHSC or its designee audits quality assurance fee determinations for accuracy.

The proposed amendment revises §352.7 to:

Replace references to the "Commission or its designee" with references to DADS, which is responsible for the administration of the quality assurance fee.

Renumber subsection (a)(4) as subsection (b) and clarify that the financial penalty is equal to one-fourth the amount of the quality assurance fee for each month the quality assurance fee is late, not reported, or unpaid.

Re-designate the remaining subsections appropriately.

Modify new subsection (e) to indicate that DADS may suspend payments to a facility that fails to pay or report the quality assurance fee.

The proposed amendment revises §352.8 to:

Replace references to the "Commission or its designee" with references to DADS, which is responsible for the administration of the quality assurance fee.

Clarify in subsection (b)(1) that a request for an informal review must be received by DADS no later than 20 calendar days after the date on the written notification of the calculation of the quality assurance fee.

Replace references to "staff," "lead staff," and "panel" with references to DADS.

Clarify in subsection (d) that DADS sends its written decision within "30 days after" rather than "within 30 days of," the date the request for informal review is received by DADS and that the decision is sent to the "facility" rather than the "interested party."

The proposed amendment revises §352.9 to:

Remove reference to the appeal as being for the assessment of a penalty and replace it with a reference to the appeal as being for an informal review decision, since this section refers to §352.8 which governs informal reviews, not assessments of penalties.

Replace references to the "Commission or its designee" with references to DADS, which is responsible for the administration of the quality assurance fee.

Change an incorrect reference to the formal appeal rules related to HHSC programs.

#### Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that, during the first five-year period the amended rules are in effect there will be a fiscal impact to state government of \$3,078,151 for state fiscal year (SFY) 2008; \$4,617,227 for SFY 2009; \$4,617,227 for SFY 2010; \$4,617,227 for SFY 2011; and \$4,617,227 for SFY 2012 as a result of changing the amount of the quality assurance fee that is collected from 6 percent to 5.5 percent. The proposed rule amendments will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the amended sections.

#### Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the proposed amendment. The implementation of these proposed rule amendments does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this proposed amendment. The amendment will not affect local employment.

#### Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the proposed rule amendments are in effect, the expected public benefit is that obsolete rule language will be eliminated; references to TDMHMR, which no longer exists, will be removed and replaced with references to DADS, the

agency currently responsible for administering the ICF/MR program; and the rules will provide clear guidance to agency staff and providers on quality assurance fee reporting requirements and calculations, monitoring and auditing responsibilities, penalties, informal review and formal appeal rights and responsibilities. Finally, the public will benefit because the rules will reflect the new maximum quality assurance fee allowed under the federal Tax Relief and Health Care Act of 2006, P.L. 109-432, Section 403 effective January 1, 2008.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce 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.

#### Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

#### Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resource Code, §32.021 and Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

#### §352.1. Purpose [and Duration] of Chapter.

(a) This chapter implements the determination, assessment, collection, and enforcement of the quality assurance fee authorized under chapter 252, Health and Safety Code, subchapter H.

(b) The purpose of the quality assurance fee established under this chapter is to improve the quality of care provided to persons with mental retardation as follows:

(1) The quality assurance fee is intended to support and/or maintain an increase in reimbursement to [licensed intermediate care] facilities [for the mentally retarded and facilities operated according to the requirements of chapter 252, Health and Safety Code and owned and/or operated by a community mental health and mental retardation center as described in chapter 534, subchapter A, Health and Safety Code, and a facility owned by the Texas Department of Mental Health

and Mental Retardation] that participate in the Medicaid program, subject to legislative appropriation for this purpose; and

(2) The Department of Aging and Disability Services (DADS) [The Commission or its designee] may also offset allowable expenses to administer the quality assurance fee program against revenues generated by the collection of the quality assurance fee.

~~{(e) This chapter will expire on September 1, 2005, unless chapter 252, subchapter H, Health and Safety Code, is extended by the 79th Texas Legislature.}~~

#### §352.2. Definitions.

As used in this chapter, the following terms shall have the meanings prescribed below, unless the context clearly indicates otherwise:

(1) "DADS" means: The Department of Aging and Disability Services.

(2) ~~{(4)}~~ "Facility" means:

(A) An intermediate care facility for the mentally retarded or the corporate parent of an intermediate care facility for the mentally retarded licensed under chapter 252, Health and Safety Code; or

(B) A facility operated according to the requirements of chapter 252, Health and Safety Code, and owned and/or operated by a community mental health and mental retardation center as described in chapter 534, subchapter A, Health and Safety Code; or

(C) A facility owned by DADS [the Texas Department of Mental Health and Mental Retardation].

(3) ~~{(2)}~~ "Gross receipts" means money paid to a facility as compensation for services provided to residents [patients], including resident [client] participation, but does not include charitable contributions to a facility. Gross receipts are defined as accrued payments and not as cash received.

(4) ~~{(3)}~~ "Total patient days" means the sum, computed on a monthly basis, of the following:

(A) The total number of residents [patients] occupying a facility bed immediately before midnight on each day of the month; and

(B) The total number of beds that are on hold on each day of the month and that have been placed on hold for a period not to exceed three consecutive calendar days during which a resident [patient] is on therapeutic leave during the month.

(C) The total number of days a resident [patient] is discharged from a facility are not counted in the calculation of the total patient days under this chapter.

#### §352.3. Quality Assurance Fee Determination Methodology.

~~{(a) Quality assurance fee on State facilities - As provided in section 1(b) of the Act of June 20, 2003, 78th Leg. R.S., (Senate Bill 1862), not later than August 31, 2003, the Texas Department of Mental Health and Mental Retardation shall pay for each facility owned by the department the quality assurance fee for patient days occurring between September 1, 2002, and July 31, 2003.}~~

(a) ~~{(b)}~~ Quality assurance fee. Effective January 1, 2008 [Beginning September 1, 2003], the quality assurance fee for a facility is five and one half [in the amount of six] percent of a facility owner's gross receipts [each reimbursement or payment rate received, including those received from the resident, for each resident in the facility during a calendar month, provided the amount of all such quality assurance

fees assessed for the facility during the 12-month period following assessment of the quality assurance fee do not exceed six percent of the facility's total annual gross receipts in Texas].

(b) ~~{(e)}~~ Quality assurance fee review. Every twelve months on a schedule determined by DADS, DADS [Not later than July 31, 2002, and every six months thereafter, the commission or its designee] will review each facility owner's quality assurance fee payments from all of the owner's facilities combined [each individual facility's quality assurance fee calculation]. A facility owner's [facility's] liability for the quality assurance fee may be adjusted following this review to ensure that the quality assurance fee equals five and one half [does not exceed six] percent of annual gross receipts from all facilities [revenue].

#### §352.4. Required reports.

(a) The following reports must be filed by a facility in accordance with DADS instructions [the instructions of the Commission or its designee]:

(1) The monthly patient day report required under subsection (c) of this section; and

(2) The [semi-] annual report of gross receipts required under subsection (d) of this section.

(b) Amended reports.

(1) A facility may amend a report required under subsections (c) or (d) of this section;

(2) An amended monthly patient day report must be filed no later than 20 [10] calendar days after the last day of the month for which the report was filed [following the filing of the report required under subsection (c) of this section].

(3) An amended report of gross receipts must be filed no later than 10 calendar days after the filing of the report required under subsection [following the filing of the report required under subsection] (d) of this section.

(c) Monthly patient day report.

(1) A facility must report, not later than the 10th [20th] calendar day after the last day of a month, the total number of patient days for the facility during the preceding month.

(2) A facility must file the report required by this subsection on forms or in the format and according to the instructions prescribed by DADS [the commission or its designee].

(d) Reporting of gross receipts.

(1) A facility must report, no later than October 31 of each year, money paid to the facility by private-pay residents and money paid to the facility for bed-hold fees for the period of September 1 through August 31 immediately preceding the report. DADS will use the Durable Medical Equipment and Applied Income amounts on file with the Claims Management System and the amounts reported by the facility for private-pay and bed-hold to determine the total gross receipts [not later than the 10th calendar day following the last day of the sixth month following the effective date of this chapter, the total gross receipts the facility received during the preceding 6-month period].

(2) A facility must file the report required by this subsection on forms or in the format and according to the instructions prescribed by DADS [the commission or its designee].

#### §352.5. Payment and Collection of Quality Assurance Fee.

(a) A facility must:

(1) Pay the amount of the quality assurance fee in accordance with DADS [the] instructions [of the commission or its designee] not later than the 30th day after the last day of the month for which the fee is assessed; or

(2) Pay the amount of the quality assurance fee in accordance with DADS [ the] instructions [of the commission or its designee] and request an informal review of the calculation of the quality assurance fee in accordance with §352.8 of this chapter.

~~[(3) Not later than August 31, 2003, the Texas Department of Mental Health and Mental Retardation shall pay for each facility owned by the department the quality assurance fee imposed under §352.3(a) of this title for patient days occurring between September 1, 2002, and July 31, 2003.]~~

(b) ~~[(4)]~~ DADS [The commission or its designee] may review the calculation of the quality assurance fee to ensure its accuracy and instruct the facility to correct its calculation and payment.

§352.6. *Enforcement.*

(a) DADS monitors [The commission or its designee may audit] a facility's records or the record of any corporate parent or affiliate of a facility for the purpose of determining the total patient days and [or] gross receipts of the facility.

(b) The Health and Human Services Commission (HHSC) and DADS [commission] may not grant any exceptions from the quality assurance fee or the provision of any data necessary for DADS [the Commission or its designee] to calculate the fee.

(c) HHSC or its designee audits quality assurance fee determinations in accordance with this subsection.

(1) HHSC or its designee periodically audits the records of a facility and, if necessary, the corporate parent or affiliate of a facility to verify the amount of the quality assurance fee owned by the facility. The facility must allow HHSC or its designee to review and photocopy any records necessary to conduct the audit.

(2) If a facility fails to maintain records or fails to allow HHSC or its designee to review and photocopy any records necessary to conduct an audit, an audit will be conducted with the records available.

(3) HHSC or its designee provides the facility with a report of the final audit findings.

(4) If the final audit findings show the facility owes additional amounts for the quality assurance fee, DADS notifies the facility of the amount due. If the final audit findings show the facility is owed money due to overpayment of the quality assurance fee, DADS refunds the amount owed to the facility owner.

§352.7. *Penalty.*

(a) DADS [The commission or its designee] will assess a financial penalty against a facility that:

(1) Fails to timely file the monthly facility report required under §352.4 of this chapter;

(2) Files a false, erroneous, or fraudulent monthly facility report that DADS [the commission or its designee] concludes resulted in the assessment of a quality assurance fee that is less than the facility should have been assessed; or

(3) Fails to timely pay a quality assurance fee assessed under §352.5 of this chapter.

(b) ~~[(4)]~~ A penalty assessed under this section is [in] an amount equal to one-fourth [one-half] the amount of the [outstanding] quality assurance fee for each month the quality assurance fee is late, not reported or unpaid [or fees, not to exceed \$20,000].

(c) ~~[(b)]~~ DADS [The commission or its designee] will notify a facility in writing of the assessment of a penalty under this section and the amount of the penalty.

(d) ~~[(e)]~~ DADS [The commission or its designee] may make a referral to an appropriate authority in cases where it [the commission or its designee] makes a good faith determination that a facility has:

(1) Committed fraud in the submission of information to DADS [the commission or its designee];

(2) Willfully submitted erroneous information to DADS [the commission or its designee]; or

(3) Violated a requirement of its license or Medicaid certification.

(e) ~~[(d)]~~ DADS [The commission or its designee] may suspend payments to a facility that fails to pay or report [a facility that fails to pay] the quality assurance fee [to the Comptroller of Public Accounts or other appropriate authority for purposes of implementing a suspension of payments to the provider].

(f) ~~[(e)]~~ The assessment of a penalty under this section does not relieve a facility from:

(1) Providing services to residents [patients] in accordance with its obligations under contract or the law;

(2) Paying additional quality assurance fees that may be assessed to the facility; or

(3) Otherwise complying with licensure and certification requirements.

§352.8. *Informal review.*

(a) A facility that believes DADS [the commission or its designee] incorrectly calculated the amount of a quality assurance fee as defined in this chapter may request an informal review from DADS [the commission or its designee] in accordance with this section.

(b) The purpose of an informal review is to provide for the informal and efficient resolution of the matters in dispute. An informal review is not a formal administrative hearing, but is a prerequisite to obtaining a formal administrative hearing and is conducted according to the following procedures:

(1) The facility must request an informal review in writing to DADS [the commission or its designee], delivered by United States mail or special mail delivery to DADS no later than [within] 20 calendar days after [or] the date on the written notification of a calculation [any of the actions] described in subsection (a) of this section.

(2) A facility's written request for an informal review must include:

(A) A concise statement of the specific actions or determinations the facility disputes;

(B) The facility's recommended resolution; and

(C) Any supporting documentation the facility deems relevant to the dispute. It is the responsibility of facility to submit all pertinent information at the time of its request for an informal review.

(c) On receipt of a request for informal review, DADS [the commission or its designee] assigns the review to appropriate staff.

(1) DADS [The lead staff member] coordinates a review by appropriate staff of the information submitted by the facility [interested party].

(2) DADS [Staff] may request additional information from the facility, which the facility must submit in writing to DADS [the

lead staff member] within 14 calendar days after [of] the request for additional information. Information received after 14 days may not be used in DADS [the panel's] written decision unless the interested party receives approval from DADS [of the lead staff member] to submit the information after 14 days.

(d) Within 30 days after [of] the date the request for informal review is received by DADS [the commission or its designee] or the date additional requested information is received by DADS, DADS sends [the commission or its designee, the lead staff member must send] the facility [interested party] its written decision by certified mail, return receipt requested.

§352.9. [Format] *Appeal of an Informal Review Decision [Penalty].*

A facility that wishes to appeal an informal review decision [the assessment of a penalty] under §352.8 of this chapter may request a hearing [formal appeal] from the Health and Human Services Commission [Texas Department of Human Services] in accordance with Chapter 357, Subchapter I of this title (relating to Hearings Under the Administrative Procedure Act) [40 T.A.C. §90.236].

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705060

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: December 2, 2007

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



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 18. ORGANIC STANDARDS AND CERTIFICATION

The Texas Department of Agriculture (the department) proposes amendments to §18.236, concerning dairy animals on certified organic livestock operations, §18.600, concerning evaluation criteria, and §18.702, concerning fees, and the repeal of §§18.601 - 18.606, concerning the list of allowed and prohibited substances for organic production and processing, and §18.701, concerning the Organic Certification Advisory Committee. These amendments and repeals are proposed to bring the Texas Organic Standards and Certification regulations into conformity with revisions to the National Organic Program regulations (7 CFR Part 205) that were published in the *Federal Register* in 2005 - 2007. The need for conformity in these regulations is specified in §205.501(a)(3) of the National Organic Program (NOP) regulations, which requires that organic certification agents accredited by the NOP must certify to standards that are in accordance with the NOP regulations. Consistency with the National Organic Standards is also required in Texas Agriculture Code (the Code), §18.002, which provides that rules for the certification of organic products adopted by the depart-

ment must be consistent with the provisions of the National Organic Program

The amendment to §18.236 is proposed to maintain consistency with the National Organic Standards regarding the origin of dairy animals on certified organic livestock operations by eliminating the allowance of 20% non-organically produced feed for dairy animals during the first 9 months of the conversion of a whole dairy herd from conventional to organic production. The proposed changes would also allow forage and crops from land that is in the farm's organic system plan, and in the third year of organic management, to be consumed by the farm's dairy animals during the 12 months immediately preceding the sale of organic milk and organic milk products.

The proposed repeal of §§18.601 - 18.606 will eliminate the need for frequent rule changes to maintain consistency with the National Organic Standards regarding the List of Allowed and Prohibited Substances and will allow for the adoption by reference of 7 CFR Part 205, §§205.601 - 205.606 of the NOP regulations (the National List) in place of the existing text of §§18.601 - 18.606. This proposal has been made due to changes to the NOP regulations that will result in additions to the National List as frequently as multiple times annually. Adoption of these sections by reference would save the department from making correspondingly frequent changes to §§18.601 - 18.606 in order to maintain consistency with the National Organic Standards.

The proposed repeal of §18.701 will eliminate an advisory committee established in rule that has been replaced by a new advisory committee established by the 80th Legislature in HB 2345. The new committee will address the organic regulatory issues of the existing committee as well as take on additional duties as specified by the Legislature. The amendment of §18.702(b)(2) is proposed in order to remove an obsolete provision in the rule that allowed for a prorated fee for organic handlers when the annual certification update due date was changed from December 31 to August 31 in 2004.

Leslie McKinnon, Coordinator for Organic Certification, has determined that for the first five-year period the proposed amendments are in effect there is no anticipated fiscal impact for state and local governments as a result of administering or enforcing the rule amendments, as proposed.

Ms. McKinnon has also determined that for each year of the first five years the amended sections and repeals are in effect, the public benefit anticipated as a result of enforcing and administering the amended sections and repeals will be the consistency of state rules with federal regulations, which will result in less confusion for the regulated industry and the interested members of the public. The cost anticipated to micro-businesses, small businesses or individuals required to comply with the amendment would be limited to the increased feed cost for dairy producers converting to organic production. It is not possible to calculate this increased feed cost because it would depend on several variables, including the kinds and amounts of organic grains used in the feed ration, whether the grains were grown by the organic dairy producer or purchased from other organic producers or distributors, the price of organic grain or feed at the time of purchase, the size of the dairy herd and the amount of pasture available for grazing on the dairy farm.

Comments on the proposal may be submitted to Leslie McKinnon, Coordinator for Organic Certification, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments

must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

### SUBCHAPTER C. ORGANIC PRODUCTION AND HANDLING REQUIREMENTS

#### 4 TAC §18.236

The amendments to §18.236 are proposed under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products that are consistent with the provisions of the National Organic Program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 18.

§18.236. *Origin of Livestock.*

(a) Livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management from the last third of gestation or hatching, except as follows.

(1) (No change.)

(2) Dairy animals. Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labeled, or represented as organic, except that: ~~when an entire, distinct herd is converted to organic production, the producer may:~~

(A) crops and forage from land, included in the organic system plan of a dairy farm, that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12 month period immediately prior to the sale of organic milk and milk products; and

~~[(A) for the first 9 months of the year, provide a minimum of 80-percent feed that is either organic or raised from land included in the organic system plan and managed in compliance with organic crop requirements; and]~~

~~[(B) provide feed in compliance with §18.237 of this title (relating to Livestock Feed) for the final 3 months;]~~

(B) [(C)] once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.

(3) (No change.)

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

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

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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



### SUBCHAPTER F. ADMINISTRATIVE DIVISION 1. THE LIST OF ALLOWED AND PROHIBITED SUBSTANCES

#### 4 TAC §18.600

The amendment of §18.600 is proposed under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products that are consistent with the provisions of the National Organic Program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 18.

§18.600. *Adoption of National List [Evaluation Criteria for Allowed and Prohibited Substances, Methods, and Ingredients].*

The Texas Department of Agriculture hereby adopts by reference 7 Code of Federal Regulations, Part 205, Subpart G, Administrative, The National List of Allowed and Prohibited Substances, §§205.601 - 205.606. [Synthetic and nonsynthetic substances included on or deleted from the list of allowed and prohibited substances will be based on the National List of Allowed and Prohibited Substances established by the National Organic Program in 7 Code of Federal Regulations, Part 205, Subpart F.]

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

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#### 4 TAC §§18.601 - 18.606

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

The repeal of §§18.601 - 18.606 is proposed under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products that are consistent with the provisions of the National Organic Program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 18.

§18.601. *Synthetic Substances Allowed For Use in Organic Crop Production.*

§18.602. *Nonsynthetic Substances Prohibited for Use in Organic Crop Production.*

§18.603. *Synthetic Substances Allowed for Use in Organic Livestock Production.*



§18.604. *Nonsynthetic Substances Prohibited for Use in Organic Livestock Production.*

§18.605. *Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as "Organic" or "Made with Organic (Specified Ingredients or Food Group(s))."*

§18.606. *Nonorganically Produced Agricultural Products Allowed as Ingredients in or on Processed Products Labeled as Organic or Made with Organic Ingredients.*

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

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## DIVISION 5. MISCELLANEOUS PROVISIONS

### 4 TAC §18.701

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

The repeal of §18.701 is proposed under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products that are consistent with the provisions of the National Organic Program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 18.

§18.701. *Organic Certification Advisory Committee.*

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

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General Counsel

Texas Department of Agriculture

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### 4 TAC §18.702

The amendment of §18.702 is proposed under Texas Agriculture Code (the Code), §18.002, which provides the department

with the authority to adopt rules for the certification of organic products that are consistent with the provisions of the National Organic Program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 18.

§18.702. *Fees.*

(a) (No change.)

(b) Scheduled date of annual update.

(1) (No change.)

(2) For handlers (processors, distributors and retailers) the due date for the annual certification update shall be August 31 of each year [after December 31, 2003. To adjust to the new annual update due date, a prorated certification fee shall be charged for the time period from January 1, 2004 to August 31, 2004 for businesses changing to the August 31 due date].

(3) (No change.)

(c) - (j) (No change.)

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

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Dolores Alvarado Hibbs

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## 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), proposes to amend §3.37, concerning the calculation of annual assessment for banks.

Under Finance Code, §31.106, each bank must pay fees to the department for the cost of examination, the equitable or proportionate cost of maintenance and operation of the department, and the cost of enforcement. Pursuant to Finance Code, §31.003(a)(4), fees set by rule must be ratable and equitable.

Examination fees for state banks are set forth in §3.36 and §3.37. As these sections demonstrate, the department utilizes a tiered, assessment-based fee for supervision and examination of banks, collected in quarterly installments. The assessment system provides a ratable and equitable structure by which

banks pay their costs of supervision and examination, more closely tailoring the cost of supervision and examination to each bank based on factors such as size, financial condition, and frequency of examinations.

Section 3.37 specifies the calculation of assessments. A state bank's annual assessment is calculated using three factors: (1) a base assessment amount provided for the assessable asset group to which a bank belongs, plus (2) an additional amount determined by applying a declining marginal assessment factor to assets in excess of the floor of the relevant assessable asset group, as modified by (3) the applicable examination frequency.

Section 3.37 contains a table that divides banks into 10 asset size groups or categories, the largest of which applies to banks with assessable assets of \$10 billion or more. Prior to 2006, no state bank had assessable assets of \$10 billion, and only one state bank currently exceeds \$10 billion in assessable assets. However, the department is currently processing an application that, if approved, would result in entry of a bank into the Texas state bank regulatory system that will be several times larger than the largest existing state bank. Because the department by statute must limit its fees to an amount sufficient to fund its operations (i.e., is self-funded and self-leveling), the §3.37 table should be modified to create additional asset size categories with declining marginal assessment factors to more equitably reflect the anticipated cost of supervising and examining larger banks than exist in the system today.

The proposed amendment will substitute a new table in §3.37 that caps the \$10 billion assessable asset group at \$20 billion and adds four additional groups, for assessable assets of \$20-40 billion, \$40-60 billion, \$60-80 billion, and \$80 billion or greater. Because no current state bank would fall into any of the four proposed new categories, the creation of these new categories will not affect the assessment payable by any currently existing Texas state bank.

In addition, the department is proposing to eliminate minor mathematical inconsistencies in the existing base assessment amounts. By design, the base assessment amount is cumulative, with each successive asset group incurring the same assessments payable by smaller assessment groups plus additional amounts calculated at the specified marginal rate. Due to a previously undiscovered error, the current base assessments for each group do not accurately carry over from the next smaller group, although the differences are quite small. Under the proposal, the applicable base assessment will decline by approximately \$10 for the first three groups, \$5 for the next three groups, \$65 for the seventh group, and \$365 for the next two groups.

With respect to the last currently existing group (assessable assets of \$10 billion and over), the required mathematical correction will result in an increase of \$885 in the base assessment. To mitigate this small increase, the marginal assessment factor for this group is proposed to be reduced from 0.048 to 0.047. Based on bank asset data as of March 31, 2007, the maximum annual assessment of the only bank in this group will decline by \$432.

The proposed mathematical adjustments would cause the total possible assessments on industry to decline by approximately \$10,000 in the aggregate. However, assessments actually paid are unlikely to change in any predictable way because the department normally does not collect the full assessment as a result of deferral or forgiveness of a portion of installments due as

necessary to match revenue with appropriated expenditures and avoid the accumulation of unnecessary fund balances.

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

Mr. Bacon also has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing this section is the economic self-sufficiency of the department with respect to regulation of the banking industry. For each year of such first five years, there will be no economic costs to persons required to comply with the amended section. Because no existing state bank falls within any of the four new assessable asset groups, the creation of these new categories will not affect the assessment payable by any currently existing Texas state bank. Finally, Mr. Bacon has determined that the proposal will not have an adverse effect upon small businesses or micro-businesses.

If the referenced, large bank application is approved, Mr. Bacon estimates that the bank would pay assessments of approximately \$2.4 million for each of the first five years the amended section is in effect, an amount that is anticipated to offset the increased expenditures of the department related to supervision and examination of the bank.

To be considered, comments on the proposed amendment 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. Comments may also be submitted by e-mail to [ejobe@banking.state.tx.us](mailto:ejobe@banking.state.tx.us).

The amendment is proposed pursuant to Finance Code, §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees. The assessments provided for in the proposed amendment are established by the commission and not mandated by the Legislature.

Finance Code, §31.106, is affected by the proposed amendments.

*§3.37. Calculation of Annual Assessment for Banks.*

The annual assessment for a state bank is calculated as described in §3.36 of this title (relating to Annual Assessments and Specialty Examination Fees), based on the values in the following table:

Figure: 7 TAC §3.37  
[Figure: 7 TAC §3.37]

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

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



## PART 2. TEXAS DEPARTMENT OF BANKING

### CHAPTER 35. CHECK VERIFICATION ENTITIES

The Finance Commission of Texas (the "commission") proposes new Chapter 35, §§35.1, 35.11 - 35.17, 35.31, 35.51 - 35.59, 35.71, and 35.72, concerning check verification entities. The proposed chapter will implement the requirements of §35.595, Business & Commerce Code, and §11.309, Finance Code (the "State statutes"), pertaining to Texas Department of Banking (the "department") registering check verification entities ("entity" or "entities") and creating and maintaining a secure electronic notification system (the "system") to facilitate financial institutions sending information to the entities when requested by a customer who is the victim of an offense under §32.51, Penal Code ("Section 32.51").

During the 80th Texas Legislative Session, 2007, the legislature passed House Bill 2002 (HB 2002). HB 2002 added §35.959 to the Business & Commerce Code. This new statute requires a financial institution to submit information regarding a reported incident of fraudulent use or possession of identifying information ("fraud") to a secure electronic notification system established by the Banking Commissioner (the "commissioner"). Section 35.595 allows the Commission to adopt rules to implement the section, clarify duties and responsibilities of the customer, financial institution, and check verification entity, and to specify how an erroneous notification may be withdrawn, amended, or corrected.

HB 2002 also added §11.309 to the Finance Code. This new statute requires the Commission to adopt rules establishing the system and requiring entities to register with the commissioner.

Proposed new Chapter 35 of this title ("Chapter 35") implements House Bill 2002 by specifying the requirements for check verification entities to register with the department and for financial institutions to transmit information through the system regarding fraud to the registered check verification entities. Information on an account, closed because of fraud, is sent through the system at the request of the owner of the account. The entities use the information to recommend that their business customers reject checks written on the closed account. Proposed Chapter 35 sets forth: how an entity registers with the department; the responsibilities of the Banking Commissioner; the procedure for a financial institution to report an offense under Section 32.51 to the system; and the procedure for correcting erroneous information sent through the system.

Pursuant to §§35.595(e) and (g), Business & Commerce Code, and §11.309(b), Finance Code, the commission proposes §§35.1, 35.11 - 35.17, 35.31, 35.51 - 35.59, 35.71, and 35.72, to implement §35.595, Business & Commerce Code; clarify the duties and responsibilities of a customer, financial institution, or entity under §35.595; register the check verification entities;

charge a reasonable annual fee; and establish an electronic notification system.

Proposed §35.1 defines the terms and phrases used in Chapter 35.

Proposed §§35.11 - 35.17 comply with the requirements in §11.309(b)(1) - (2) that the commission adopt rules addressing certain aspects of the registration of the entities.

Proposed §35.11 sets forth who must register with the commissioner as an entity.

Proposed §§35.12 and 35.13 set out the requirements for an entity to register with the department as an entity. Because the department is registering these entities, but not regulating them, the registration requirements are not as detailed as for other entities regulated by the department.

Proposed §35.14 provides that an entity must pay a \$100 registration fee annually. The commissioner is statutorily authorized to charge the entities a reasonable annual registration fee, not to exceed \$100. The commissioner has determined that an annual registration fee of \$100 is necessary to offset the cost of the registration process.

Proposed §35.15 provides that all of the entities' registrations will expire on March 1 of each year.

Proposed §35.16 details the annual registration renewal requirements.

Proposed §35.17 sets out how long a registered entity has to inform the department about changes to its registration information.

Proposed §35.31 complies with §11.309(b)(3), which instructs the commission to adopt a rule requiring the commissioner to establish the system. The rule further states that the department will maintain the system, but will not verify the accuracy, validity, or completeness of information transmitted through the system. It also clarifies that the department is not the furnisher of the information to the entities.

Proposed §35.51 describes offenses under Section 32.51.

Proposed §35.52(a) encourages financial institutions to provide customers reporting offenses under Section 32.51 with sworn statement and the written authorization forms required by §§35.595(b)(2) and (3), Business & Commerce Code, respectively. Further, when a person reports directly to an entity that they were the victim of an offense under Section 32.51, §35.52(b) encourages the entity to provide the person with the sworn statement form required by §35.595(e)(2)(B), Business & Commerce Code. Proposed §35.52(c) allows a financial institution or entity a method to provide forms on the Internet if the person agrees to receive them in that format.

Proposed §35.53 states that the department will provide model forms for the sworn statement and written authorization. Financial institutions and entities may use the model forms created by the department or use and accept other forms. The model forms will be on the department website. Financial institutions may combine the sworn statement and the written authorization into a single form. Financial institutions, entities, and banking regulators are encouraged to post these forms on their websites.

Proposed §35.54 sets out the requirements of the sworn statement required for financial institutions by §35.595(b)(2), Business & Commerce Code.

Proposed §35.55 contains the requirements of the written authorization required for financial institutions by §35.595(b)(3), Business & Commerce Code.

Proposed §35.56 contains the requirements of the sworn statement required for entities by §35.595(e)(2)(B), Business & Commerce Code.

Proposed §35.57 requires a financial institution to transmit the information set out in §35.595(d), Business & Commerce Code, through the system not later than the second business day after a customer notifies the financial institution of fraud and provides the financial institution with the statutorily required information and documents.

In recognition of the difficulty and delay involved in getting a police report, proposed §35.58 gives a person the right to provide the financial institution or check verification entity with a police case or offense number in lieu of a copy of the police report.

As required by §35.595(e), Business & Commerce Code, proposed §35.59 sets out the procedures an entity must maintain to prevent recommending approval of a check or similar sight order after receipt of a notification of an offense under Section 32.51.

Proposed §35.71 requires a financial institution to correct incorrect information provided to the system in accordance with the Federal Credit Reporting Act, 15 U.S.C. §§1681 et seq. ("FCRA").

Proposed §35.72 requires an entity to process a notice of erroneous information received through the system in the same manner as it processes information received from its usual sources.

Concern has been expressed that the State statutes impose requirements in subject matters where States are prohibited from doing so by 15 U.S.C. §1681t. The commission does not believe that these sections violate §1681t or any other sections of FCRA.

The purpose of FCRA is to require that consumer reporting agencies adopt reasonable procedures that ensure accuracy and fairness in credit reporting and to require that such reporting is confidential, accurate, relevant, and proper. See 15 U.S.C. §1681. FCRA protects consumers' reputations and protects them against the dissemination of false or misleading credit information.

Except as provided in 15 U.S.C. §1681t(b) and (c), FCRA does not annul, alter, affect, or exempt any person subject to the FCRA from complying with the laws of any State with respect to collection, distribution, or use of any information on consumers, or for the prevention or mitigation of fraud, except to the extent that those laws are inconsistent with any provision of FCRA, and then only to the extent of the inconsistency. See 15 U.S.C. §1681t(a). Section 1681t(b), however, provides that no requirement or prohibition may be imposed under the laws of any State with respect to any subject matter regulated under several sections and subsections of FCRA.

Of the sections and subsections listed in §1681t(b), the only one where the State statutes could possibly have imposed a requirement or prohibition in violation of 15 U.S.C. §1681t, is 15 U.S.C. §1681s-2. Section 1681s-2 relates to the responsibilities of persons who furnish information to consumer reporting agencies. A closer look at §1681s-2, reveals that it relates to two subject matters: (1) the accuracy of information provided to consumer reporting agencies by furnishers of information and (2) the duties of furnishers of information upon notice of a dispute. The

State statutes do not impose a requirement or prohibition in either of these subject matters. Section 1681s-2 deals with the duties of furnishers of information after the information is sent, while the State statutes impose a requirement for a financial institution to send information to check verification entities when requested by a consumer. With respect to furnishers of information to consumer reporting agencies the State statutes and these proposed new rules merely require financial institutions to send certain customer information to entities when requested to do so by a customer.

Proposed rule, §35.71, does not impose a requirement or prohibition in the subject matter of §1681s-2; it merely requires that the financial institution comply with 15 U.S.C. §§1681 et seq.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for each year of the first five years that proposed Chapter 35 is in effect, there will be no fiscal implication for local government, and there is no fiscal implication for state government as a result of administering proposed Chapter 35. Entities required to register under Chapter 35 will incur a \$100 annual registration fee pursuant to §11.309(b)(2), which authorizes the commissioner to charge a reasonable annual registration fee not to exceed \$100. The proposed annual registration fee will enable the department to recover its costs in registering the entities.

Mr. Bacon also has determined that, for each of the first five years Chapter 35 is in effect, the public benefit anticipated as a result of the adoption of the proposed chapter will be businesses accepting fewer checks on accounts closed because of fraud. The entities will receive a benefit when information on closed accounts is sent to them through the system. The registrants use this information to enhance the services they provide to businesses who contract with them to provide this information. Financial institutions benefit from Chapter 35 by giving them an additional fraud prevention service that they provide to their customers. Finally, financial institutions additionally benefit from processing fewer checks written by thieves on their customers' accounts. Financial institutions will be impacted because their employees will have to take the time to receive the information and documents from their customers and enter the information into the system.

There will be no adverse economic impact on small businesses or micro-businesses. There will be no material difference in the cost of compliance for small or micro-businesses as compared with large businesses.

Comments on proposed Chapter 35 may be submitted to Shannon Phillips, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by e-mail to: sphillips@banking.state.tx.us. Comments will be accepted for 31 days following the date of publication of this proposal in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 7 TAC §35.1

New §35.1 is proposed under the authority of Business & Commerce Code §35.595, which requires a financial institution to submit information reported by victims of an offense under Section 32.51 to the system established by the commissioner; Finance Code §11.309(b), which requires the Commission to adopt rules requiring entities to register with the commissioner, authorizes the commissioner to charge a fee for registration, and establishes the system; and Finance Code §31.003, which

allows the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Chapters 11, 12, and 13.

Finance Code, Chapter 11, Business & Commerce Code, Chapter 35, and Penal Code, Chapter 32, are affected by proposed Chapter 35.

§35.1. Definitions.

In this subtitle:

(1) Banking commissioner--The Commissioner of the Texas Department of Banking.

(2) Department--The Texas Department of Banking.

(3) Electronic notification system--The secure e-mail or other secure system established under Section 11.309, Finance Code, and used by financial institutions to notify check verification entities as required by Section 35.595, Business & Commerce Code.

(4) Financial institution--A financial institution as defined by Section 35.595(a)(2), Texas Business & Commerce Code.

(5) Police report--A police report of an offense under Section 32.51, Penal Code.

(6) Sworn statement--The sworn statements referred to in Section 35.595(b)(2) and Section 35.595(e)(2)(B), Business & Commerce Code, except when the term is specifically limited to one of the sworn statements.

(7) Written authorization--The written authorization referred to in Section 35.595(b)(3), Business & Commerce Code.

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

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A. Kaylene Ray

General Counsel

Texas Department of Banking

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## SUBCHAPTER B. REGISTRATION OF CHECK VERIFICATION ENTITIES

### 7 TAC §§35.11 - 35.17

New §§35.11 - 35.17 are proposed under the authority of Business & Commerce Code §35.595, which requires a financial institution to submit information reported by victims of an offense under Section 32.51 to the system established by the commissioner; Finance Code §11.309(b), which requires the Commission to adopt rules requiring entities to register with the commissioner, authorizes the commissioner to charge a fee for registration, and establishes the system; and Finance Code §31.003, which allows the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Chapters 11, 12, and 13.

Finance Code, Chapter 11, Business & Commerce Code, Chapter 35, and Penal Code, Chapter 32, are affected by proposed Chapter 35.

§35.11. Who must register with the banking commissioner?

An entity is a check verification entity and must register with the banking commissioner if it:

(1) is a consumer reporting agency;

(2) contracts with businesses in this state to recommend acceptance or rejection of checks or similar sight orders received by the businesses; and

(3) compiles and maintains files on consumers on a nationwide basis regarding the consumers' check-writing history for those businesses with which it contracts.

§35.12. What is the registration requirement for a check verification entity?

A check verification entity must register with the department and then renew the registration annually thereafter on forms prescribed by the department.

§35.13. What must a check verification entity do to register in Texas?

(a) A check verification entity must complete and submit the registration form prescribed by the banking commissioner, which at a minimum, must include:

(1) the full legal name, any assumed name, principal business address, mailing address, business telephone number, facsimile number, and website address of the check verification entity;

(2) the full legal name, title, business telephone number, facsimile number, and e-mail address of the following persons associated with the check verification entity:

(A) the person responsible for questions about the registration or renewal process; and

(B) the person responsible for compliance with the requirements of Business and Commerce Code, §35.595.

(3) a statement that:

(A) the registration information is true and correct;

(B) it has business clients in Texas and compiles and maintains files on consumers on a nationwide basis regarding consumers' check-writing history for those businesses;

(4) such other information as the banking commissioner may require, including information confirming that the registering entity is required to register under §35.11 of this title; and

(5) a certification by an authorized officer that the information therein is true and correct; and

(b) Submit the nonrefundable annual registration fee of \$100 with the registration form.

§35.14. Is there a fee for registering a check verification entity?

A check verification entity must pay a \$100 fee to the department when it initially submits a completed registration form to the department and then annually thereafter when it submits a form to renew its registration.

§35.15. When does a check verification entity's registration expire?

Regardless of the date on which a registration under this chapter is effective, the registration expires on March 1 of each year.

§35.16. How does a check verification entity renew its registration?

To renew a registration, a check verification entity must file a completed registration form pursuant to the instructions in §35.13 of this title, on or before February 1 of each year.

§35.17. What must a check verification entity do when its registration information changes?

A check verification entity must notify the department of any change in the registration information provided to the department not later than the 30th day after the date of the change.

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

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A. Kaylene Ray

General Counsel

Texas Department of Banking

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For further information, please call: (512) 475-1300



## SUBCHAPTER C. RESPONSIBILITIES OF THE BANKING COMMISSIONER

### 7 TAC §35.31

New §35.31 is proposed under the authority of Business & Commerce Code §35.595, which requires a financial institution to submit information reported by victims of an offense under Section 32.51 to the system established by the commissioner; Finance Code §11.309(b), which requires the Commission to adopt rules requiring entities to register with the commissioner, authorizes the commissioner to charge a fee for registration, and establishes the system; and Finance Code §31.003, which allows the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Chapters 11, 12, and 13.

Finance Code, Chapter 11, Business & Commerce Code, Chapter 35, and Penal Code, Chapter 32, are affected by proposed Chapter 35.

§35.31. What is the banking commissioner required to do with respect to the electronic notification system?

(a) The banking commissioner is required to establish an electronic notification system, through secure email or another secure system, to be used by a financial institution to notify check verification entities as required by Section 35.595, Business & Commerce Code.

(b) The department will maintain the electronic notification system for financial institutions to use to transmit the required information to check verification entities, but the department:

(1) will not verify the accuracy, validity, or completeness of any information transmitted through the electronic notification system; and

(2) is not furnishing the information to the check verification entities.

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

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A. Kaylene Ray

General Counsel

Texas Department of Banking

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## SUBCHAPTER D. PROCEDURE FOLLOWING A CUSTOMER REPORT OF AN OFFENSE UNDER SECTION 32.51, PENAL CODE

### 7 TAC §§35.51 - 35.59

New §§35.51 - 35.59 are proposed under the authority of Business & Commerce Code §35.595, which requires a financial institution to submit information reported by victims of an offense under Section 32.51 to the system established by the commissioner; Finance Code §11.309(b), which requires the Commission to adopt rules requiring entities to register with the commissioner, authorizes the commissioner to charge a fee for registration, and establishes the system; and Finance Code §31.003, which allows the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Chapters 11, 12, and 13.

Finance Code, Chapter 11, Business & Commerce Code, Chapter 35, and Penal Code, Chapter 32, are affected by proposed Chapter 35.

§35.51. What is an offense under Section 32.51, Penal Code?

Generally, a person commits an offense under §32.51, Penal Code, if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses:

(1) identifying information of another person without the other person's consent; or

(2) without legal authorization, information concerning a deceased person that would be identifying information of that person were that person alive.

§35.52. What must a financial institution or check verification entity do when a person reports to it that the person was the victim of an offense under Section 32.51, Penal Code?

(a) When a customer reports to a financial institution that they have been the victim of an offense under Section 32.51, Penal Code, the financial institution is encouraged to provide the customer with a sworn statement form under Section 35.595(b)(2), Business & Commerce Code, and a written authorization form under Section 35.595(b)(3).

(b) When a person reports to a check verification entity that they have been the victim of an offense under Section 32.51, Penal Code, the check verification entity is encouraged to provide the person with a sworn statement form under Section 35.595(e)(2)(B), Business & Commerce Code.

(c) If a person agrees to receive the documents described in subsection (a) or (b) of this section in a particular electronic format or on the Internet, a financial institution or check verification entity may provide the documents to the person electronically or by providing the person with the URL address of the webpage where the forms are located:

(1) on the website of the financial institution or check verification entity; or

(2) on the department's website.

§35.53. Will the department provide model forms for the sworn statement and written authorization required by Section 35.595(b)(2) and (3), Business & Commerce Code?

(a) The department has provided a model form combining the sworn statement under Section 35.595(b)(2), Business & Commerce Code, and the written authorization under Section 35.595(b)(3) for use by financial institutions.

(b) The department has provided a model form sworn statement under Section 35.595(e)(2)(B), Business & Commerce Code, for use by check verification entities.

(c) A financial institution or check verification entity may use and accept:

(1) the model forms provided by the department; and

(2) other forms that contain spaces for persons to provide the information required by Section 35.595, Business and Commerce Code, and this Chapter.

(d) The model forms in subsection (a) and (b) of this section are available on the department's website. The department encourages financial institutions, check verification entities, and other financial institution regulators to make the model forms, or the forms they use, available on their websites.

(e) A financial institution may use and accept a form that combines the sworn statement and the written authorization into a single form.

§35.54. What information must appear on the sworn statement required by Section 35.595(b)(2), Business & Commerce Code, for use when a person contacts a financial institution with the intent to send information through the electronic notification system?

The sworn statement form required by Section 35.595(b)(2), Business & Commerce Code, must include:

(1) a notice, at the top of the first page, that provides that:

(A) the customer must file a police report regarding an offense under Section 32.51, Penal Code; and

(B) the customer must return the completed sworn statement with either:

(i) the incident or case number of the police report;

or

(ii) a copy of the police report.

(2) blanks for the customer to provide:

(A) customer's name, address, phone number, date of birth;

(B) the number and the issuing governmental entity's name for the customer's:

(i) driver's license or state issued identification card;

or

(ii) if the customer does not have a driver's license or state issued identification card, other government-issued identification.

(C) the account number of any account compromised by the alleged offense and closed in response to the alleged offense;

(D) routing number for the financial institution where the account was closed;

(E) numbers or the range of numbers of any checks that have been lost, stolen, or compromised, if any;

(F) the incident or case number of the police report; and

(G) a signature before a notary public.

§35.55. What information must appear on the written authorization required by Section 35.595(b)(3), Business & Commerce Code?

The written authorization form provided to a customer by a financial institution must contain:

(1) a signature bar for the customer's signature; and

(2) a provision in uppercase, bold-faced type that is substantially similar to this provision and in at least 12-point font: *THE STATE OF TEXAS HAS ESTABLISHED AN ELECTRONIC NOTIFICATION SYSTEM TO DELIVER INFORMATION TO CHECK VERIFICATION ENTITIES REGARDING VICTIMS OF OFFENSES UNDER SECTION 32.51, PENAL CODE, REGARDING FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION OF A PERSON. THE CHECK VERIFICATION ENTITIES USE INFORMATION RECEIVED TO ASSIST BUSINESSES IN DECIDING WHETHER TO ACCEPT CHECKS AND OTHER PAYMENT DEVICES PRESENTED TO THEM. BY SUBMITTING THIS FORM, YOU ARE AUTHORIZING \_\_\_\_\_ (NAME OF FINANCIAL INSTITUTION) TO SUBMIT THE INFORMATION YOU PROVIDED ON THE SWORN STATEMENT TO THE ELECTRONIC NOTIFICATION SYSTEM.*

§35.56. What information must appear on the sworn statement required by Section 35.595(e)(2)(B), Business & Commerce Code, for use with a person who contacts a check verification entity directly?

The sworn statement required by Section 35.595(e)(2)(B), Business & Commerce Code, must include:

(1) the information required by §35.54 of this title; and

(2) a statement that the person has requested that their financial institution close any account that has been compromised by the alleged offense.

§35.57. When must a financial institution submit customer information through the electronic notification system?

A financial institution must submit the information required by Section 35.595(d), Business & Commerce Code, to the electronic notification system not later than the second business day after the date the customer:

(1) notifies the financial institution that the customer was a victim of an offense under Section 32.51, Penal Code;

(2) requests the financial institution close an account that has been compromised by the alleged offense; and

(3) presents to the home office, if in Texas, or to any branch of the financial institution in Texas:

(A) an incident or case number of the police report or a copy of the police report of an offense under Section 32.51, Penal Code;

(B) the sworn statement required by Section 35.595(b)(2), Business & Commerce Code; and

(C) the written authorization required by Section 35.595(b)(3), Business & Commerce Code.

§35.58. May a financial institution or check verification entity accept a case or offense number issued by a police department instead of a copy of the police report?

Instead of a copy of the police report regarding an offense under Section 32.51, Penal Code, a person may provide a financial institution or

check verification entity the case or offense number issued by the police department.

§35.59. What procedures must a check verification entity maintain to prevent recommending approval of a check or similar sight order after receipt of a notification of an offense under Section 32.51, Penal Code?

A check verification entity must process a notification received through the electronic notification system or pursuant to Section 35.595(e)(2), Business & Commerce Code, in the same manner as it processes information received from its usual sources, including information received from its business customers.

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

Filed with the Office of the Secretary of State on October 19, 2007.

TRD-200705025

A. Kaylene Ray  
General Counsel

Texas Department of Banking

Proposed date of adoption: December 14, 2007

For further information, please call: (512) 475-1300



## SUBCHAPTER E. PROCEDURES WHEN INCORRECT INFORMATION IS REPORTED TO THE CHECK VERIFICATION ENTITY

### 7 TAC §§35.71, §35.72

New §35.71 and §35.72 are proposed under the authority of Business & Commerce Code §35.595, which requires a financial institution to submit information reported by victims of an offense under Section 32.51 to the system established by the commissioner; Finance Code §11.309(b), which requires the Commission to adopt rules requiring entities to register with the commissioner, authorizes the commissioner to charge a fee for registration, and establishes the system; and Finance Code §31.003, which allows the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Chapters 11, 12, and 13.

Finance Code, Chapter 11, Business & Commerce Code, Chapter 35, and Penal Code, Chapter 32, are affected by proposed Chapter 35.

§35.71. What must a financial institution do when it receives notice from a customer or a check verification entity that it sent incorrect information through the electronic notification system?

A financial institution that determines or is informed that information it furnished to check verification entities through the electronic notification system is not complete or accurate must correct that information promptly in accordance with 15 U.S.C. §§1681 et seq. and other applicable law. The electronic notification system is available to the financial institution to provide the registered check verification entities with complete and accurate information.

§35.72. What must a check verification entity do when it receives notice directly from a person pursuant to Section 35.595(e)(2), Business & Commerce Code, or from a financial institution through the electronic notification system that information the check verification entity received was erroneous?

Subject to other applicable state or federal law, a check verification entity that is notified that information it received through the electronic

notification system is not complete or accurate must process the notice in the same manner as it processes such notices received from its usual sources, including information received from its business customers.

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

Filed with the Office of the Secretary of State on October 19, 2007.

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A. Kaylene Ray  
General Counsel

Texas Department of Banking

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## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 89. PROPERTY TAX LENDERS

#### SUBCHAPTER E. DISCLOSURES

##### 7 TAC §§89.501 - 89.507

The Finance Commission of Texas (commission) proposes new 7 TAC Chapter 89, §§89.501 - 89.507, concerning Property Tax Lenders. The new rules contained in 7 TAC §§89.501 - 89.507 outline Subchapter E, concerning Disclosures.

As a note of background regarding these rules, the property tax lender industry is a fairly young industry (approximately 10 - 12 years old) and an industry newly regulated by the agency. The agency decided that it would be in the best interest of consumers as well as the industry to gather information from interested stakeholders in order to prepare an informed and well-balanced proposal for the commission on the issue of disclosures. Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and received written comments from several interested stakeholders. Subsequently, the agency held a stakeholder meeting where several stakeholders provided verbal testimony and elaborated on their written comments to the ANPR.

Upon review of all the thorough and insightful commentary provided, the agency also distributed a proposed rule draft to the growing list of stakeholders for specific early or pre-comment prior to the presentation of the rules to commission. The agency believes that this early participation of stakeholders in the rule-making process has greatly benefited the resulting proposal.

The agency carefully evaluated the stakeholders' comments and has incorporated numerous recommendations offered by the stakeholders. Some suggestions, however, are not included in the agency's proposal. Regarding certain comments that the agency decided not to incorporate in this proposal, the agency has provided some initial explanation as to the reasoning behind those drafting decisions. During the official comment period, stakeholders are welcome to resubmit any comments regarding issues not incorporated into the proposal.

In general, the purpose of the new rules is to establish for property tax lenders certain disclosures required under Senate Bill



1520 (SB 1520), as enacted by the 80th Texas Legislature. The individual purposes of each rule are provided below.

Section 89.501 outlines the purpose of Subchapter E, which is to provide disclosures for property tax loan transactions.

Section 89.502 provides definitions to be used in Subchapter E, including the incorporation of definitions contained in the Texas Finance Code and the Texas Tax Code.

Section 89.503 prescribes the general format of the disclosures contained in Subchapter E, including readable typefaces and point sizes.

Section 89.504 outlines the requirements for the disclosure statement provided to a property owner under Texas Tax Code, §32.06(a-4)(1). Subsection (a) describes the required elements that must be included in the disclosure statement.

It was suggested that the element contained in §89.504(a)(5) read as follows: "a statement that the property tax loan is superior to any other preexisting lien on the property, except a preexisting property tax loan." The agency recognizes that a preexisting property tax loan could certainly exist and would have equal superiority to a property tax loan currently being entered into by the property owner. The agency chose not to include this technical exception in order to align with the plain language approach of the disclosure statement. The agency believes that most owners will not have an existing tax lien on the same property when they are reviewing the disclosure. Additionally, there are certain concepts which are not completely explained in order for the disclosure to fit on a single page. The current language focuses on the property tax loan before the owner and its relation to any existing mortgage.

Subsection (b) of §89.504 requires that the disclosure statement fit on one standard-size sheet of paper. Subsection (c) details how the disclosure statement must be delivered, and subsection (d) explains how that delivery must be verified. Subsection (d) also includes provisions for married property owners and property owned by a legal entity.

The issue was raised that §89.504(c) be revised to allow an exception where the mailed delivery prior to closing could be waived for good cause, which would include situations of imminent foreclosure or imposition of additional penalties on the property owner. The agency believes that the delivery provision as proposed would provide the majority of property owners a copy of the disclosure statement in a timely manner before closing, thus allowing the property owner to absorb the information and make an informed decision. While disallowing the suggested exception may delay certain property owners from obtaining a property tax loan at the most beneficial time, the agency believes that the greater interest of the majority of property owners would best be served through timely delivery prior to closing. But in the interest of obtaining more complete information, the agency invites comments on the issue of the delivery timing of the disclosure statement.

Section 89.505 outlines the requirements for the notice of delinquency sent by the mortgage servicer or the holder of the first lien to the transferee of a tax lien under Texas Tax Code, §32.06(f-1). Subsection (a) lists the required elements that must be included in the notice of delinquency. Subsection (b) outlines the delivery requirements, and subsection (c) describes how that delivery must be verified.

Section 89.506 provides the required disclosure statement under Texas Tax Code, §32.06(a-4)(1), and a sample model notice of delinquency under Texas Tax Code, §32.06(f-1).

Section 89.507 describes the permissible changes that may be made to each of the disclosures. The disclosure statement is a strict, prescribed form that may only be changed according to the exclusive list outlined in §89.507(a). In contrast, the notice of delinquency form is simply a model disclosure that may experience several modifications, as outlined in §89.507(b), which offers flexibility to the provider of the notice. The different approaches utilized for the two disclosures echo the statute, as the disclosure statement is mandated by the statute, whereas the notice of delinquency is optional.

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 consistency and clarity in the disclosures provided, benefiting both lenders and consumers alike. An additional public benefit of the proposed rules is enhanced compliance with the credit laws.

Additional economic costs may be incurred by a person required to comply with this proposal. For those who will be required to comply, the anticipated costs related to disclosures would include the costs associated with copying and delivering the disclosure forms, and costs attributable to the loss of obsolete forms inventory. Additional copy costs are estimated to be approximately \$0.10 - \$0.20 per new form. The additional cost of delivery is estimated to be the cost of first-class U.S. postage, which is currently \$0.41 per mailed disclosure form.

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

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these new rules, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of these proposed rules should that effect be adverse to small 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](mailto: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.

The new sections are proposed under Texas Tax Code, §32.06(a-4) and (f-1), which authorize the Finance Commission to adopt rules to establish certain disclosures for property tax lenders.

The statutory provisions affected by the proposed new sections are contained in Texas Tax Code, §32.06 and §32.065, and Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

§89.501. Purpose.

The purpose of the rules contained in this subchapter is to provide disclosures for property tax loan transactions. These rules prescribe the form and content of the disclosures under Texas Tax Code, §32.06(a-4)(1) and §32.06(f-1).

§89.502. Definitions.

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

(1) Property tax lender--has the meaning assigned by Texas Finance Code, §351.002(1) (Acts 2007, 80th Leg., ch. 1220). Another name for a "property tax lender" is a "transferee" as defined by Texas Tax Code, §32.06(2), and these terms may be used synonymously.

(2) Property tax loan--has the meaning assigned by Texas Finance Code, §351.002(2) (Acts 2007, 80th Leg., ch. 1220). Another name for a "property tax loan" is a "tax lien transfer," and these terms may be used synonymously.

(3) Tax lien transfer--has the meaning assigned by Texas Finance Code, §351.002(2) (Acts 2007, 80th Leg., ch. 1220). Another name for a "tax lien transfer" is a "property tax loan," and these terms may be used synonymously.

(4) Transferee--has the meaning assigned by Texas Finance Code, §351.002(1) (Acts 2007, 80th Leg., ch. 1220) and Texas Tax Code, §32.06(2). Another name for a "transferee" is a "property tax lender," and these terms may be used synonymously.

§89.503. Format.

(a) Disclosures for property tax loan transactions must be printed in an easily readable font and type size. If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include: Times New Roman, Scala, Caslon, Century Schoolbook, Helvetica, and Garamond.

(c) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times New Roman typeface for visual comparative purposes. Generally, the typeface for the body of the disclosures must be at least as large as 11 point in the Times New Roman typeface. The typeface for the headings must be in boldface type and at least as large as 12 point in the Times New Roman typeface. A point is generally viewed as 1/72nd of an inch.

§89.504. Requirements for Disclosure Statement to Property Owner.

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer must contain the following required elements:

(1) the property tax lender's name, principal business address, and license number;

(2) a statement that the property owner currently has a lien against the owner's property for unpaid property taxes;

(3) a statement that the property owner can pay the taxing unit(s) directly;

(4) a statement that the property owner may authorize that the lien of the taxing unit(s) be transferred to the property tax lender;

(5) a statement that the property tax loan is superior to any other preexisting lien on the property;

(6) a statement that if the property is a homestead, disabled persons or persons age 65 or older may be eligible for tax deferral under Texas Tax Code, §33.06;

(7) a statement that there may be alternatives available to the property owner instead of the property tax loan, (e.g., entering into a payment installment agreement with the taxing unit(s), financing options through an existing mortgage lender or other private lenders, borrowing from savings or family members);

(8) a statement that if the property owner does not pay, the property owner may lose the property;

(9) a statement that the tax lien may be considered a default by any mortgage holder with a lien on the same property, and the only way to correct the default is to pay off the taxes and have the lien released;

(10) a statement that any secured loan may be foreclosed if the loan is in default, and the cost of a foreclosure, either tax lien or mortgage, may be added to the amount owed by the property owner;

(11) a statement that the property owner may contact the Office of Consumer Credit Commissioner about questions or problems, listing the OCC's address, toll-free consumer helpline, and website, as follows: 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occ.state.tx.us; and

(12) a statement that the property owner may seek the advice of an attorney or another third party before signing a property tax loan.

(b) Single page required. The disclosure statement required by §89.506(a) of this title (regarding Disclosures) must fit on one standard-size sheet of paper (8 1/2 by 11 inches).

(c) Delivery.

(1) Face-to-face interview before closing. In the case of a face-to-face interview with one or more property owners who are applying for a property tax loan, a property tax lender must provide a disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by Figure: 7 TAC §89.506(a), to the property owner(s) at the time of the interview. A property owner present at the interview may sign an acknowledgment verifying receipt of the disclosure statement at that time. A property owner present at the interview also may accept delivery of the disclosure statement on behalf of other co-applicants.

(2) No face-to-face interview. If there is no face-to-face interview, a property tax lender must deliver a disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by Figure: 7 TAC §89.506(a), to each owner of the property by placing it in the U.S. mail, with prepaid first-class postage, or via facsimile if available to the property owner. The disclosure statement must be mailed or faxed within three business days from receipt of the property owner's application for a property tax loan, or within three business days from the date that the property tax lender first has knowledge of the property owner's agreement to enter into a property tax loan with the property tax lender. If property owners who are co-applicants provide the same mailing address, one copy delivered to that

address is sufficient. If different addresses are shown by co-applicants, a copy must be delivered to each of the co-applicants.

(d) Verification of delivery.

(1) At time of face-to-face interview before closing. At the time of a face-to-face interview, verification that a disclosure was provided under this section is not required, but may be established by a signed and dated acknowledgment of each owner of the property obtained at the time of the interview.

(2) No face-to-face interview. If there is no face-to-face interview, the property tax lender must either mail or fax the disclosure statement to the each owner of the property as prescribed in subsection (c)(2) of this section. The property tax lender must allow a reasonable period of time for delivery by mail. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery. For disclosures delivered via facsimile, a dated facsimile confirmation page indicating that the disclosure statement was successfully transmitted to the fax number provided by the property owner will constitute verification of delivery.

(3) At time of closing. At the time of closing, a property tax lender may deliver an additional copy of the disclosure statement prescribed by Figure: 7 TAC §89.506(a), but is not required to do so. The property tax lender must obtain a dated acknowledgment signed by each owner of the property stating that the property owner(s) received the disclosure statement prior to closing. The acknowledgment of receipt may be included on the disclosure form as provided in §89.507(a)(4) of this title (relating to Permissible Changes).

(4) Married property owners. If the property is designated as a homestead, the signatures of both spouses must be obtained by the property tax lender in order to verify delivery of a disclosure under this section.

(5) Property owned by a legal entity. If the property is owned by a legal entity (e.g., a living trust), the signature of a person with authority to sign on behalf of the legal entity must be obtained by the property tax lender in order to verify delivery of a disclosure under this section.

§89.505. Requirements for Notice of Delinquency to Transferee.

(a) Required elements. If a notice of delinquency under Texas Tax Code, §32.06(f-1) is sent by the mortgage servicer or the holder of the first lien to the transferee of a tax lien, it must contain the following required elements:

- (1) the date of the notice;
- (2) the name of the property owner;
- (3) the address of the property owner;
- (4) the address of the property;
- (5) the legal description of the property;
- (6) the tax account number or property tax loan number;
- (7) the name and address of the mortgage servicer or the first lien holder sending the notice; and

(8) the sender's relationship to the preexisting lien, and if the sender is not the lien holder, the name and address of the lien holder.

(b) Delivery.

(1) Timing of delivery. If the mortgage servicer or the holder of the first lien sends a notice of delinquency under Texas Tax Code, §32.06(f-1) to the transferee of a tax lien, it must be sent within 30 days of the 90-day delinquency of the property owner.

(2) Method of delivery. At a minimum, a notice under this section must be sent by U.S. mail or via facsimile. Mortgage servicers or first lien holders may use certified mail or delivery by a commercial delivery service with tracking abilities.

(c) Verification of delivery. Verification that a notice was sent under this section, at a minimum, must be established by a dated postmark of the U.S. Postal Service or by a dated facsimile confirmation page. Mortgage servicers or first lien holders who use certified mail or a commercial delivery service may verify delivery with a return receipt or tracking receipt.

§89.506. Disclosures.

(a) The required disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer is presented in the following figure.  
Figure: 7 TAC §89.506(a)

(b) A sample model notice of delinquency under Texas Tax Code, §32.06(f-1) that may be sent by the mortgage servicer or the holder of the first lien to the transferee of a tax lien is presented in the following example.  
Figure: 7 TAC §89.506(b)

§89.507. Permissible Changes.

(a) A property tax lender must use the required disclosure statement under Texas Tax Code, §32.06(a-4)(1) as prescribed by Figure: 7 TAC §89.506(a), but may consider making only limited technical changes, as provided by the following exclusive list:

(1) Substituting "transferee" for "property tax lender," or using pronouns such as "we" and "us";

(2) Substituting "borrower" for "property owner," or using pronouns such as "you" and "your";

(3) Substituting "tax lien transfer" for "property tax loan";  
or

(4) Adding an optional, dated signature block at the very bottom of the disclosure form, which must include the following statement directly above the signature line of the property owner(s): "My signature indicates only that I have received a copy of this disclosure."

(b) A property tax lender may consider making the following types of changes to the model notice of delinquency under Texas Tax Code, §32.06(f-1) as provided by Figure: 7 TAC §89.506(b):

(1) Adding information related to information set forth in the model disclosures that is not otherwise prohibited by law;

(2) Substituting "property tax lender" for "transferee," or using pronouns such as "you" and "your";

(3) Substituting "borrower" for "property owner";

(4) Presenting the model clauses in any order, and combining or further segregating the model clauses, if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures;

(5) Inserting descriptive titles, headings, subheadings, numbering, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or to provide emphasis; or

(6) Making other changes which do not affect the substance of the 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 October 19, 2007.

TRD-200705013

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 936-7621



## SUBCHAPTER F. COSTS AND FEES

### 7 TAC §89.601

The Finance Commission of Texas (commission) proposes new 7 TAC Chapter 89, §89.601, concerning Property Tax Lenders. The new rule contained in 7 TAC §89.601 outlines Subchapter F, concerning Costs and Fees.

As a note of background regarding this rule proposal, the property tax lender industry is a fairly young industry (approximately 10 - 12 years old) and an industry newly regulated by the agency. The agency decided that it would be in the best interest of consumers as well as the industry to gather information from interested stakeholders in order to prepare an informed and well-balanced proposal for the commission on the issue of fees. Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and received written comments from several interested stakeholders. Subsequently, the agency held a stakeholders meeting where several stakeholders provided verbal testimony and elaborated on their written comments to the ANPR.

Upon review of all the thorough and insightful commentary provided, the agency also distributed a proposed rule draft to the growing list of stakeholders for specific early or pre-comment prior to the presentation of the rule to commission. The agency believes that this early participation of stakeholders in the rule-making process has greatly benefited the resulting proposal.

The agency carefully evaluated the stakeholders' comments and has incorporated numerous recommendations offered by the stakeholders. Some suggestions, however, are not included in the agency's proposal. Regarding certain comments that the agency decided not to incorporate in this proposal, the agency has provided some initial explanation as to the reasoning behind those drafting decisions. During the official comment period, stakeholders are welcome to resubmit any comments regarding issues not incorporated into the proposal.

In general, the purpose of the new rule is to establish for property tax lenders reasonable fees for closing costs required under Senate Bill 1520 (SB 1520), as enacted by the 80th Texas Legislature. Section 89.601 provides the requirements regarding fees for closing costs that may be charged, contracted for, or received by property tax lenders. The individual purposes of each subsection of the rule are provided below.

Subsection (a) of §89.601 outlines the applicability of the fee limitations to property designated as "Category A (Real Property: Single-Family Residential)," and homesteads designated as "Category E (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts.

Section 89.601(a) establishes what reasonable fees for closing costs are for a property tax loan secured by real property that is designed for single-family residential use. Agency staff advised a representative of the Texas Association of Assessing Officers concerning the intended scope of this rule and was directed to the Property Classification Guide published by the Texas Comptroller of Public Accounts. The two selected categories capture the majority of property used for single-family residential use. Furthermore, utilizing these two categories, as defined by the Comptroller, provides certainty to the industry and consumers on the applicability of the fee limitations.

Subsection (b)(1) explains the scope of the closing costs, which includes costs incurred by a property tax lender from the time of application through the time of closing. Under §89.601(b)(2), a non-comprehensive list of examples of closing costs is provided. Again, the list contained in subsection (b)(2) is not an exhaustive or comprehensive list. The rule limits what an owner may be charged on a property tax loan. The list in the rule contains examples of the types of fees for closing costs a property tax lender might incur. Just because a particular fee is not contained in the list does not mean that it can be used to charge an owner more than the maximums or that the omitted fee cannot be charged.

Subsection (c) describes provisions related to the total maximum fees for closing costs that may be charged, contracted for, or received by a property tax lender. Subsection (c)(1) explains that the maximum fees include funds received by third parties or those retained by the property tax lender. Consequently, a maximum fee amount or ceiling is determined by the total amount of fees for closing costs paid by the property owner.

Under §89.601(c)(2), the maximum fee limits for closing costs are outlined, according to the total amount of money paid by a property tax lender to the taxing unit(s) to obtain transfer of the tax lien, which is known as the "total tax lien payment amount." Subsection (c)(3) states that the maximum fees contained in subsection (c)(2) constitute "reasonable closing costs" under Texas Tax Code, §32.06.

The agency was asked to give consideration to using a cost of living adjustment with the fees. At this time, the agency has decided not to include a cost of living provision within this proposal. One reason is that the current version of the proposed rule provides the property tax lender with a larger fee for a larger property tax loan. If property values increase, then the effect would be similar to the incorporation of a cost of living adjustment. Additionally, even if property values do not increase, the agency has the ability to revise the rule in the future. The issue of a cost of living provision may be revisited at a future date after the agency has had an opportunity to observe the industry.

Subsection (d) of §89.601 provides a limited exception to the fee maximums, where a property tax lender may charge for attorney's fees "that are reasonable and necessary to establish in court the correct title to the property to which the property tax loan relates."

It was requested that the words "in court" be removed from proposed §89.601(d), in part because the attorney's fees related to curative title issues for property tax loans often do not require a lawsuit or court proceeding. The agency intends this exception to cover the more unusual or special title situations that a property tax lender may encounter. For that reason, the agency believes that title issues not requiring a court proceeding should be included under the maximum fee amounts, absorbed by the lender, or paid by the property owner to an outside attorney.

Thus, the agency decided to include "in court" within the proposed language.

The issue was brought forth of requiring that the property tax lender obtain a written authorization from the property owner before charging additional attorney's fees under proposed §89.601(d). The agency believes that the suggested written authorization would not be obtained by the proper party, i.e., the attorney. It is not within the scope of these rules to regulate the relationship between a property owner and that owner's attorney. The agency, however, would like to study this issue further and invites comments concerning the requirement of a written authorization prior to the charging of attorney's fees to establish correct title in court.

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

Commissioner Pettijohn has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of the new rule will be consistency and clarity in the fees charged for closing costs, benefiting both lenders and consumers alike. An additional public benefit of the proposed rule is enhanced compliance with the credit laws.

Additional economic costs may be incurred by a person required to comply with the fees for closing costs proposed in §89.601. The anticipated costs related to the fee limitations are not predictable, as the current practice in the property tax lender industry includes a wide range of fees. The variance for closing cost fees is both above and below the fee maximums proposed within this rule. Thus, some lenders will have to reduce their fees in order to comply and other lenders will be able to continue charging the same amount as their fees are less than the fees permitted by the proposal. Obviously, the lender whose current fees are greater than the fees proposed would incur the difference between the fees as proposed and the lender's current fees as a cost to continue engaging in a property tax loan that is secured by real property designed for single-family use.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of the new rule, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of the proposed rule should that effect be adverse to small businesses.

Comments on the proposed new rule may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by 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 rule is 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.

The new section is proposed under Texas Tax Code, §32.06(a-4), which authorizes the Finance Commission to adopt rules to establish reasonable fees for property tax lenders.

The statutory provisions affected by the proposed new section are contained in Texas Tax Code, §32.06 and §32.065, and

Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

§89.601. Fees for Closing Costs.

(a) Applicability. The fee limitations contained in this section are applicable to property tax loans secured by property designated as "Category A (Real Property: Single-Family Residential)," and home-steads designated as "Category E (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts.

(b) Closing costs for which fees may be charged, contracted for, or received.

(1) Scope of closing costs. For purposes of this section, the term "closing costs" includes costs incurred by a property tax lender from the time of application through the time of closing.

(2) Examples of closing costs. The following is a non-comprehensive list of examples of closing costs for which a property tax lender may charge, contract for, or receive fees in connection with a property tax loan. Examples of some allowable fees for closing costs include the following:

- (A) an application fee;
- (B) an appraisal or inspection fee;
- (C) a title examination fee;
- (D) a property survey fee;
- (E) a fee for flood and plat determinations;
- (F) a document preparation fee;
- (G) a closing or escrow fee;
- (H) a fee for a tax certificate or tax payoff determination;
- (I) a loan origination fee;
- (J) a loan processing fee;
- (K) an underwriting fee;
- (L) a fee for obtaining credit reports;
- (M) a fee for federally-mandated fees;
- (N) a fee for courier and delivery services.

(c) Total maximum fees for closing costs. For purposes of this section, the "total amount of money paid by a property tax lender to the taxing unit(s) to obtain transfer of the tax lien" will be referred to as the "total tax lien payment amount."

(1) Maximum fees include funds received by third parties or retained by property tax lender. The maximum fees provided for by this section encompass fees related to closing costs, whether the charge is paid by a property owner directly to a third party, paid to a third party through a property tax lender, or paid by a property owner directly to and retained by a property tax lender. A property tax lender may absorb any closing costs and may pay third parties out of the total compensation paid to it by a property owner.

(2) Maximum fee limits for closing costs. A property owner may not be charged, directly or indirectly, by a property tax lender an amount related to closing costs in excess of the amounts authorized by this section. A property tax lender may not directly or indirectly charge, contract for, or receive any amount related to closing costs from a property owner in excess of the amounts authorized by this section. The following subparagraphs contained in this paragraph

outline the total maximum fees for closing costs that may be charged, contracted for, or received by a property tax lender in connection with a property tax loan, based on the total tax lien payment amount.

(A) For a total tax lien payment amount that is less than \$2,500, the maximum fee for closing costs is \$1,000.

(B) For a total tax lien payment amount that is equal to or greater than \$2,500 but less than \$5,000, the maximum fee for closing costs is \$1,250.

(C) For a total tax lien payment amount that is equal to or greater than \$5,000 but less than \$7,500, the maximum fee for closing costs is \$1,500.

(D) For a total tax lien payment amount that is equal to or greater than \$7,500 but less than \$10,000, the maximum fee for closing costs is \$1,750.

(E) For a total tax lien payment amount that is equal to or greater than \$10,000, the maximum fee for closing costs is \$2,000, or 10% of the total tax lien payment amount, whichever is greater.

(3) Reasonable closing costs. The maximum fees contained in paragraph (2) of this subsection constitute "reasonable closing costs" under Texas Tax Code, §32.06.

(d) Exception for attorney's fees required to establish correct title. In addition to the maximum fees outlined by subsection (c)(2) of this section, a property tax lender may include in a property tax loan attorney's fees incurred on behalf of a property owner that are reasonable and necessary to establish in court the correct title to the property to which the property tax loan relates.

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

Filed with the Office of the Secretary of State on October 19, 2007.

TRD-200705014

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 936-7621



## CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS SUBCHAPTER F. SECOND LIEN HOME IMPROVEMENT CONTRACTS (SUBCHAPTER G)

### 7 TAC §§90.602 - 90.604

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §90.602, concerning Contract Provisions, §90.603, concerning Model Clauses, and §90.604, concerning Permissible Changes for second lien home improvement contracts.

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 technical corrections.

House Bill 1038 (HB 1038) was passed by the 80th Texas Legislature and went into effect on September 1, 2007. HB 1038 requires that two related disclosures concerning the Texas Residential Construction Commission (TRCC) be provided when certain registrations are required. The first notice, which we refer to as the "TRCC home improvement contract notice," must be provided for certain contracts where the total cost of home improvement is \$10,000 or more, requiring the contract be registered under the Texas Residential Construction Commission Act, Texas Property Code, §426.003. The second notice, which we refer to as the "TRCC builder notice," must be provided when the contractor is required to be registered with the TRCC.

Both notices must contain the contractor's certificate of registration number and direct the owner to contact the TRCC for complaints and inquiries. Revisions related to the TRCC disclosures are contained in §90.602(1)(N), (3)(V), and (5)(HH); §90.603(b)(14), (d)(22), and (f)(34); and the figures contained in 7 TAC §90.604(a)(12), (14), and (16). Please note that these disclosures are only required when the particular registrations are required, i.e., registration of the contract or of the builder. The rule text contained in §90.603 states that these disclosures may be omitted if the registration(s) are not required, resulting in the notices being inapplicable.

Another recent legislative change was also enacted during the 2007 session with the passage of House Bill 2061 (HB 2061). HB 2061 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. Thus, the commission is proposing that revisions regarding the Notice of Confidentiality Rights reflecting the required nature of the notice be added to the rule text in §90.603(d)(24), and that the notice itself be added to the model contract contained in Figure: 7 TAC §90.604(a)(14) for consistency purposes. This notice was returned to the other affected model contracts in a previous rule adoption. In addition, some technical corrections have been made throughout these rules, including renumbering.

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

For each year of the first five years the amendments to these rules are in effect, Commissioner Pettijohn has also determined that the public benefits anticipated as a result of the proposed amendments will be that the commission's rules will reflect current statutory provisions and will be more easily understood. Another public benefit of these rule amendments will be increased uniformity and consistency in credit contracts.

Additional economic costs may be incurred by a person required to comply with this proposal. These costs, however, are required by the statutory provisions enacted by HB 1038; the proposed amendments merely serve to implement the statute. As noted above, the disclosures contained in these rule amendments are only required when the particular registrations are required. Thus, not all home improvement contracts will be affected. For those who will be required to comply, the anticipated costs would include the costs associated with copying a contract or new forms, and costs attributable to the loss of obsolete forms inventory. Additional copy costs are estimated to be approximately \$0.30 - \$0.40 per contract or new form.

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

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule amendments, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of these proposed amendments should that effect be adverse to small businesses.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by 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 as well as all of the rules contained in Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. However, regarding Chapter 90, Subchapter A - F, 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 as well as other recent changes, 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.

#### §90.602. *Contract Provisions.*

A Chapter 342, Subchapter G second lien home improvement loan transaction may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include that provision in the contract. A licensee who

does not desire to apply a provision is not required to include it in the contract. For example, a licensee who does not assess a fee for dishonored checks may omit the fee for dishonored check clause. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter G home improvement loan transaction may contain the following provisions:

(1) For a contract for use in a transaction that does not allow withdrawals or multiple advances:

(A) - (G) (No change.)

(H) A provision regarding changes [~~eharges~~] and extras;

(I) - (M) (No change.)

(N) Texas Residential Construction Commission disclosures;

(O) [~~(N)~~] An assignment; and

(P) [~~(O)~~] A provision regarding notice of confidentiality rights.

(2) (No change.)

(3) For a contract for use in a transaction that allows for withdrawals or multiple advances:

(A) - (J) (No change.)

(K) A provision regarding changes [~~eharges~~] and extras;

(L) - (T) (No change.)

(U) A notice specifying that the owner and the contractor are responsible for meeting the terms of the contract; [~~and~~]

(V) Texas Residential Construction Commission disclosures;

(W) [~~(V)~~] An assignment; and [-]

(X) A provision regarding notice of confidentiality rights.

(4) (No change.)

(5) For a deed of trust for use in a transaction that allows for withdrawals or multiple advances:

(A) - (GG) (No change.)

(HH) Texas Residential Construction Commission disclosures;

(II) [~~(HH)~~] Signature blocks; and

(JJ) [~~(II)~~] A provision regarding notice of confidentiality rights.

#### §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) - (7) (No change.)

(8) Changes [~~Charges~~] and extras. The model clause regarding changes [~~eharges~~] and extras reads: "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."

(9) - (13) (No change.)

(14) Texas Residential Construction Commission (TRCC) disclosures.

(A) TRCC home improvement contract notice. If a contract for the construction of a new home or an improvement to an existing home is required to be registered under the Texas Residential Construction Commission Act, Texas Property Code, §426.003, the contract must contain a TRCC home improvement contract notice. The disclosure or notice must contain:

(i) the builder's name and certificate of registration number; and

(ii) the notice required by the Texas Residential Construction Commission Act, Texas Property Code, §420.001, including the telephone number of the TRCC, in at least 10-point bold type or the computer equivalent.

(B) TRCC builder notice. If the contractor is required to register as a builder with the TRCC, the contract for improvements to an existing residence must incorporate a TRCC builder notice. The disclosure or notice must contain:

(i) the contractor's certificate of registration number; and

(ii) the address and telephone number at which the owner may file a complaint with the TRCC about the conduct of the contractor.

(C) Omission permitted if not applicable. The TRCC home improvement contract notice may be omitted if the contract is not required to be registered under Texas Property Code, §426.003. The TRCC builder notice may be omitted if the contractor is not required to register with the TRCC.

(15) [(14)] Assignment. The parties may use a different assignment or a separate document for the assignment without having to submit the contract to the agency as a non-standard contract. The model assignment in which the contractor transfers and assigns the lien to the lender reads:

Figure: 7 TAC §90.603(b)(15)

~~Figure: 7 TAC §90.603(b)(14)~~

(16) [(15)] Notice of confidentiality rights disclosure. The security document 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;

(B) be in at least 12-point boldfaced type or 12-point uppercase lettering; and

(C) be substantially similar to the required notice or disclosure under Texas Property Code, §11.008(b). The model notice of confidentiality rights reads: "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."

(c) (No change.)

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

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

(11) Changes [Charges] and extras. The model clause regarding changes [charges] and extras reads: "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."

(12) - (21) (No change.)

(22) Texas Residential Construction Commission (TRCC) disclosures.

(A) TRCC home improvement contract notice. If a contract for the construction of a new home or an improvement to an existing home is required to be registered under the Texas Residential Construction Commission Act, Texas Property Code, §426.003, the contract must contain a TRCC home improvement contract notice. The disclosure or notice must contain:

(i) the builder's name and certificate of registration number; and

(ii) the notice required by the Texas Residential Construction Commission Act, Texas Property Code, §420.001, including the telephone number of the TRCC, in at least 10-point bold type or the computer equivalent.

(B) TRCC builder notice. If the contractor is required to register as a builder with the TRCC, the contract for improvements to an existing residence must incorporate a TRCC builder notice. The disclosure or notice must contain:

(i) the contractor's certificate of registration number; and

(ii) the address and telephone number at which the owner may file a complaint with the TRCC about the conduct of the contractor.

(C) Omission permitted if not applicable. The TRCC home improvement contract notice may be omitted if the contract is not required to be registered under Texas Property Code, §426.003. The TRCC builder notice may be omitted if the contractor is not required to register with the TRCC.

(23) [(22)] Assignment. The parties may use a different assignment or a separate document for the assignment without having to submit the contract to the agency as a non-standard contract. The model assignment in which the contractor transfers and assigns the lien to the lender reads:

Figure: 7 TAC §90.603(d)(23)

~~Figure: 7 TAC §90.603(d)(22)~~

(24) Notice of confidentiality rights disclosure. The security document 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;

(B) be in at least 12-point boldfaced type or 12-point uppercase lettering; and

(C) be substantially similar to the required notice or disclosure under Texas Property Code, §11.008(b). The model notice of confidentiality rights reads: "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."

(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) - (33) (No change.)

(34) Texas Residential Construction Commission (TRCC) disclosures.

(A) TRCC home improvement contract notice. If a contract for the construction of a new home or an improvement to an existing home is required to be registered under the Texas Residential Construction Commission Act, Texas Property Code, §426.003, the contract must contain a TRCC home improvement contract notice. The disclosure or notice must contain:

(i) the builder's name and certificate of registration number; and

(ii) the notice required by the Texas Residential Construction Commission Act, Texas Property Code, §420.001, including the telephone number of the TRCC, in at least 10-point bold type or the computer equivalent.

(B) TRCC builder notice. If the contractor is required to register as a builder with the TRCC, the contract for improvements to an existing residence must incorporate a TRCC builder notice. The disclosure or notice must contain:

(i) the contractor's certificate of registration number; and

(ii) the address and telephone number at which the owner may file a complaint with the TRCC about the conduct of the contractor.

(C) Omission permitted if not applicable. The TRCC home improvement contract notice may be omitted if the contract is not required to be registered under Texas Property Code, §426.003. The TRCC builder notice may be omitted if the contractor is not required to register with the TRCC.

(35) [(34)] Signature blocks. The parties' signatures must be notarized. The licensee may use a different notary acknowledgment without having to submit the deed of trust to the agency as non-standard. Documents for a home improvement loan on a homestead must be signed at the office of the lender, an attorney at law, or a title company. If this provision applies, the model clause, "This document must be signed at the office of the Lender, an attorney at law, or a title company" should appear above the signature of the borrower. The model provision regarding signature blocks reads:

Figure: 7 TAC §90.603(f)(35)

[Figure: 7 TAC §§90.603(f)(34)]

(36) [(35)] Notice of confidentiality rights disclosure. The security document 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;

(B) be in at least 12-point boldfaced type or 12-point uppercase lettering; and

(C) be substantially similar to the required notice or disclosure under Texas Property Code, §11.008(b). The model notice of confidentiality rights reads: "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."

§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) (No change.)

(14) A sample model contract that allows for withdrawals or multiple advances is presented in the following example. Figure: 7 TAC §90.604(a)(14)

(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 October 19, 2007.

TRD-200705008

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 936-7611



## PART 6. CREDIT UNION DEPARTMENT

### CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS SUBCHAPTER G. LENDING POWERS

#### 7 TAC §91.704

The Credit Union Commission proposes amendments to §91.704, concerning real estate lending. The amendments incorporate the mortgage fraud notice requirements set out in HB 716, passed by the 80th Legislature, add a definition of home loan, and correct two typographical errors.

The amendments to the rule are proposed to clarify that credit unions must provide the mortgage fraud notice required by the recent amendment to Chapter 343 of the Finance Code, which requires lenders making home loans to notify borrowers of the penalties for making false or misleading statements to obtain a residential mortgage loan. The definition of home loan is identical to Finance Code §343.001(2).

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 proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be to educate and warn borrowers of the seriousness of mortgage fraud. 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 amendments 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, January 18, 2008 at 9:00 am at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.001, which authorizes the Commission to adopt rules regarding loans to members.

The specific section affected by the proposed amendments is Texas Finance Code, §124.001.

*§91.704. Real Estate Lending.*

(a) Definitions. For the purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) First lien means any mortgage that takes priority over any other lien or encumbrance on the same property and that must be satisfied before other liens or encumbrances may share in proceeds from the property's sale.

(2) Home loan means a loan that is:

(A) made to one or more individuals for personal, family, or household purposes; and

(B) secured in whole or part by:

(i) a manufactured home, as defined by Finance Code §347.002, used or to be used as the borrower's principal residence; or

(ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower's principal residence.

(3) ~~[(2)]~~ Other acceptable collateral means any collateral in which the credit union has a perfected security interest, that has a quantifiable value, and is accepted by the credit union in accordance with safe and sound lending practices.

(4) ~~[(3)]~~ Owner-occupied means that the owner of the underlying real property occupies a dwelling unit of the real property as a principal residence.

(5) ~~[(4)]~~ Readily marketable collateral means insured deposits, financial instruments, and bullion in which the credit union has a perfected interest. Financial instruments and bullion must be saleable [salable] under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market.

(b) Written Procedures. A credit union, before engaging in any real estate lending activity, shall establish, in addition to the general

requirements of §91.701(c) of this title (relating to Lending Powers), loan administration procedures that address the following, as applicable:

- (1) Title insurance;
- (2) Escrow administration;
- (3) Loan payoffs;
- (4) Collection and foreclosure; and
- (5) Servicing and participation agreements.

(c) Loan to Value Limitations.

(1) The board of directors shall establish their own internal loan-to-value limits for real estate loans based on type of loan. These internal limits, however, shall not exceed the following regulatory limits:

(A) Unimproved land held for investment/speculation--Loan to value limit 60%

(B) Construction and Development: commercial, multifamily, and other nonresidential--Loan to value limit 75%

(C) Interim Construction: owner-occupied residential real estate--Loan to value limit 90%

(D) First lien: owner-occupied residential real estate (other than home equity)--Loan to value limit 95%

(E) First lien: other residential real estate such as a second or vacation home--Loan to value limit 90%

(F) Home equity--Loan to value limit 80%

(G) All Other--Loan to value limit 80%

(2) In determining the loan to-value ratio, a credit union shall include the total amount of outstanding debt secured by ~~[and]~~ other liens on the real property securing or being improved by the loan.

(d) Maximum Maturities. Notwithstanding the general 15-year maturity limit on lending transactions to members, the board of directors shall establish in written policy internal maximum maturities for real estate lending transactions. These maturities should not exceed the following regulatory limits:

(1) Improved residential real estate loans (owner-occupied, first lien)--40 years

(2) Improved residential real estate loans (not owner-occupied, first lien)--30 years

(3) Interim construction loans--18 months

(4) Manufactured home (first lien)--20 years

(5) Home equity loans--20 years (second lien)--30 years (first lien)

(6) Home improvement loans--20 years

(7) All other loans--15 years

(e) Mortgage Fraud Notice. A credit union must provide to each applicant for a home loan a written notice at closing. The notice must be provided on a separate document, be in at least 14-point type, and have the following or substantially similar language: "Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of §32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed \$10,000. "I/we, the undersigned home loan applicant(s), represent that

I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan. "I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing." On receipt of the notice, the applicant shall verify the information and execute the notice. A credit union must keep the signed notice on file with the records required under §91.702.

(f) ~~(e)~~ Excluded Transactions. It is recognized that there are a number of lending situations in which other factors significantly outweigh the need to apply the regulatory loan-to-value limits. These include:

(1) Loans that are covered through appropriate credit enhancements in the form of readily marketable collateral or other acceptable collateral.

(2) Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.

(3) Loans guaranteed, insured or otherwise backed by the full faith and credit of the state, a municipality, a county government, or an agency thereof, provided that the amount of the guaranty, insurance, or assurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.

(4) Loans that are to be sold promptly after origination, without recourse, to a financially responsible third party.

(5) Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs) where consistent with safe and sound credit union practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.

(6) Loans that facilitate the sale of real estate acquired by the credit union in the ordinary course of collecting a debt previously contracted in good faith.

(g) ~~(f)~~ Loans to 100% of Value. A credit union may make a loan in an amount up to 100% of the value of real property security if that part of the loan that exceeds the regulatory loan-to-value limit is guaranteed or insured by a private corporation, organization or other entity. The board of directors must ensure that the credit union exercises appropriate due diligence to ensure that any such guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705058

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 837-9236



## PART 7. STATE SECURITIES BOARD

### CHAPTER 107. TERMINOLOGY

#### 7 TAC §107.2

The Texas State Securities Board proposes an amendment to §107.2, concerning definitions. The proposal would amend the rule to replace the definition of NASD with a definition for FINRA. This change reflects the creation of FINRA (Financial Industry Regulatory Authority) from the merger of NASD and the member regulation, enforcement, and arbitration functions of the New York Stock Exchange.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be an accurate reference to an industry organization. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposed amendment affects Texas Civil Statutes, Articles 581-12, 581-12-1, 581-13, 581-18, and 581-19.

#### §107.2. Definitions.

The following words and terms, when used in Part 7 ~~[VII]~~ of this title (relating to the State Securities Board), shall have the following meanings, unless the context clearly indicates otherwise.

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

(22) FINRA--The Financial Industry Regulatory Authority, created through the consolidation of NASD and the member regulation, enforcement, and arbitration functions of the New York Stock Exchange. [NASD--The National Association of Securities Dealers, Inc., and NASD Regulation, Inc., a subsidiary of the National Association of Securities Dealers, Inc.]

(23) - (39) (No change.)

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

Filed with the Office of the Secretary of State on October 16, 2007.



## CHAPTER 115. SECURITIES DEALERS AND AGENTS

### 7 TAC §§115.1 - 115.5

The Texas State Securities Board proposes amendments to §§115.1 - 115.5, concerning securities dealers and agents. The proposals would update references to reflect the creation of FINRA (Financial Industry Regulatory Authority) from the merger of NASD and the member regulation, enforcement, and arbitration functions of the New York Stock Exchange.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rules are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be accurate references to an industry organization. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendments are proposed under Texas Civil Statutes, Articles 581-28-1 and 581-13.D. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Article 13.D provides the Board with authority to waive examination requirements for any applicant or class of applicants.

The proposed amendments affect Texas Civil Statutes, Articles 581-12, 581-13, 581-18, and 581-19.

#### §115.1. General Provisions.

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(6) FINRA--The Financial Industry Regulatory Authority, created through the consolidation of NASD and the member regulation, enforcement, and arbitration functions of the New York Stock Exchange. [NASDR--The National Association of Securities Dealers Regulation, Inc.]

(7) - (9) (No change.)

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

#### §115.2. Application Requirements.

(a) (No change.)

(b) Designated officer registration. Dealers must file a Form U-4 application to register an officer or partner in connection with the registration of the dealer. The officer or partner must be a control person of the dealer. The officer or partner must complete the necessary registration and examination requirements. An applicant may designate as its officer or partner a control person registered in Texas via the Central Registration Depository System maintained by FINRA [the National Association of Securities Dealers]. If the officer or partner resigns or is otherwise removed from his or her position, the firm shall make an application to register another officer or partner within 30 days.

(c) Branch office registration and inspection. A request for registration of a branch office of a dealer may be made upon initial application of the dealer or by amendment to a current registration. No sales-related activity may occur in any branch office location until such time as the dealer receives notification from the Securities Commissioner that such location has been approved as a branch office. The request for registration of a branch office may be made by the submission of Form BR on CRD for FINRA [NASD] member firms. For non-FINRA [non-NASD] member firms, the request is made by submitting Form BR in paper form to the Securities Commissioner. The fee for registration of each branch office is \$25. Simultaneous with the request for registration of a branch office, a supervisor must be designated. A supervisor is not required to be registered as a FINRA [an NASD] principal, but must be registered in Texas as an agent and is responsible for supervision of the activities of the branch office. A supervisor may not supervise sales activities encompassing a broader range of products than those covered by the supervisor's qualification examination(s). Within 10 business days from when a supervisor ceases to be employed or registered in such capacity by the dealer, a new supervisor, qualified by passage of the appropriate examinations, must be designated. Absent the designation of a new supervisor to the Securities Commissioner within the 10 business day period, the registration of a branch office whose supervisor ceases to be employed as such by a dealer may be automatically terminated. The branch office registration may be reinstated upon the designation of a qualified supervisor and payment of the branch office registration fee. Each branch office registered with the Securities Commissioner is subject to unannounced inspections at any time during normal business hours.

(d) (No change.)

(e) Central Registration Depository System (CRD).

(1) Whenever the Texas Securities Act or Board rules require the filing of an application with the Securities Commissioner for dealer or agent registration, members of FINRA [the National Association of Securities Dealers, Inc. (NASD)] or applicants for membership in FINRA [the NASD] shall make such filing electronically through the CRD which is jointly operated by FINRA [the NASD] and the North American Securities Administrators Association, Inc. (NASAA). Applicants shall use the applicable uniform form for the submission of the filing in question and shall supplement their electronic filing by filing, in paper form, the items listed in paragraphs (3) - (6) of subsection (a) of this section, directly with the Commissioner.

(2) (No change.)

#### §115.3. Examination.

(a) (No change.)

(b) Examinations accepted.

(1) Each applicant must pass an examination on general securities principles. This requirement may be satisfied by passing an examination on general securities principles administered by FINRA [~~the NASD~~]. As set forth in paragraph (3) of this subsection, applicants for restricted registrations may substitute an examination dealing with a particular type of security for an examination on general securities principles.

(2) For purposes of this subsection, the Securities Commissioner recognizes the following general examinations administered by FINRA [~~the NASD~~]:

(A) (No change.)

(B) Series 2--FINRA [~~NASD~~] Non-Member General Securities Examination; and

(C) (No change.)

(3) In lieu of an examination on general securities principles, the Securities Commissioner recognizes the following limited examinations, administered by FINRA [~~the NASD~~], for the corresponding restricted registrations:

(A) - (G) (No change.)

(4) (No change.)

(c) Waivers of examination requirements.

(1) (No change.)

(2) A full waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

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

(G) a person who completed the required examinations, but whose registration has lapsed for more than two years and who has been continually registered during the period of the lapse (or unregistered for no more than 60 days when transferring from one employer to another) with FINRA [~~the NASD~~] and the state securities regulator in the state in which the person maintains its principal place of business.

(3) A partial waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) applicants who have been continuously registered with the Securities and Exchange Commission, FINRA [~~National Association of Securities Dealers, New York Stock Exchange~~], or any other exchange listed in the Act, §6.F, or recognized by the Board pursuant to §111.2 of this title (relating to Listed and Designated Securities) for 10 years immediately preceding the application for registration in Texas. These applicants are required to pass an examination on state securities law as required by subsection (b)(4) of this section;

(B) - (E) (No change.)

(4) (No change.)

(d) (No change.)

§115.4. *Evidences of Registration.*

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

(c) Termination. A securities dealer is required to notify the Securities Commissioner upon termination of any registered agent from its employ. Upon receipt of such notification, the Commissioner may terminate the registration. Dealers who are members of FINRA [~~the NASD~~] must file through the CRD a Form U-5, Uniform Termination

Notice for Securities Industry Registration, to comply with this subsection.

(d) (No change.)

§115.5. *Minimum Records.*

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

(c) Exemptions from the requirements of subsection (b) of this section:

(1) A dealer is not required to make or keep such records of transactions cleared for such dealer by a member of FINRA [~~the National Association of Securities Dealers, Inc.~~], the American Stock Exchange, the Boston Stock Exchange, the Chicago Stock Exchange, [~~the New York Stock Exchange,~~] the Pacific Stock Exchange, the Chicago Board Options Exchange, or any other recognized and responsible stock exchange approved by the Securities Commissioner pursuant to the Texas Securities Act, §6.F, where such records are customarily made and kept by the clearing member.

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

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

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

Filed with the Office of the Secretary of State on October 16, 2007.

TRD-200704910

Denise Voigt Crawford  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 305-8303



## CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

### 7 TAC §116.2, §116.3

The Texas State Securities Board proposes amendments to §116.2 and §116.3, concerning investment advisers and investment adviser representatives. The proposals would update references to reflect the creation of FINRA (Financial Industry Regulatory Authority) from the merger of NASD and the member regulation, enforcement, and arbitration functions of the New York Stock Exchange.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rules are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be accurate references to an industry organization. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendments are proposed under Texas Civil Statutes, Articles 581-28-1 and 581-12-1.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12-1.B provides the Board with authority to make rules authorizing a federal covered investment adviser or a representative of a federal covered investment adviser to engage in rendering services as an investment adviser in this state on submission to and receipt by the Commissioner of a notice filing, a consent to service of process, and fee.

The proposed amendments affect Texas Civil Statutes, Articles 581-12, 581-12-1, 581-13, 581-18, and 581-19.

§116.2. *Application Requirements.*

- (a) - (d) (No change.)
- (e) Investment Adviser Registration Depository (IARD).

(1) Whenever the Texas Securities Act or Board rules require the filing of an application with the Securities Commissioner for investment adviser or investment adviser representative registration, such application must be filed electronically via the IARD, which is jointly operated by FINRA [the NASD], the North American Securities Administrators Association, Inc. (NASAA), and the Securities and Exchange Commission (SEC). Applicants shall use the applicable uniform forms for the submission of the filing in question and shall supplement their electronic filing by filing, in paper form, the items listed in paragraphs (3) - (9) of subsection (a) of this section, directly with the Commissioner.

- (2) (No change.)

- (f) (No change.)

§116.3. *Examination.*

- (a) (No change.)
- (b) Examinations accepted.
  - (1) (No change.)

(2) Each of these examinations (except the Texas Securities Act examination) is administered by FINRA [the NASD] and can be scheduled by submitting a Form U-10 to FINRA [the NASD].

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

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

Filed with the Office of the Secretary of State on October 16, 2007.

TRD-200704912

Denise Voigt Crawford  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: December 2, 2007  
For further information, please call: (512) 305-8303

◆ ◆ ◆  
**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 ("commission") proposes amendments to 10 TAC §303.19, relating to the renewal of registration for builders and remodelers in the state of Texas as provided for in Title 16, Property Code. The amendments are proposed to implement new agency procedures, clarify the rules and incorporate recent legislative amendments to the agency statute into its rules. In addition, the amendments are proposed as part of an agency rule review plan pursuant to Government Code §2001.039. This proposal supersedes the amendments to §303.19 that was published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5255), which the commission has withdrawn.

Section 303.19 describes the renewal process for registration of homebuilders and remodelers.

Susan K. Durso, General Counsel, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect the public will benefit from the enhanced registration requirements and clarity of the procedures to regulate registered builders.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect there will be no significant impact on individuals or large, small and micro-businesses because of the adoption of the proposed amendments.

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

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect there will be no adverse economic impact on small business other than the cost of renewal of the certificate of registration, which is required by law to do business as a builder or remodeler in this state pursuant to Property Code §416.004 and §416.009. Furthermore, the General Appropriations Act, House Bill 1, 80th Regular Session, Texas Legislature, p. VIII-70, Rider 4, requires that the commission impose the maximum statutory fee for builder regis-

tration and renewal. Therefore, no regulatory flexibility analysis is required.

Interested persons may submit written comments (12 copies) on the proposed amendments to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13509, Austin, Texas 78711. The deadline for submission of comments is 30 days from the date of publication of the proposed amendments in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed amendments. As part of the rule review, the public may include comments on whether the rule is still necessary. Comments may be submitted electronically to [comments@trcc.state.tx.us](mailto:comments@trcc.state.tx.us). For comments submitted electronically, please include "Renewal Registration" in the subject line. Comments submitted electronically to another electronic address or that do not include "Renewal Registration" in the subject line may not be considered.

The amendments are proposed pursuant to Chapter 416, Property Code, which provides for the registration of builders and remodelers, and pursuant to Property Code §408.001, which provides more general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Government Code §2001.039, which requires agencies to periodically review their rules.

The statutory provisions affected by these proposed amendments are those set forth in Property Code, Chapters 408 and 416.

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

*§303.19. Renewal of Registration for Builders and Remodelers.*

(a) A [After March 1, 2004, a] person operating as a builder or remodeler in this state must keep a current certificate of registration and must timely renew its certificate of registration in order to remain in good standing with the commission.

(b) The primary designated agent shall apply timely for renewal of the certificate of registration. [A builder that has been issued an even-numbered builder registration certificate must renew its registration by the last day of February of each even-numbered year. A builder that has been issued an odd-number certificate of registration must renew its registration by February 28 of each odd-numbered year.]

(c) A builder or remodeler that [whø] fails to maintain a current certificate of registration may be subject to a late fee, [and either] an administrative penalty, or other disciplinary action, as determined by the commission.

(d) In order to renew a certificate of registration, a builder or remodeler shall submit a completed application for renewal of a certificate of registration and the required fee to the commission not later than fifteen (15) [thirty (30)] days prior to the end of the applicable registration period as provided in [subsection (b) of] this section.

(e) A builder or remodeler must respond completely and truthfully regarding criminal history and public financial information, and the ownership of all business entities registered with the commission. Failure to respond completely and truthfully is a violation of Government Code §2005.052 and will be considered evidence that the applicant is not honest and trustworthy and does not have integrity, and may result in denial of the renewal.

(f) All builders and remodelers that file renewal applications with the commission and that have registered more than twenty-five homes in the prior calendar year must file their renewal applications via the commission's secure Web portal provided for online builder/remodeler renewal registration. A completed renewal application and renewal fee must be submitted for each named individual or business entity under which the applicant intends to operate as a builder or remodeler in this state.

(g) Builders and remodelers that are required to use the online renewal process under subsection (f) of this section, but that are unable to utilize the online system may submit a sworn affidavit to the Executive Director requesting a waiver from the required use of the online process for renewal registration.

(h) The Executive Director may grant a waiver requested under subsection (g) of this section, if the builder or remodeler submits a sworn affidavit stating that the builder or remodeler:

(1) does not have the use of a credit card or access to online banking for the purpose of making an online payment;

(2) does not have access to the internet; or

(3) other good cause for waiver as determined in the sole discretion of the Executive Director.

(i) A decision by the Executive Director on whether to grant a waiver under subsection (h) of this section is a final agency decision not subject to further administrative appeal.

(j) A builder or remodeler that failed to timely renew during a previous renewal period and that alleges that it has not acted as a builder or a remodeler in this state during the period in which it did not have an active certificate of registration as required by law, must apply for renewal of its certificate of registration under its existing builder registration number accompanied by a notarized affidavit that the company has not acted as a builder since the registration expired.

(k) A builder or remodeler that registered with the commission prior to September 1, 2007 and that has been issued an even-numbered builder registration certificate must renew its registration by the last day of February of each even-numbered year to remain in good standing. A builder or remodeler that renews its registration pursuant to this subsection will renew thereafter every two years on the date indicated in the letter accompanying the renewal certificate.

(l) A builder or remodeler that registered with the commission prior to September 1, 2007, and that has been issued an odd-number certificate of registration must renew its registration by February 28 of each odd-numbered year to remain in good standing. A builder or remodeler that renews its registration pursuant to this subsection will renew thereafter every two years on the date indicated in the letter accompanying the renewal certificate.

(m) A builder or remodeler that registers with the commission for the first time after September 1, 2007:

(1) will be required to renew its registration one year from the date of approval of the initial registration as shown on the commission's letter accompanying the original certificate of registration; and

(2) must show proof of having obtained five hours of approved continuing education credits timely as required by §303.32 of this chapter or the renewal application will be denied.

(n) A builder or remodeler that renews its registration with the commission in accordance with subsection (m) of this section thereafter will renew its certificate of registration every two years from the date that renewal is approved as shown on the commission's letter accompanying the renewal card.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705036

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 463-2886



## SUBCHAPTER E. TEXAS STAR BUILDER PROGRAM

### 10 TAC §303.300

The Texas Residential Construction Commission ("commission") proposes amendments to 10 TAC §303.300, which sets forth the requirements for qualification for the Texas Star Builder Program. The amendments are the result of legislative changes to the commission's enabling Act that impact the Star Builder Program. Also, the commission proposes changes to the membership qualifications for larger builders to encourage participation. In addition, the commission is proposing program enhancements that will improve member accountability for participation in program requirements. Further, the commission has added to its rule two more avenues to make the public aware of a builder's pending application for membership in the program through publication in a newspaper published in the same geographical area of the builder's designated address.

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

Ms. Durso has also determined that for each year of the first five year period the proposed amendments are in effect the public will benefit from the enhanced program requirements, greater opportunities for comment on the builders seeking membership in the program, and a larger group of builders applying to the program. There will not be an adverse effect on individuals, or large, small or micro businesses. The program is voluntary and to the extent that participation in the program includes increased costs for maintaining continuing education requirements, any increased cost to members is elective.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are 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.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect there will be no adverse economic impact on small business. Therefore, no regulatory flexibility analysis is required.

Interested persons may send written comments regarding the proposed amendments to the Texas Residential Construction

Commission, P.O. Box 13509, Austin, Texas 78711-3509. Comments regarding the amendments will be accepted for 30 days following the date of publication in the *Texas Register*. Thereafter, the comments will not be considered as timely filed. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Star Builder rule amendments" in the subject line. Comments submitted electronically to another address or with a different subject line may not be considered.

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 and Property Code §416.011.

The statutory provisions affected by these proposed amendments are those set forth in Property Code, Chapters 408 and 416.

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

*§303.300. Texas Star Builder Program.*

(a) Purpose. The Texas Star Builder Program is a voluntary program for builders and remodelers that are registered and are in good standing under Subchapter A of this chapter for a period of twelve months immediately preceding their application to the program and have registered at least three residential construction projects with the commission. Participation in this program is not required to be a builder or remodeler in the state [State] of Texas.

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

(1) Aging-in-place--universal design techniques allowing a person to live comfortably, safely and independently while enjoying daily rituals regardless of age.

(2) [~~4~~] Applicant--the [The] person identified on the Certificate of Registration issued by the commission pursuant to Subchapter A of this chapter that applies for membership in the Texas Star Builder Program under this section.

(3) Complaint--a written notice by a person or persons to the commission stating a disagreement with or concern about a builder's performance, construction practices or business practices.

(4) [~~2~~] Continuing education--commission-approved [Commission-approved professional] education courses or professional development activities such as workshops, seminars, institutes, conferences or short-term courses [that a member must complete annually for continued membership in the Texas Star Builder Program].

(5) [~~3~~] Continuous membership--a [A] period of membership in good standing without voluntary or involuntary interruption or lapse.

(6) Customer service handbook--a written program given to each residential construction customer that demonstrates the member's commitment to customer service. Program elements must include all of the following:

(A) documentation of the construction schedule from start to finish;

(B) a description of the sub-contract construction sequencing and appropriate times for customer consultation or decisions;

(C) an agreement to provide written weekly updates on construction progress;



- (D) procedures to remedy any variations;
- (E) a written commitment to provide daily member or construction manager site visits;
- (F) construction site clean-up policies;
- (G) construction site security and safety procedures;

and

(H) information about the commission, its complaint procedures and its process for requesting a state sponsored inspection for alleged post construction defects.

(7) EasyLiving Home™--a voluntary certification program that specifies criteria in everyday construction to add convenience in your new home and to welcome all friends, family and visitors regardless of age, size or physical ability.

(8) Employee involved in on-site construction activities--an employee of the member who is responsible for residential construction activities at the residential construction job site and whose job duties include but are not limited to:

- (A) acting as a project manager, superintendent or foreman;
- (B) supervising construction crews or subcontractors;
- (C) scheduling construction crews or subcontractors;
- (D) inspecting construction work; or
- (E) inventorying and inspecting the delivery of construction materials to the site.

(9) Energy Star--the US Environmental Protection Agency promulgated guidelines for products and designs that promote energy efficiency that conserves natural resources while providing a comfortable and healthy home environment.

(10) [(4)] Foundation Practices--

(A) Foundations are designed by a structural engineer based on a site specific geotechnical report as may be required by the engineer of record;

(B) The site specific geotechnical report is one that is appropriate for the circumstances with the frequency and spacing of the borings determined by the geotechnical engineer;

(C) Foundations are built as designed;

(D) The construction of the foundation system is inspected prior to the placement of the concrete by the engineer or an employee of the engineer who issues an inspection report;

(E) If the foundation system is designed for post-tension cables, then the builder shall maintain a record of the stressing certification;

(F) The builder makes a record of the elevations of the foundation prior to substantial completion of the home or an improvement to the home;

(G) The builder provides to the homeowner a final survey showing that the site drainage is in accordance with the International Residential Code; and

(H) The builder who constructs the major structural components of a single-family dwelling or duplex or a material improvement, for a period of ten years following the date of substantial completion, shall maintain:

(i) the plans, specifications, and recommendations provided by the engineer and the geotechnical report if required;

(ii) the inspection report;

(iii) the stressing certification; and

(iv) the record of the original elevations.

(11) Green building--sustainable designs that use renewal materials to conserve energy and environmental resources, provide lower maintenance and better indoor air quality.

(12) [(5)] Member--a [A] person registered by the commission as a builder or remodeler or designated agent of a builder or remodeler [by the commission] who has been approved by the commission for admission into the Texas Star Builder program.

(13) [(6)] Program Year--July 1 to June 30 of each calendar year. [Beginning July 1, 2006, the twelve months from July 1 to June 30 each year will constitute a Program Year for the Texas Star Builder Program.]

(14) [(7)] Responsible Party--an [An] individual who is authorized to act on behalf of a business entity applying for membership [that is a registered builder or remodeler] in transactions encumbering [involving] amounts in excess of \$100,000, excluding execution of contracts or instruments of conveyance for the sale of a single lot or dwelling unit, or the acquisition of materials for construction thereof.

(15) [(8)] SIRP--the [The] State-sponsored Inspection and Dispute Resolution Process.

(16) [(9)] Universal Design Options--features [Features] in residential construction that provide barrier-free access and easy mobility and independence for people with a broad variety of physical needs including all of the following: barrier-free construction of exterior doors, [±] interior doorways and hallways; reinforced bathroom walls, tubs and showers; and maximum height restrictions for switches, boxes and thermostats.

(c) Eligibility.

(1) An applicant who is a sole proprietor must satisfy one of the following:

(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state [State] of Texas; [Ø]

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state [State] of Texas, is an active builder member of and with continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; [Ø]

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state [State] of Texas and the applicant or a responsible party of the applicant holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state [State] of Texas and the applicant or a responsible party of the applicant has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(2) An applicant that is a business entity, which registered fewer than 40 homes [~~40 homes or less~~] in the preceding twelve months, must have at least one responsible party of the applicant who satisfies one of the following:

(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the State of Texas; [~~or~~]

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state [State] of Texas, is an active builder member of and with continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; [~~or~~]

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state [State] of Texas and holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state [State] of Texas and has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(3) An applicant that is a business entity, which registered more than 40 homes in the preceding twelve months, must have at least one responsible party of the applicant and one employee of the applicant who is involved in on-site construction activities [~~for each 40 homes registered in the preceding twelve months~~], who each satisfies one of the following:

(A) twelve years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state [State] of Texas; [~~or~~]

(B) seven years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state [State] of Texas, is an active builder member of and with continuous membership in a trade association related to the construction industry for at least five years preceding the date of the application; [~~or~~]

(C) five years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state [State] of Texas and holds a four-year degree in construction science or its equivalent from an accredited college or university; or

(D) three years of experience immediately preceding the application acting as a builder or remodeler of single family dwellings or duplexes in the state [State] of Texas and has credible documentation of completion of educational requirements administered by an association or institution that designates a level of expertise in the residential construction industry, such as the National Association of Home Builders Graduate Builder and Remodeler Programs.

(d) Financial Responsibility. An applicant must:

(1) provide documentation from a financial institution that includes a statement of the following information that at the time of the application:

(A) Applicant has an excellent relationship with the financial institution (or highest standard of relationship, as defined by the financial institution);

(B) Applicant is eligible for an extension of credit for the purpose of residential construction;

(C) Applicant is not in default of any credit obligations to the financial institution; and

(D) The officer or official of the financial institution that executes the document does not have actual knowledge that the applicant, any affiliate of the applicant, or any corporate officer, general partner or constituent partner as identified by the applicant to the financial institution, has filed for federal bankruptcy in this state or any state in the seven years immediately preceding the date of the application.

(E) The officer or official of the financial institution that executes the document does not have actual knowledge that the applicant has overdrafts or past due notices that have not been brought current in a timely manner within the standards of the lending industry; and

(F) The officer or official of the financial institution that executes the document does not have actual knowledge of any current delinquency in property taxes, unsatisfied judgments or enforceable mechanic's and [~~or~~] materialmen's liens on any property for which applicant entered into a transaction governed by the Act as a result of failure to pay a subcontractor or supplier unless the builder has either:

(i) secured a properly filed bond to indemnify the lien pursuant to the provisions of Property Code Chapter 53, Subchapter H;

(ii) secured the issuance of title insurance to protect the homeowner against the lien claim; or

(iii) initiated legal action to contest the lien and demonstrated proof of financial responsibility to pay the costs of defense of title to the property and pay the lien claim if the lien is proven to be proper.

(2) provide a notarized affidavit in which [~~sworn or attested statement of~~] the applicant attests that:

(A) the applicant, any affiliate or corporate officer, general partner or constituent partner of the applicant has not filed for federal bankruptcy in this state or any other state in the seven years immediately preceding the date of the application;

(B) the applicant is current on all state property taxes unless a protest or legal challenge has been properly filed;

(C) the applicant has no unpaid judgments;

(D) the applicant has no enforceable mechanic's and [~~or~~] materialmen's liens on any property for which the applicant entered into a transaction governed by the Act as a result of failure to pay a subcontractor or supplier unless the builder has either:

(i) secured a properly filed bond to indemnify the lien pursuant to the provisions of Property Code Chapter 53, Subchapter H;

(ii) secured the issuance of title insurance to protect the homeowner against the lien claim; or

(iii) initiated legal action to contest the lien and demonstrated proof of financial responsibility to pay the costs of defense of title to the property and pay the lien claim if the lien is proven to be proper.

(3) The requirements of a statement prepared by a financial institution in accordance with paragraph (1) of this subsection do not require the financial institution to conduct any independent investigation beyond the institution's own records and the actual knowledge of the officer or official who executes the document.

(4) If an applicant is unable to obtain the required statement in accordance with paragraph (1) of this subsection, an applicant can submit instead a statement signed by an officer of its financial institution on a commission-prescribed form that the institution does not choose to provide the requested information or submit an affidavit by the applicant attesting to the fact that the financial institution was asked to provide the information and refused.

(e) Insurance requirements.

(1) A remodeler-applicant must maintain a general liability policy of:

(A) \$300,000 per occurrence, if the applicant registered between 25 - 75 homes in the preceding twelve months; or

(B) \$500,000 per occurrence, if the applicant registered between 76 - 125 homes in the preceding twelve months; or

(C) \$1,000,000 per occurrence, if the applicant registered 126 or more homes in the preceding twelve months.

(2) A remodeler-applicant who has registered fewer than 25 homes in the preceding twelve months does not need to comply with the general liability insurance requirements of this section.

(3) A builder-applicant must maintain a general liability policy of:

(A) \$300,000 per occurrence, if the applicant registered between 50 - 150 [~~50 and 150~~] homes in the preceding twelve months;

(B) \$500,000 per occurrence, if the applicant registered between 151 - 350 [~~151 and 350~~] homes in the preceding twelve months;

(C) \$1,000,000 per occurrence, if the applicant registered between 351 - 1000 [~~351 and 1000~~] homes in the preceding twelve months; or

(D) \$2,000,000 per occurrence, if the applicant registered over 1,000 homes in the preceding twelve months.

(4) A builder-applicant who registered fewer than 50 homes in the preceding twelve months does not need to comply with the general liability insurance requirements of this section.

(f) Construction Practices.

(1) During the Program Year the [The] applicant must participate in at least three of the construction practices listed in this subsection. Before committing to participate in any construction practice as a part of the application for membership, the applicant must have the specific knowledge, skills or certification required to participate in the practice. For construction practices requiring Executive Director approval, the program information must be submitted with the application. A construction program offered as an element of eligibility under subsection (c) of this section may not also be used to fulfill the requirement of participation in a construction practice under this subsection. Construction practice programs under this section are: [provide a sworn or attested statement that the applicant shall comply during the term of membership with the requirements of at least three of the following:]

(A) [~~(1)~~] a green building program such as the Model Green Home Building Guidelines sponsored by the National Associa-

tion of Home Builders, or any local governmental authority [~~or similar publicly or privately sponsored programs as approved by the Executive Director~~];

(B) [~~(2)~~] the Energy Star Program [~~or similar programs as approved by the Executive Director~~];

(C) [~~(3)~~] the Certified Aging-in-Place Specialist Program or EasyLiving Home™ [EasyLiving Home] Certification Program;

(D) [~~(4)~~] a private inspection program for at least three (3) phases of construction for all new residential construction projects subject to registration by the commission [homes built] in [a] geographic area [areas] that are not inspected by municipal inspectors; or

[~~(5) another nationally recognized program that requires a greater standard of residential construction practice than required by the commission pursuant to the commission-adopted limited warranty and building and performance standards or usual and customary residential construction practices as approved by the Executive Director; or~~]

(E) [~~(6)~~] the Foundation Practices as defined in this section; or

(F) [~~(7)~~] provide homeowners with whom it enters into a transaction governed by the Act with:

(i) a third-party warranty program offered by a commission-approved third-party warranty company; or

(ii) [~~provide those homeowners with~~] a two-year warranty for all one-year workmanship and materials items pursuant to the building and performance standards set forth in Chapter 304, Subchapter B of this title; or

(iii) a Customer Service Handbook specific to the member provided for all customers signing contracts with the member for qualifying projects; or

(G) [~~(8)~~] affirm that 8% of homes constructed annually were built in accordance with Universal Design Options as defined in this section; or[-]

(H) any other local or nationally recognized program that requires a greater standard of construction practice than required by the commission pursuant to the commission adopted limited warranty and building and performance standards or usual and customary construction practices or that provides an increased level of service for residential construction consumers, as approved by the Executive Director.

(2) At the end of each program year, the member must provide proof of participation in each of the three construction practices selected at the time of applications.

(g) [~~Participation.~~] Applicants must agree to actively participate in any eligible SIRP request submitted by a homeowner involving a residential construction project for which the applicant was the builder or remodeler and must agree to respond to the homeowner in good faith based on the final non-appealable SIRP report and recommendation.

(h) Construction Defects. An applicant is not eligible for membership if [Effective January 1, 2007,] the number of homeowner-submitted eligible SIRP requests for alleged construction defects against an applicant that resulted in a finding of a construction defect in the final non-appealable inspection report exceeds [may not exceed]:

(1) two homes for applicants that registered fewer than 40 homes in the preceding twelve months; or

(2) five percent of the number of homes registered for applicants that registered 40 or more homes in the preceding twelve months.

(i) Application. Applicants must submit a completed commission-prescribed application form and credible documentation supporting the information supplied in the application for each applicant seeking membership or renewal ~~[in the Texas Star Builder Program].~~

(1) An applicant may submit an application for membership ~~[in the Texas Star Builder Program]~~ only once during a Program Year.

(2) For each applicant seeking membership under this section, the commission shall publish a notice of application in the *Texas Register*, in a local newspaper of general circulation serving the geographical area in which the applicant maintains its designated address as provided pursuant to §303.13 of this chapter, and on the commission website.

(A) The commission shall accept written public comment on each application submitted to the commission for a period of twenty-one days following the date of publication of the notice.

(B) The commission will consider comments received in response to published notices of application in the approval process.

(3) Applicants shall respond to inquiries from the commission for further information regarding an application for membership or renewal of membership. Failure to respond ~~[within 15 days]~~ to a request for information shall result in the administrative withdrawal of the application.

(4) The commission shall issue a Texas Star Builder certificate of membership to each applicant approved for membership ~~[in the Texas Star Builder Program]~~ not later than twenty-one days following the expiration of the comment period under this section.

(5) Failure to submit all requested documentation within fifteen days of notice of an incomplete application will result in the administrative withdrawal of the application.

(6) ~~[(5)]~~ A Texas Star Builder certificate of membership shall be effective for one Program Year unless revoked. For the initial year of membership, the hours of continuing education and the number of homes registered for purpose of compliance with selected construction practices will be prorated based on the quarter in which the application is approved for applications approved after September 30 of a Program Year. For purposes of this subsection, the Program Year will be prorated by quarters for periods from October through December, January through March, and April through June. [a two-year term of membership from the date of issuance unless revoked, without prorating any portion of a Program Year in which the membership is not yet approved.]

(j) Continuing education. ~~[Beginning July 1, 2006,]~~

(1) All [all] members shall complete at least 16 hours of continuing education per Program Year, except as provided in subsection (h) of this section for the initial year of membership. A member may not submit for credit a continuing education course with the same course content as one that has been previously submitted for credit by the same member [cannot be repeated for credit].

(2) Each member shall comply with the continuing education requirements for builders and remodelers set forth in §303.20 of this chapter, in addition to the requirements of this section.

(3) Continuing education courses that satisfy the requirements for continuing education under §303.20(c) of this chapter may be counted towards the continuing education requirements of this section.

(4) ~~[(4)]~~ For purposes of this requirement:

(A) any individual member must maintain the continuing education requirement;

(B) any member that is a business entity that registered fewer than 40 homes in the preceding twelve months, shall require at least one officer of the member to maintain the continuing education requirement; ~~[or]~~

(C) any member that is a business entity, that registered between 40 - 100 [more than 40] homes in the preceding twelve months, shall require that:

(i) one officer of the member [maintains the continuing education requirement;] and

(ii) one responsible party or [for every 40 homes registered,] one employee of the member who is involved in on-site construction activities [shall also] maintain the continuing education requirement; and[-]

(D) any member that is a business entity that registered between more than 100 homes in the preceding twelve months shall require that:

(i) one officer of the member and

(ii) one responsible party or one employee of the member who is involved in on-site construction activities; and

(iii) for every 50 homes registered over 100, one employee of the member who is involved in on-site construction activities maintain the continuing education requirement.

(E) Evidence of completion of the continuing education requirements of this section must be submitted with each renewal application.

~~[(D) Beginning July 1, 2006, and each Program Year thereafter, members must submit evidence no later than June 30 of each Program Year that they have completed the continuing education requirements of this section during the preceding 12 months. Proof of continuing education must be submitted to the commission with a completed Texas Star Builder continuing education form and processing fee.]~~

(5) ~~[(E)]~~ Approved Continuing Education Courses or Programs.

(A) ~~[(4)]~~ The commission ~~[Executive Director]~~ shall review all courses or programs submitted and shall approve those sufficient to ~~[that]~~ satisfy the continuing education requirement, considering[- The Executive Director shall consider in the approval process of a proposed training program,] the objective and purpose of the program, the content and subject matter of each course and the qualifications of the presenters.

(B) Any person who wishes to sponsor a course or training program for continuing education purposes under this section must submit a written request on a commission-prescribed form with a detailed course agenda, a written course description and resume or biographical information of each speaker or presenter to the commission for approval, not later than thirty days prior to the proposed event.

(C) Upon receipt of complete request for approval of a continuing education course or credit, including all information re-

quired under subparagraph (B) of this paragraph, approval will not be withheld unreasonably.

~~/(ii) Any member that registers more than 30 homes per year that wished to conduct an in-house training program for its employees or any person who wishes to sponsor a course or training program for continuing education purposes under this section must submit a written request for consideration, a detailed course agenda, a written course description and resume or biographical information of each speaker or presenter to the Executive Director for approval, not later than sixty (60) days prior to the proposed event.}~~

(6) ~~[(2)]~~ Substitutions for Continuing Education Coursework.

(A) A member may substitute not more than three credit hours of continuing education per Program Year for participation in an active leadership role (such as an officer or committee chairperson) in a trade association for the Program Year in which the continuing education hours would have been taken. To receive this leadership credit, the member shall submit to the commission written verification from the president, executive officer, or other equivalent of the association, certifying the member's leadership status.

(B) A member may not substitute more than two credit hours of continuing education for self-study ~~[in a Program Year]~~. To receive this self-study credit, the member must submit to the commission a statement that verifies the completion of self-study and a description of the materials studied.

(C) A member may substitute instructor credit for up to five credit hours of continuing education in a Program Year. Each hour of instruction given is equivalent to an hour of continuing education credit. To receive this instructor credit, the member must submit to the commission a copy of the published course agenda.

(k) Renewal. In order to renew membership in the Texas Star Builder Program, a member [person] must submit a completed application for renewal with the required documentation set forth in this section to the commission not later than June 1 of a Program Year [thirty days prior to the expiration of the effective date shown on the current Texas Star Builder certificate of membership].

(l) Denial.

(1) The commission shall deny an application for membership or the renewal of membership in the Texas Star Builder Program if the commission determines that the applicant is ineligible for admission or for continued membership in the program.

(2) If the commission denies an application for membership or the renewal of membership, the commission shall provide written notice to the applicant not later than the fifteenth business day following the expiration of the public comment period set forth in this section.

(3) The commission shall state the reason(s) for denial of membership or renewed membership in the Texas Star Builder Program in its written notice to the applicant and provide notice and [an] opportunity for appeal.

(m) Appeal of Denial.

(1) A denial under this section is final unless the applicant timely submits [An applicant who receives a notice of denial under subsection (l) of this section may appeal the decision to the Executive Director by submitting] a written request for reconsideration to the Executive Director not later than thirty days from the date of the notice of denial [receipt of the notice of denial].

(2) The decision of the Executive Director regarding the appeal is a final agency decision not subject to further administrative appeal.

(n) Revocation of Membership.

(1) The commission shall revoke a certificate of membership in the Texas Star Builder Program if the commission determines that:

(A) the member has been subject to a final disciplinary action from the commission pursuant to Chapter 418 of the Act;

(B) the member used fraud or deceit in obtaining the certificate of membership;

(C) the member is no longer eligible for a Certificate of Registration as a builder or remodeler or is no longer eligible to serve as a designated agent for a builder or remodeler;

(D) the member's Certificate of Registration is not in good standing; [has been suspended; is placed in inactive status or] the member has been placed under a commission probation order; or

(E) the member has failed to maintain the program's continuing education requirements as required by this section;[-]

(F) the member fails to demonstrate participation in three construction practices;

(G) the member fails to respond to the commission concerning a complaint; or

(H) the member fails to participate in a SIRP.

(2) If a membership is revoked, the commission shall provide written notice to the member not later than the fifth day after the revocation becomes effective.

(3) The commission shall state the reason(s) for the revocation in its written notice to the member.

(4) A member whose certificate of membership is subject to revocation ~~[for a finding under paragraph (1)(B) of this subsection]~~ shall be provided an opportunity for appeal.

(o) Appeal from Revocation.

(1) A member whose membership has been revoked under ~~[subsection (n)(1)(B) of this section]~~ may appeal the decision by submitting a written request for reconsideration to the Executive Director within ten days of the date of the [receipt of] notice of revocation.

(2) The decision of the Executive Director on the appeal of a revocation is a final agency decision not subject to further administrative appeal.

(3) Upon expiration or notice of final revocation of membership in the Texas Star Builder Program, the former member shall immediately return the Texas Star Builder certificate of membership and discontinue the use and dissemination of the "Texas Star Builder" designation on all advertisements, promotions or written material.

(p) Recognition of Membership. A member may display the Texas Star Builder logo so long as that member remains in good standing as a member of [in] the Texas Star Builder Program. Members who have had continuous membership in the Texas Star Builder Program may display the number of years of continuous 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 October 22, 2007.

TRD-200705042

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 463-2886



## CHAPTER 305. PRACTICE AND PROCEDURES FOR HEARINGS AND DISCIPLINARY ACTIONS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 10 TAC §305.10

The Texas Residential Construction Commission ("commission") proposes new §305.10 regarding a person's false statement, misrepresentation, or refusal to provide information to the commission. The new rule implements the provisions of House Bill 1168 of the 80th Texas Legislature, which applies to all licensing agencies. Under House Bill 1168, a "license" means a license, certificate, registration, permit, or other authorization. The commission issues registrations and certificates that fall within the scope of House Bill 1168. Accordingly, the new rule implements House Bill 1168 for the commission's regulatory purposes.

The new rule provides that a person commits a violation if the person makes a false statement in connection with applying for or renewing a registration or certification with the commission; makes a material misrepresentation to the commission, including a material omission of information, in connection with applying for or renewing the registration or certification; fails or refuses to provide information requested by the commission; or fails or refuses to provide all of the person's criminal history information in response to the commission's request for the information. The new rule defines a request by the commission to include an application form, letter, e-mail, facsimile transmission, or other form of communication.

If a person violates the new rule, the commission could deny the person's application for registration or certification and may suspend or revoke the person's registration or certification, within the confines of the commission's authority under Title 16 of the Property Code. A person subject to the new section would be entitled to the same administrative procedures that govern other denials, suspensions, and revocations by the commission.

The new rule will aid the commission in obtaining complete and accurate information in its application process for persons who wish to become registered and certified as a builder, a designated agent for a builder, a third-party inspector, or arbitrator. It will permit the commission to better protect the public by making sure that all applicants are truthful in their applications and provide full information regarding their criminal backgrounds. The new rule also will aid the commission's complaint resolution process, by requiring timely responses from registered builders to complaints filed against them by homeowners and other persons.

Susan Durso, General Counsel, has determined that for each year of the first five-year period that the new section is in effect

there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed section.

Ms. Durso has also determined that for each year of the first five-year period the proposed section is in effect the public will benefit from more complete, accurate, and truthful applications for registration and certification being filed with the commission and by greater responsiveness to the commission's complaint resolution process.

Ms. Durso has also determined that for each year of the first five-year period the proposed section is in effect there will be no significant effect on individuals or large, small, and micro-businesses as a result of the adoption of the new rule.

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

Ms. Durso has also determined that for each year of the first five year period the proposed section is in effect there will be no adverse economic effect on small businesses. Therefore, no regulatory flexibility analysis is necessary.

Interested persons may submit written comments (12 copies) on the proposed rule to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13509, Austin, Texas 78711. The deadline for submission of comments is 30 days from the date of publication of the proposed section in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the new rule. Comments may be submitted electronically to [comments@trcc.state.tx.us](mailto:comments@trcc.state.tx.us). For comments submitted electronically, please include "False Statements" in the subject line. Comments submitted electronically that are sent to a different address or that do not have "False Statements" in the subject line may not be considered.

The new rule is proposed under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, Property Code Chapters 418 and 419, and legislative revisions to Government Code Chapter 2005, which establish the new statutory authority for denial, suspension, or revocation for false statements, misrepresentation, or refusal to provide information to licensing agencies.

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

§305.10. False Statements, Misrepresentations, or Refusal to Provide Information.

(a) A person commits a violation of this section if the person:

(1) makes a false statement in connection with applying for or renewing a registration or certification with the commission;

(2) makes a material misrepresentation to the commission, including a material omission of information, in connection with applying for or renewing the registration or certification;

(3) fails or refuses to provide information requested by the commission; or

(4) fails or refuses to provide all of the person's criminal history information in response to the commission's request for the information.

(b) For the purposes of this section, a request by the commission may be made in an application, form, letter, e-mail, facsimile transmission, or other form of written communication.

(c) If a person commits a violation of this section, the commission may deny the person's application for registration or certification and may suspend or revoke the person's registration or certification or may undertake other disciplinary action as described in this chapter that is within the commission's authority pursuant to Property Code Chapters 418 and 419.

(d) A denial, suspension, or revocation of a certificate of registration or a certification under this section is governed by the same administrative procedures described in this chapter that apply to other denials, suspensions, and revocations by the commission.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705038

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 463-2866



## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 9. LP-GAS SAFETY RULES

##### SUBCHAPTER A. GENERAL REQUIREMENTS

###### 16 TAC §§9.8, 9.10 - 9.12, 9.51, 9.52, 9.54

The Railroad Commission of Texas proposes amendments to §§9.8, 9.10 - 9.12, 9.51, 9.52, and 9.54, relating to Application for a New Certificate; Rules Examination; Previously Certified Individuals; Trainees; General Requirements for Training and Continuing Education; Training and Continuing Education Courses; and Commission-Approved Outside Instructors.

The Commission proposes the amendments to update and clarify certain LP-gas training and continuing-education requirements. For all of the rules in this proposal, the Commission specifies an effective date of February 1, 2008.

In §9.8, the Commission proposes a non-substantive change to clarify that the courses named in §9.51 or §9.52 may or may not include Advanced Field Training (AFT) activities.

In §§9.10, 9.51, and 9.52, the Commission proposes to add statements that, in addition to complying with NFPA 58, §§4.4 and 11.2, licensees and certified individuals must also comply with the Commission's training and continuing education rules.

In §9.10(a), the Commission proposes new paragraphs (6) and (7). Proposed new paragraph (6) concerns time limits for examinations. The time limits, proposed to begin June 1, 2008, would

require an applicant to complete a qualifying examination within two hours or three hours, depending on the examination. Category E management-level examinations and employee-level examinations for bobtail drivers and service and installation technicians would be limited to three hours from the time the examination begins; all other examinations would be limited to two hours from the time the examination begins. The examination proctor is proposed to be the official timekeeper. Examinees would be required to turn in their examinations and answer sheets before or at the end of the established time limit for the examination. The proctor would mark any answer sheet that was not completed within the time limit.

The proposed time limits would not affect the open- or closed-book status of qualifying examinations. Management-level examinations are currently closed book, and would remain so under the current proposal. Employee-level examinations are currently open book, and would remain so under the current proposal.

The Commission proposes these time limits for reasons of efficiency. The Commission must be able to plan and budget for the activities and expenses associated with the examination program. This program is a substantial undertaking. In fiscal 2006 and 2007, AFRED staff administered a total of 6,586 qualifying examinations, of which 6,022 (91 percent) were open-book, employee-level examinations that are unlimited as to time. It is not unusual for examinees to arrive unprepared and spend an entire day of their and their employers' time researching the answers to a 50-question test. In addition, 3,876 of these qualifying examinations (59 percent) were administered outside Austin, often following an eight-hour training class, at donated or public facilities. The Commission's expectation is that the managers of some of these facilities who are not willing to let the Commission use their building to give open-ended examinations after hours may be willing to let AFRED do so with a guarantee that the examinations will end at a reasonable hour. In such cases, the examinee, his or her employer, and AFRED staff would all benefit from not having to come back the next morning to take an examination.

The Commission considers the proposed time limits reasonable. Qualifying examinations vary in length according to the number and complexity of the LP-gas activities they authorize the examinee to perform. A three-hour time limit is proposed for the closed-book Category E management-level examination, which currently has 175 questions, and for the open-book employee-level bobtail driver and service and installation examinations, which currently have 75 questions. Two-hour time limits are proposed for all other closed-book management-level examinations, which currently have between 25 and 100 questions, and for all other open-book employee-level examinations, which currently have between 33 and 50 questions. The Commission proposes to implement these time limits on June 1, 2008, by which date AFRED will have published detailed study guides that will enable applicants to prepare more adequately for all employee-level examinations and reduce or eliminate the need to spend time researching the answers to questions during the examination.

In new paragraph (7), the Commission proposes wording that employee-level LP-gas transport driver, DOT cylinder filling, and motor/mobile fuel dispensing examinations may be offered in either Spanish or English. This option, which is currently available only to employee-level LP-gas transport driver examinees, is proposed in response to requests from two LP-gas marketers to

make the cylinder-filling and motor/mobile fuel dispensing examinations, which are very often taken together, available in Spanish.

In §9.10(b), the Commission proposes a name change for one examination and two new examinations. In paragraph (3), the engine fuel examination is proposed to be changed to "On-Road Motor Fuel" examination, with other clarifying wording added. In paragraphs (4) and (5), new examinations for "Non-Road Motor Fuel" and "Mobile Fuel" are proposed to clarify some distinctions between these activities and allow individuals to certify according to their actual job duties. In general, the On-Road Motor Fuel examination is intended to cover LP-gas activities related to highway vehicles such as cars, trucks and buses that are propelled by LP-gas. The Non-Road Motor Fuel examination is intended to cover LP-gas activities related to off-road equipment such as industrial forklifts and commercial mowers that are propelled by LP-gas, but whose fuel systems differ significantly from those used on highway vehicles. The Mobile Fuel examination is intended to cover LP-gas activities related to mobile LP-gas equipment such as appliances installed on a trailer, catering truck or mobile kitchen. In paragraph (8), the Commission proposes to add stationary engines to the list of stationary LP-gas systems relative to which a Service and Installation examination qualifies an individual to perform LP-gas activities. This change is proposed to clarify which examination qualifies an individual to perform LP-gas activities related to stationary engines such as those that power generators and pumps. The Table in §9.10(b) is also amended to include these changes. The new employee-level non-road motor fuel and mobile fuel examinations will be available for employees of both Category E and Category L licensees. These three examinations are often the subject of questions to the Commission as to which examination an applicant needs to take, and the Commission finds that the proposed changes will improve safety by offering examinations that better reflect the way that LP-gas motor fuel and mobile fuel activities are performed in actual industry practice.

The Commission proposes in §9.11(a) to add wording to require an ultimate consumer and a state agency, county, municipality, school district, or other governmental subdivision to notify AFRED when a previously certified individual is hired, and to delete §9.11(b) as redundant. Other new wording exempts a state agency, county, municipality, school district, or other governmental subdivision from this requirement if such entity chooses not to certify its employees who perform LP-gas activities. The Commission adds this wording to conform its transfer-notification requirements for ultimate consumers and for public entities that elect to certify their employees to the transfer-notification requirements for licensees. Under the rule as proposed, the Commission will be informed of LP-gas certified individuals' affiliations and be able to send renewal notices and other communications to the individual's correct work address, regardless whether he or she is employed by a licensee, an ultimate consumer, or a public entity that elects to certify its employees.

In §9.12, the Commission proposes to delete the requirement that a licensee or ultimate consumer file LPG Form 16 for each trainee at the time the trainee begins supervised LP-gas activities. This filing requirement is no longer necessary.

In §9.51(b)(3)(E), a reference is added to the on-road motor fuel, non-road motor fuel, and mobile fuel certifications, which are proposed to be added in §9.10.

Some non-substantive clarifying changes are proposed in §9.52(b)(1)(A) concerning some deadlines that have already passed. In subsection (h), the Commission proposes some changes to the Tables that list the LP-gas training and continuing education courses. The first table has no changes. In Table 2, the column entitled "Portable Cylinder Filling" is changed to "DOT Cylinder Filling." The word "Dispensing" is added in the column for "Motor & Mobile Fuel." The entire column for "Bobtail Service & Installation" and the accompanying footnote are proposed to be deleted. This category of certification is no longer in use and has been replaced by separate bobtail and service and installation certifications. The "RV Technician" column is proposed to be changed to "Recreational Vehicle." The revision date for this table is proposed as February 2008.

Tables 3 and 4 include some changes to the CETP course numbers and titles; these changes match the current CETP course titles. No substantive changes are proposed in these two tables.

The Commission proposes in §9.54(a)(1)(C) to add authorized Category I outside instructors to the list of outside instructors who may offer the applicable training and continuing education classes to Category F, G, I, and J management-level certificate holders and DOT cylinder filling and motor/mobile fuel dispenser applicants and employee-level certificate holders. References to Category I are also proposed in subsection (b)(2) and (j)(1).

Dan Kelly, director, Alternative Fuels Research and Education Division, has determined that for each of the first five years the proposed amendments will be in effect there will be fiscal implications for state government, in particular due to the proposed amendments in §9.10 and §9.11. The changes in §9.10 will affect the Commission by allowing training staff to better plan out-of-town travel and to avoid unexpected delays and costs due to examinations taking longer than planned. The Commission may experience additional costs in developing the two new examinations and Spanish versions of some of the examinations; these costs cannot be calculated, but will be handled through the regular budget and duties assigned to AFRED. There may be fiscal implications for local governments with regard to the changes proposed in §9.11 depending on whether such entities hire previously certified individuals.

Mr. Kelly has also determined that for each year of the first five years the amendments will be in effect the public benefit anticipated as a result of enforcing the amendments will be improvement in safety due to a better trained LP-gas industry.

Mr. Kelly has determined that there may be some economic cost to small businesses, micro-businesses, and individuals based on the proposed time limits for examinations in §9.10 and the proposed addition in §9.54 of Category I as potential outside instructors. Pursuant to Texas Government Code, §2006.002(c), the Commission has determined that the cost for individual, small business, or micro-business LP-gas licensees or examination applicants may be affected if an individual cannot complete an examination within the time limit, fails the examination, and must retake it at a different time. Other individuals, small businesses, or micro-businesses may experience cost savings if they or their employees spend only two or three hours instead of an entire day taking an examination. However, the Commission cannot predict when or if that may occur. Individuals who wish to become Category I outside instructors pursuant to §9.54 will incur the costs for such applications; however, this is a voluntary activity.



The Commission assumes that there are LP-gas licensees or examination applicants that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code, §2006.001(1) and (2), respectively; however, the Commission has no data on these businesses' growth rates, employee turnover rates, career-ladder programs, or other internal factors that could require some of the businesses' employees to take new rules examinations. Further, the Commission does not have information on these businesses' gross receipts, sales revenues, or labor costs. Therefore, the Commission is not able to determine the exact cost of compliance based on the cost for each employee, the cost for each hour of labor, or the cost for each \$100 of sales pursuant to Texas Government Code, §2006.002(c). Finally, pursuant to Texas Government Code, §2006.002, the Commission finds that, considering the purpose of Texas Natural Resources Code, Chapter 113, which is to protect the health, welfare, and safety of the general public through the Commission's promulgation and adoption of rules and standards relating to all aspects of the LPG industry, including training, continuing education, and examination requirements, it is not feasible to reduce any adverse effect the proposed amendments could have on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/rules/commentform.html](http://www.rrc.state.tx.us/rules/commentform.html); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). Comments should refer to LPG Docket No. 1936, and will be accepted until 5:00 p.m. on Monday, December 3, 2007, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site several days prior to publication of the proposal, giving interested persons over additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Kelly at (512) 463-7291. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/rules/proposed.html](http://www.rrc.state.tx.us/rules/proposed.html).

The Commission proposes the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §113.051.

Cross reference to statute: Texas Natural Resources Code, Chapter 113, §113.051.

Issued in Austin, Texas on October 9, 2007.

#### §9.8. *Application for a New Certificate.*

(a) An applicant for a new certificate shall:

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

(3) complete any required training and/or [and] AFT in §9.51 and §9.52 of this title (relating to General Requirements for Training and Continuing Education; and Training and Continuing Education Courses).

(b) (No change.)

#### §9.10. *Rules Examination.*

(a) In addition to complying with NFPA §§4.4 and 11.2, an [An] individual who files LPG Form 16 and pays the applicable nonrefundable examination fee may take the rules examination at the Commission's AFRED Training Center, 6506 Bolm Road, Austin, Texas, between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and at other designated times and locations around the state. Tuesdays and Thursdays are the preferred days for examinations at the AFRED Training Center.

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

(6) Time limits.

(A) Effective June 1, 2008, an applicant shall complete the examination within the time limit specified in this paragraph.

(i) The Category E management-level (closed book), Bobtail employee-level (open book), and Service and Installation employee-level (open book) examinations shall be limited to three hours.

(ii) All other categories of management-level examinations and all other employee-level examinations shall be limited to two hours.

(B) The examination proctor shall be the official time-keeper.

(C) An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.

(D) The examination proctor shall mark any answer sheet that was not completed within the time limit.

(7) The Commission may offer employee-level LP-Gas Transport Driver, DOT Cylinder Filling, and Motor/Mobile Fuel Dispensing examinations in Spanish or English.

(b) Table 1 of this subsection specifies the examinations offered by the Commission.

Figure: 16 TAC §9.10(b)

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

(3) The On-Road Motor [Engine] Fuel examination qualifies an individual to install LP-gas motor [or mobile] fuel containers, cylinders, and LP-gas motor fuel systems, and replace container valves on motorized vehicles licensed to operate on public roadways [including trailers, catering trucks, mobile kitchens, tar kettles and similar vehicles, and non-road vehicles such as industrial trucks and stationary engines such as generators and pumps]. The On-Road Motor [Engine] Fuel examination does not authorize an individual to fill LP-gas motor or mobile fuel containers.

(4) The Non-Road Motor Fuel examination qualifies an individual to install LP-gas motor fuel containers, cylinders, and LP-gas motor fuel systems, and replace container valves on vehicles such as industrial forklift trucks and lawnmowers. The Non-Road Motor Fuel examination does not authorize an individual to fill LP-gas motor fuel containers or cylinders.

(5) The Mobile Fuel examination qualifies an individual to install LP-gas mobile fuel containers, cylinders, and LP-gas mobile fuel systems, and replace container valves on mobile fuel equipment such as trailers, catering trucks, mobile kitchens, tar kettles, hot oil units, auxiliary engines and similar equipment. The Mobile Fuel examination does not authorize an individual to fill LP-gas mobile fuel containers or cylinders.

(6) [(4)] The DOT Cylinder Filling examination qualifies an individual to inspect, requalify, fill, disconnect and connect cylinders, including industrial truck cylinders, and to exchange cylinder valves. The DOT Cylinder Filling examination does not authorize an individual to fill ASME motor or mobile fuel containers.

(7) [(5)] The Recreational Vehicle examination qualifies an individual to install LP-gas motor or mobile fuel containers, including cylinders, and to install and repair LP-gas systems on recreational vehicles. The Recreational Vehicle examination does not authorize an individual to fill LP-gas containers.

(8) [(6)] The Service and Installation examination qualifies an individual to perform all LP-gas activities related to stationary LP-gas systems, including LP-gas containers, [and] appliances, and stationary engines. The Service and Installation examination does not authorize an individual to fill containers or operate an LP-gas transport.

(9) [(7)] The Appliance Service and Installation examination qualifies an individual to perform all LP-gas activities related to appliances, including installing, repairing and converting appliances, installing and repairing connectors from the appliance gas stop through the venting system, and to perform leak checks on the new or repaired portion of an LP-gas system. The Appliance Service and Installation examination does not authorize an individual to install a container, install or repair piping upstream of and including the appliance gas stop, or to install, repair or adjust regulators.

(10) [(8)] The Motor/Mobile Fuel Dispensing examination qualifies an individual to inspect and fill motor or mobile fuel containers on vehicles, including recreational vehicles, cars, trucks, and buses. The Motor/Mobile Fuel Dispensing examination does not authorize an individual to fill LP-gas cylinders or ASME stationary containers.

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

#### §9.11. *Previously Certified Individuals.*

[(a)] A licensee, an ultimate consumer, or a state agency, county, municipality, school district, or other governmental subdivision shall notify AFRED when a certified individual is hired by filing LPG Form 16A and a nonrefundable \$10 fee with AFRED within 10 calendar days, or in lieu of that form, the \$10 fee and a written notice including the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, names of the newly-hired certified employee's previous and new employers, and types of LP-gas work to be performed by the newly-hired certified employee. A state agency, county, municipality, school district, or other governmental subdivision is exempt from this subsection if such entity chooses not to certify its employees who perform LP-gas activities.

[(b)] An ultimate consumer that operates an LP-gas transport shall also comply with this section.]

#### §9.12. *Trainees.*

(a) A licensee or ultimate consumer may employ an individual as a trainee for a period not to exceed 45 calendar days without that individual having successfully completed the rules examination as specified in §9.10 of this title (relating to Rules Examination) subject to the following conditions.

[(1)] The trainee shall be directly and individually supervised at all times by an individual who has successfully completed the Commission's rules examination for the areas of work being performed by the trainee.

[(2)] The licensee or ultimate consumer shall ensure that LPG Form 16 is on file with AFRED for each trainee at the time that

the trainee begins supervised LP-gas activities. The trainee shall then have 45 calendar days to pass the applicable rules examination.]

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

#### §9.51. *General Requirements for Training and Continuing Education.*

(a) In addition to complying with NFPA §§4.4 and 11.2, effective [Effective] March 1, 2001, individuals shall comply with the training and continuing education requirements in this chapter.

(b) Applicants for new licenses or new certificates, as set forth in §9.7 and §9.8 of this title (relating to Application for License and License Renewal Requirements, and Application for a New Certificate, respectively) and persons holding existing licenses or certificates shall comply with the training or continuing education requirements in this chapter. Any individual who fails to comply with the training or continuing education requirements by the assigned deadline may regain certification by paying the nonrefundable course fee and satisfactorily completing an authorized training or continuing education course within two years of the deadline. In addition to paying the course fee, the person shall pay any fee or late penalties to the Alternative Fuels Research and Education Division (AFRED).

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

(3) The training and continuing education requirements do not apply to:

(A) - (D) (No change.)

(E) anyone certified only as a transport driver, or who holds only an on-road motor fuel, non-road motor fuel, or mobile fuel certification.

(4) (No change.)

(c) - (g) (No change.)

#### §9.52. *Training and Continuing Education Courses.*

(a) Training. In addition to complying with NFPA §§4.4 and 11.2, applicants [Applicants] for a new certification and applicants who have passed a certification examination but have not completed an applicable training course shall complete training as specified in the tables in subsection (h) of this section prior to their first certificate renewal deadline. Category E management-level applicants shall attend the 80-hour class; Category F, G, I, and J management-level applicants shall attend the 16-hour class; and Category D, K and M management-level applicants and all applicants for employee-level certifications that are subject to training requirements shall attend an eight-hour class. A certificate holder's training deadline shall not be extended if that individual retakes and passes an examination for the current category and level of certification. A training deadline shall be extended only after a certificate holder successfully completes an applicable training class.

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

(b) Continuing education. A certificate holder shall complete at least eight hours of continuing education every four years as specified in the tables in subsection (h) of this section. Upon fulfillment of this requirement, the certificate holder's next continuing education deadline shall be four years after the May 31 following the date of the most recent class the certificate holder has completed, unless the class was completed on May 31, in which case the deadline shall be four years from that date. A certificate holder's continuing education deadline shall not be extended if an examination for a current category and level of certification is retaken and passed; a continuing education deadline shall be extended only after a certificate holder successfully completes an applicable continuing education class. An individual who completes

a continuing education class after the assigned deadline shall have four years from the original deadline to complete the next class.

(1) Continuing education requirements for certain categories.

(A) Certificate holders who hold only a Category D, F, G, J, or K certificate as of the effective date of this section shall have completed ~~[complete]~~ their initial continuing education requirement by May 31, 2005. Beginning September 1, 2005, Category M and recreational vehicle technician certificate holders shall have completed ~~[until May 31, 2006, to complete]~~ their initial continuing education requirement by May 31, 2006. Certificate holders who hold a Category D, F, G, J, K, or M certificate or a recreational vehicle technician certificate and who have more than one certification as of February 1, 2001, shall complete their continuing education requirement by the continuing education deadline assigned for the initial certificate. Public employees who were ~~[are]~~ certified as of June 1, 2006, shall have completed ~~[complete]~~ their continuing education requirement by May 31, 2007.

(B) (No change.)

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

(c) - (g) (No change.)

(h) Available courses. Training and continuing education courses and other information are shown in Tables 1 through 4 of this subsection. Items on the tables marked with an "x" indicate courses that meet training or continuing education requirements for management-level or employee-level certificate holders in that category. Figure: 16 TAC §9.52(h)

(i) (No change.)

§9.54. *Commission-Approved Outside Instructors.*

(a) General.

(1) AFRED may approve and award training or continuing education credit for the management-level and employee-level applicants and certificate holders specified in this section offered by an outside instructor provided the outside instructor complies with the requirements of this section.

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

(C) Authorized Category I outside instructors may offer only the applicable training and continuing education classes to Category F, G, I, and J management-level certificate holders and DOT cylinder filling and motor/mobile fuel dispenser applicants and employee-level certificate holders.

(D) [(C)] Authorized Category M outside instructors may offer only the applicable training and continuing education classes to Category M management-level applicants and recreational vehicle technician employee-level applicants or certificate holders.

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

(b) Application process. Outside instructor applicants shall submit the following to AFRED:

(1) (No change.)

(2) a copy of the applicant's Category D, E, I, or M current certification card or, in the case of Category D only, a copy of the master or journeyman plumber/class A or B registration/examination exemption certificate issued by the License and Permit Section of the Gas Services Division;

(3) - (5) (No change.)

(c) - (i) (No change.)

(j) Continuing requirements. Outside instructors shall:

(1) maintain their Category D, E, I, or M certificate or Category D registration/examination exemption certificate in continuous good standing. The Train-the-Trainer class shall not count as credit towards any training or continuing education requirements. Any interruption of the required Category D, E, I, or M certification or Category D registration/examination exemption certificate may result in the Commission revoking the outside instructor's approval;

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

(k) - (l) (No change.)

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705071

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 475-1295



## CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)

### SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

#### 16 TAC §13.70, §13.73

The Railroad Commission of Texas proposes amendments to §13.70 and §13.73, relating to Examination Requirements and Renewals, and Employee Transfers.

The Commission proposes the amendments to establish reasonable time limits for qualifying examinations and to extend to ultimate consumers and public entities that hire previously certified individuals the same rules that apply to CNG licensees that hire previously certified individuals. The Commission proposes an effective date of February 1, 2008, for these amendments.

In §13.70(a), the Commission proposes new paragraph (6). Proposed new paragraph (6) concerns time limits for examinations. The time limits, proposed to begin June 1, 2008, would require an applicant to complete a qualifying examination within two hours from the time the examination begins. The examination proctor is proposed to be the official timekeeper. Examinees would be required to turn in their examinations and answer sheets before or at the end of the established time limit for the examination. The proctor would mark any answer sheet that was not completed within the time limit.

The proposed time limits would not affect the open- or closed-book status of qualifying examinations. Management-level examinations are currently closed book, and would remain so under the current proposal. Employee-level examinations are currently open book, and would remain so under the current proposal.

The Commission proposes these time limits for reasons of efficiency. The Commission must be able to plan and budget for the activities and expenses associated with the examination program.

The Commission considers the proposed time limits reasonable. Qualifying examinations vary in length according to the number and complexity of the CNG activities they authorize the examinee to perform. Open-book employee-level examinations currently have 50 questions; closed-book management-level examinations currently have either 50 or 100 questions. A two-hour time limit is proposed for all examinations, based on approximately 22 minutes per question for an open-book examination and approximately 1-1/4 to 22 minutes per question for a closed-book examination.

In §13.73, the Commission proposes to add wording to require an ultimate consumer and a state agency, county, municipality, school district, or other governmental subdivision to notify AFRED when a previously certified individual is hired. Other new wording exempts a state agency, county, municipality, school district, or other governmental subdivision from this requirement if such entity chooses not to certify its employees who perform CNG activities. The Commission adds this wording to conform its transfer-notification requirements for ultimate consumers and for public entities that elect to certify their employees to the transfer-notification requirements for licensees. Under the rule as proposed, the Commission will be informed of CNG certified individuals' affiliations and be able to send renewal notices and other communications to the individual's correct work address, regardless whether he or she is employed by a licensee, an ultimate consumer, or a public entity that elects to certify its employees.

Dan Kelly, Director, Alternative Fuels Research and Education Division, has determined that for each of the first five years the proposed amendments will be in effect there will be fiscal implications for state government. The changes in §13.70 will affect the Commission by allowing training staff to better plan out-of-town travel and to avoid unexpected delays and costs due to examinations taking longer than planned. There may be fiscal implications for local governments with regard to the changes proposed in §13.73 depending on whether such entities hire previously certified individuals.

Mr. Kelly has also determined that for each year of the first five years the amendments will be in effect the public benefit anticipated as a result of enforcing the amendments will be improvement in the efficiency of operation of the Commission's CNG qualifying examination program.

Mr. Kelly has determined that there may be some economic cost to small businesses, micro-businesses, and individuals based on the proposed time limits for examinations in §13.70. Pursuant to Texas Government Code, §2006.002(c), the Commission has determined that the cost for individual, small business, or micro-business CNG licensees or examination applicants may be affected if an individual cannot complete an examination within the time limit, fails the examination, and must retake it at a different time. Other individuals, small businesses, or micro-businesses may experience cost savings if they or their employees spend only two or three hours instead of an entire day taking an examination. However, the Commission cannot predict when or if that may occur.

The Commission assumes that there are CNG licensees or examination applicants that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code,

§2006.001(1) and (2), respectively; however, the Commission has no data on these businesses' growth rates, employee turnover rates, career-ladder programs, or other internal factors that could require some of the businesses' employees to take new rules examinations. Further, the Commission does not have information on these businesses' gross receipts, sales revenues, or labor costs. Therefore, the Commission is not able to determine the exact cost of compliance based on the cost for each employee, the cost for each hour of labor, or the cost for each \$100 of sales pursuant to Texas Government Code, §2006.002(c). Finally, pursuant to Texas Government Code, §2006.002, the Commission finds that, considering the purpose of Texas Natural Resources Code, Chapter 116, which is to protect the health, safety, and welfare of the general public by adoption of necessary rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas, including rules establishing examination requirements, it is not feasible to reduce any adverse effect the proposed amendments could have on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/rules/commentform.html](http://www.rrc.state.tx.us/rules/commentform.html); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). Comments should refer to LPG Docket No. 1936, and will be accepted until 5:00 p.m. on Monday, December 3, 2007, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site several days prior to publication of the proposal, giving interested persons over additional to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Kelly at (512) 463-7291. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/rules/proposed.html](http://www.rrc.state.tx.us/rules/proposed.html).

The Commission proposes the amendments under Texas Natural Resources Code, §116.034(a), which authorizes the Commission to adopt rules providing examination requirements for persons who are required or who wish to be licensed or registered under Chapter 116.

Statutory authority: Texas Natural Resources Code, §116.034(a).

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.034(a).

Issued in Austin, Texas on October 9, 2007.

§13.70. *Examination Requirements and Renewals.*

(a) Examination general provisions.

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

(6) Time limits.

(A) Effective June 1, 2008, an applicant shall complete the examination within two hours.

(B) The examination proctor shall be the official time-keeper.

(C) An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.

(D) The examination proctor shall mark any answer sheet that was not completed within the time limit.

(b) - (e) (No change.)

*§13.73. Employee Transfers.*

A licensee, an ultimate consumer, or a state agency, county, municipality, school district, or other governmental subdivision shall notify AFRED when a previously certified person is hired, by filing CNG Form 1016A along with a \$10 filing fee. Notification must include the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, name of previous and new licensee-employer, and types of CNG work to be performed by the newly-hired certified employee. A state agency, county, municipality, school district, or other governmental subdivision is exempt from this subsection if such entity chooses not to certify its employees who perform CNG 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 October 22, 2007.

TRD-200705069

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 475-1295



## CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

### SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

#### 16 TAC §14.2019, §14.2020

The Railroad Commission of Texas proposes amendments to §14.2019 and §14.2020, relating to Certification Requirements, and Employee Transfers.

The Commission proposes the amendments to establish reasonable time limits for qualifying examinations and to extend to ultimate consumers and public entities that hire previously certified individuals the same rules that apply to LNG licensees that hire previously certified individuals. The Commission proposes an effective date of February 1, 2008, for these amendments.

In §14.2019(a), the Commission proposes new paragraph (6). Proposed new paragraph (6) concerns time limits for examinations. The time limits, proposed to begin June 1, 2008, would require an applicant to complete a qualifying examination within two or three hours, depending on the length of the examination, from the time the examination begins. The examination proctor is proposed to be the official timekeeper. Examinees would be required to turn in their examinations and answer sheets before or at the end of the established time limit for the examination. The proctor would mark any answer sheet that was not completed within the time limit.

The proposed time limits would not affect the open- or closed-book status of qualifying examinations. Management-level examinations are currently closed book, and would remain so under the current proposal. Employee-level examinations are currently open book, and would remain so under the current proposal.

A three-hour time limit is proposed for the open-book employee-level LNG Delivery Truck Driver examination and for the closed-book management-level Category 35 Retail and Wholesale Dealers examination, which currently have 80 questions and 135 questions, respectively. A two-hour time limit is proposed for all other LNG examinations, which currently have from 40 to 60 questions (employee-level, open book) or 75 to 85 questions (management-level, closed book).

The Commission proposes these time limits for reasons of efficiency. The Commission must be able to plan and budget for the activities and expenses associated with the examination program.

The Commission considers the proposed time limits reasonable. Qualifying examinations vary in length according to the number and complexity of the LNG activities they authorize the examinee to perform. The three-hour time limit proposed for the open-book employee-level LNG Delivery Truck Driver examination and for the closed-book management-level Category 35 Retail and Wholesale Dealers examination would allow 2 1/4 minutes and 1 1/3 minutes per question, respectively. The two-hour time limit proposed for all other examinations would allow 2 minutes per question for a 60-question examination and 3 minutes per question for a 40-question examination.

In §14.2020, the Commission proposes to add wording to require an ultimate consumer and a state agency, county, municipality, school district, or other governmental subdivision to notify AFRED when a previously certified individual is hired. Other new wording exempts a state agency, county, municipality, school district, or other governmental subdivision from this requirement if such entity chooses not to certify its employees who perform LNG activities. The Commission adds this wording to conform its transfer-notification requirements for ultimate consumers and for public entities that elect to certify their employees to the transfer-notification requirements for licensees. Under the rule as proposed, the Commission will be informed of LNG certified individuals' affiliations and be able to send renewal notices and other communications to the individual's correct work address, regardless whether he or she is employed by a licensee, an ultimate consumer, or a public entity that elects to certify its employees.

Dan Kelly, director, Alternative Fuels Research and Education Division, has determined that for each of the first five years the proposed amendments will be in effect there will be fiscal implications for state government. The changes in §14.2019 will affect the Commission by allowing training staff to better plan out-of-town travel and to avoid unexpected delays and costs due to examinations taking longer than planned. There may be fiscal implications for local governments with regard to the changes proposed in §14.2020 depending on whether such entities hire previously certified individuals.

Mr. Kelly has also determined that for each year of the first five years the amendments will be in effect the public benefit anticipated as a result of enforcing the amendments will be improvement in the efficiency of operation of the Commission's LNG qualifying examination program.

Mr. Kelly has determined that there may be some economic cost to small businesses, micro-businesses, and individuals based on the proposed time limits for examinations in §14.2019. Pursuant to Texas Government Code, §2006.002(c), the Commission has determined that the cost for individual, small business, or micro-business LNG licensees or examination applicants may be affected if an individual cannot complete an examination within the time limit, fails the examination, and must retake it at a different time. Other individuals, small businesses, or micro-businesses may experience cost savings if they or their employees spend only two or three hours instead of an entire day taking an examination. However, the Commission cannot predict when or if that may occur.

The Commission assumes that there are LNG licensees or examination applicants that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code, §2006.001(1) and (2), respectively; however, the Commission has no data on these businesses' growth rates, employee turnover rates, career-ladder programs, or other internal factors that could require some of the businesses' employees to take new rules examinations. Further, the Commission does not have information on these businesses' gross receipts, sales revenues, or labor costs. Therefore, the Commission is not able to determine the exact cost of compliance based on the cost for each employee, the cost for each hour of labor, or the cost for each \$100 of sales pursuant to Texas Government Code, §2006.002(c). Finally, pursuant to Texas Government Code, §2006.002, the Commission finds that, considering the purpose of Texas Natural Resources Code, Chapter 116, which is to protect the health, safety, and welfare of the general public by adoption of necessary rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas, including rules establishing examination requirements, it is not feasible to reduce any adverse effect the proposed amendments could have on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/rules/commentform.html](http://www.rrc.state.tx.us/rules/commentform.html); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). Comments should refer to LPG Docket No. 1936, and will be accepted until 5:00 p.m. on Monday, December 3, 2007, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site several days prior to publication of the proposal, giving interested persons over additional to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Kelly at (512) 463-7291. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/rules/proposed.html](http://www.rrc.state.tx.us/rules/proposed.html).

The Commission proposes the amendments under Texas Natural Resources Code, §116.034(a), which authorizes the Commission to adopt rules providing examination requirements for persons who are required or who wish to be licensed or registered under Chapter 116.

Statutory authority: Texas Natural Resources Code, §116.034(a).

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.034(a).

Issued in Austin, Texas on October 9, 2007.

*§14.2019. Certification Requirements.*

(a) This section applies to all licensees and their employees who perform LNG activities, and to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined by this chapter as an LNG transport, including any employee of such ultimate consumer if that employee drives or in any way operates such an LNG transport. Only paragraph (2) of this subsection applies to an employee of a state agency or institution, county, municipality, school district, or other governmental subdivision. Driving a motor vehicle powered by LNG or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute LNG activities.

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

(6) Time limits.

(A) Effective June 1, 2008, an applicant shall complete the employee-level LNG Delivery Truck Driver examination and the management-level Category 35 Retail and Wholesale Dealers examination within three hours and shall complete all other examinations within two hours.

(B) The examination proctor shall be the official time-keeper.

(C) An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.

(D) The examination proctor shall mark any answer sheet that was not completed within the time limit.

(b) - (e) No change.

*§14.2020. Employee Transfers.*

When a previously certified individual is hired, the licensee, ultimate consumer, or state agency, county, municipality, school district, or other governmental subdivision shall notify AFRED by filing a properly completed and signed LNG Form 2016A along with a \$10 filing fee. Notice shall include the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, name of previous and new licensee-employer, and types of LNG related work to be performed by the newly-hired certified employee. A state agency, county, municipality, school district, or other governmental subdivision is exempt from this subsection if such entity chooses not to certify its employees who perform LNG 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 October 22, 2007.

TRD-200705070

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 475-1295

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## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

#### SUBCHAPTER H. ELECTRICAL PLANNING DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES

The Public Utility Commission of Texas (commission) proposes the repeal of §25.181 relating to Energy Efficiency Goal and §25.184 relating to Energy Efficiency Implementation Project and new §25.181 relating to Energy Efficiency Goal. The proposed new §25.181 raises the utilities' energy efficiency goals from 10% of growth in demand to 15% growth in demand by January 2009, and 20% growth in demand by January 2010, and also establishes an energy goal. The proposed new section also updates the cost effectiveness standard by adjusting the avoided cost of energy calculation. The proposed new section withdraws the prescribed incentive levels and provides the utilities the flexibility to set incentives at the lowest reasonable cost per energy efficiency project. The proposed new section will provide a cost recovery factor to compensate a utility for reasonable expenditures on energy efficiency as well as a performance bonus for exceeding its goal. The proposed repeal of §25.184 removes the energy efficiency program templates from the rule so that they may more easily be refined, amended, and added to. Project Number 33487 is assigned to this proceeding. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e).

When commenting on specific subsections of the proposed new rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

Theresa Gross, Retail Market Oversight Division, has determined that for each year of the first five-year period the proposed repeals and new section are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Gross has determined that for each year of the first five years the proposed repeals and new section are in effect, the public benefit anticipated as a result of enforcing the proposed repeals and new section will be an increase in energy efficiency services available to Texas customers and a decrease in overall energy consumption. There may be some adverse economic effect on small businesses or micro-businesses that participate in the energy efficiency programs as energy efficiency service providers but these costs cannot be quantified at this time. These costs are the result of the flexibility provided to the utilities to set incentive levels at the lowest reasonable cost per project. However, Ms. Gross has determined that the benefits accruing

from implementation of the proposed repeals and new section will outweigh these costs.

Ms. Gross has also determined that for each year of the first five years the proposed repeals and new section are in effect, there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, December 4, 2007, at 9:30 a.m. The request for a public hearing must be received within 32 days after publication.

Comments on the proposed repeals and new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 32 days after publication. Sixteen copies of comments to the proposed repeals and new section are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the repeals and new section. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed repeals and new section. The commission will consider the costs and benefits in deciding whether to adopt the proposed repeals and new section. All comments should refer to Project Number 33487.

In addition to comments on the proposed rule language, the commission invites comments on the following questions:

1. Should §25.181 specify a third party to advertise or act as an informational clearinghouse for the utilities' energy efficiency programs? If so, who should that third party be and how should this function be funded?
2. Should the calculation of avoided costs include avoided transmission costs?

#### **16 TAC §25.181, §25.184**

*(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 Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The proposed repeals are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, and 39.905 (Vernon 2007) (PURA). Section 14.001 provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Section 39.905 requires the commission to provide oversight and adopt rules and procedures as necessary, to ensure that the utilities can achieve their energy efficiency goals.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, and 39.905.

§25.181. *Energy Efficiency Goal.*

§25.184. *Energy Efficiency Implementation Project.*

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

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

TRD-200704993

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 936-7223



## 16 TAC §25.181

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, and 39.905 (Vernon 2007) (PURA). Section 14.001 provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Section 39.905 requires the commission to provide oversight and adopt rules and procedures as necessary, to ensure that the utilities can achieve their energy efficiency goals.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, and 39.905.

### §25.181. Energy Efficiency Goal.

(a) Purpose. The purpose of this section is to ensure that:

(1) electric utilities administer energy efficiency incentive programs in a market-neutral, nondiscriminatory manner and do not offer competitive services, except as permitted in §25.343 of this title (relating to Competitive Energy Services) or this section;

(2) all customers, in all eligible customer classes and all areas of an electric utility's service area, have a choice of and access to energy efficiency alternatives that allow each customer to reduce energy consumption, peak demand, or energy costs;

(3) each electric utility provides, through market-based standard offer programs or limited, targeted, market-transformation programs, incentives sufficient for retail electric providers and competitive energy service providers to acquire additional cost-effective energy efficiency for residential and commercial customers equivalent to at least:

(A) 10% of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2007;

(B) 15% of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2008, and

(C) 20% of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2009.

(b) Application. This section applies to electric utilities.

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

(1) Affiliate--

(A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of an energy efficiency service provider;

(B) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;

(C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by an energy efficiency service provider;

(D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of an energy efficiency service provider; or

(ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; or

(E) a person who is an officer or director of an energy efficiency service provider or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;

(F) a person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider;

(G) a person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph;

(H) a person who exercises common control over an energy efficiency service provider, where "exercising common control over an energy efficiency service provider" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of an energy efficiency service provider, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or

(I) a person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of an energy efficiency service provider even though neither person may qualify as an affiliate individually.

(2) Commercial customer--A non-residential customer taking service at a metered point of delivery at a distribution voltage under an electric utility's tariff during the prior calendar year and a non-profit customer or government entity, including an educational institution. For purposes of this section, each metered point of delivery shall be considered a separate customer.

(3) Competitive energy efficiency services--Energy efficiency services that are defined as competitive under §25.341 of this title (relating to Definitions).

(4) Deemed savings--A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application that an electric utility may use instead of energy and peak demand savings determined through measurement and verification activities.

(5) Demand--The rate at which electric energy is used at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).



(6) Demand savings--A quantifiable reduction in demand.

(7) Eligible customers--Residential and commercial customers. In addition, to the extent that they meet the criteria for participation in load management standard offer programs developed for industrial customers and implemented prior to May 1, 2007, industrial customers are eligible customers solely for the purpose of participating in such programs.

(8) Energy efficiency--Improvements in the use of electricity that are achieved through facility or equipment improvements, devices, or processes that produce reductions in demand or energy consumption with the same or higher level of end-use service and that do not materially degrade existing levels of comfort, convenience, and productivity.

(9) Energy efficiency measures--Equipment, materials, and practices at a customer's site that result in a reduction in electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kilowatts (kW), or both. These measures may include thermal energy storage and removal of an inefficient appliance so long as the customer need satisfied by the appliance is still met.

(10) Energy efficiency program--The aggregate of the energy efficiency activities carried out by an electric utility under this section or a set of energy efficiency projects carried out by an electric utility under the same name and operating rules.

(11) Energy efficiency project--An energy efficiency measure or combination of measures undertaken in accordance with a standard offer or market transformation program.

(12) Energy efficiency service provider--A person who installs energy efficiency measures or performs other energy efficiency services under this section. An energy efficiency service provider may be a retail electric provider or commercial customer.

(13) Energy savings--A quantifiable reduction in a customer's consumption of energy.

(14) Growth in demand--The annual increase in demand in the Texas portion of an electric utility's service area at time of peak demand, as measured in accordance with this section.

(15) Hard-to-reach customers--Residential customers with an annual household income at or below 200% of the federal poverty guidelines.

(16) Incentive payment--Payment made by a utility to an energy efficiency service provider under an energy-efficiency program.

(17) Inspection--Examination of a project to verify that an energy efficiency measure has been installed, is capable of performing its intended function, and is producing an energy saving or demand reduction.

(18) Load control--Activities that place the operation of electricity-consuming equipment under the control or dispatch of an energy efficiency service provider, an independent system operator or other transmission organization or that are controlled by the customer, with the objective of producing energy or demand savings.

(19) Load management--Load control activities that result in a reduction in peak demand on an electric utility system or a shifting of energy usage from a peak to an off-peak period or from high-price periods to lower price periods.

(20) Market transformation program--Strategic efforts to induce lasting structural or behavioral changes in the market that result in increased adoption of energy efficient technologies, services, and practices, as described in this section.

(21) Measurement and verification--Activities intended to determine the actual energy and demand savings resulting from energy efficiency projects as described in this section.

(22) Off-peak period--Period during which the demand on an electric utility system is not at or near its maximum. For the purpose of this section, the off-peak period includes all hours that are not in the peak period.

(23) Peak demand--Electrical demand at the times of highest annual demand on the utility's system.

(24) Peak demand reduction--Reduction in demand on the utility system during the utility system's peak period.

(25) Peak period--For the purpose of this section, the peak period consists of the hours from one p.m. to seven p.m., during the months of May, June, July, August, and September, excluding weekends and Federal holidays.

(26) Renewable demand side management (DSM) technologies--Equipment that uses a renewable energy resource (renewable resource), as defined in §25.173(c) of this title (relating to Goal for Renewable Energy) that, when installed at a customer site, reduces the customer's net purchases of energy, demand, or both.

(27) Standard offer contract--A contract between an energy efficiency service provider and a participating utility specifying standard payments based upon the amount of energy and peak demand savings achieved through the installation of energy efficiency measures at electric customer sites, the measurement and verification protocols, and other terms and conditions, consistent with this section.

(28) Standard offer program--A program under which a utility administers standard offer contracts between the utility and energy efficiency service providers.

(d) Cost-effectiveness standard. An energy efficiency program is deemed to be cost-effective if the cost of the program to the utility is less than or equal to the benefits of the program.

(1) The cost of a program includes the cost of incentives, measurement and verification, and actual or allocated research and development and administrative costs. The benefits of the program consist of the value of the demand reductions and energy savings, measured in accordance with the avoided costs prescribed in this subsection. The present value of the program benefits shall be calculated over the projected life of the measures installed under the program.

(2) The avoided capacity cost shall be based on the estimated capital cost of a new gas turbine, and the avoided energy costs shall be based on wholesale energy costs.

(A) The initial avoided cost of capacity is \$80/kW per year. The avoided cost of capacity shall be adjusted every two years based on the annual capacity costs of a new simple-cycle gas turbine, using a recognized industry source of information, adjusted for line losses.

(B) The initial avoided cost of energy is \$0.055 cents/kWh. The avoided cost of energy shall be adjusted annually to the simple average of the market clearing price in ERCOT for balancing energy for the previous calendar year. For areas outside of ERCOT with a regional transmission organization that has been approved by the Federal Energy Commission and operates a balancing market and publicly reports prices in the market, the avoided energy cost may be adjusted to the simple average of the market clearing price in the region for balancing service. For areas that do not have such a regional transmission organization, the ERCOT avoided energy cost

shall be used unless the commission determines a different avoided cost for an area.

(e) Annual energy efficiency goals. Electric utilities shall administer energy efficiency programs to achieve at least a 15% reduction in the electric utility's annual growth in demand of residential and commercial customers by December 31, 2008; and 20% of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2009.

(1) A utility may carry over any reduction in growth in residential and commercial demand that is achieved in 2007 in excess of 10% of its growth in demand to apply to the required savings in 2008. Each utility's demand-reduction goal shall be calculated as follows:

(A) Each year's historical demand for residential and commercial customers shall be adjusted for weather fluctuations, using weather data for the most recent ten years. The utility's growth in residential and commercial demand is based on the average growth in retail load in the Texas portion of the utility's service area, measured at the utility's annual system peak. The utility shall calculate the average growth rate for the prior five years.

(B) The demand goal for energy-efficiency savings for a year is calculated by applying the percentage goal, prescribed in this subsection, to the average growth in demand, calculated in accordance with subparagraph (A) of this paragraph.

(C) A utility may submit for commission approval an alternative method to calculate its growth in demand, for good cause.

(D) Beginning in 2009 a utility's demand reduction goal in megawatts for any year shall not be less than the previous year's goal.

(E) Savings achieved through programs for hard-to-reach customers shall be no less than 5.0% of the utility's total demand reduction goal.

(2) Beginning in 2008, an electric utility shall administer an energy efficiency program designed to meet an energy savings goal calculated from its demand savings goal, using a 30% capacity factor.

(3) Electric utilities shall administer energy efficiency programs to effectively and efficiently achieve the goals set out in this section.

(A) Incentive payments shall be made under standard offer contracts or market transformation contracts, for energy savings and demand reductions. Each electric utility shall establish standard incentive payments to achieve the objectives of this section.

(B) Projects or measures under either the standard offer or market transformation programs are not eligible for incentive payments or compensation if:

(i) A project would achieve demand or energy reduction by eliminating an existing function, shutting down a facility or operation, or would result in building vacancies or the re-location of existing operations to a location outside of the area served by the utility conducting the program, except an appliance recycling program consistent with this section.

(ii) A measure would be adopted even in the absence of the energy efficiency service provider's proposed energy efficiency project, except in special cases, such as hard-to-reach and weatherization programs.

(iii) A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.

(f) Cost recovery. An Energy Efficiency Cost Recovery Factor (EECRF) rate schedule shall be included in the utility's tariff to permit the utility to timely recover the reasonable costs of providing energy efficiency programs. The forecast of the energy efficiency program costs shall reflect the spending necessary to meet the utility's goals under this section, subject to the limitations established in this section.

(1) A utility may request that an EECRF be established to recover all of the utility's forecasted annual energy efficiency program costs, if the commission order establishing the utility's base rates does not expressly include an amount for energy efficiency program costs. If a utility's existing base rate order expressly includes an amount for energy efficiency program costs, the utility may request that an EECRF be established to recover forecasted annual energy efficiency program costs in excess of the costs recovered through base rates.

(2) In any base rate case that is filed after December 31, 2007 or is pending on that date, base rates shall not be set to recover energy efficiency costs.

(3) The EECRF shall be calculated to recover the costs associated with each program from the customer classes that receive services under each program. In connection with any application to establish or change an EECRF, the utility shall identify costs by customer class or submit factors to allocate costs among the customer classes and shall propose charges for the recovery of the costs.

(4) Each year, a utility with an EECRF shall apply to adjust the EECRF in order to minimize any over- or under-collection of energy efficiency costs resulting from the use of the EECRF. The EECRF shall be designed to permit the utility to recover any under-recovery of energy efficiency program costs or return any over-recovery of costs. An application to change an EECRF that will take effect in January of the following year shall be filed not later than May 1.

(5) The EECRF may be changed in a general rate proceeding or, if a general rate proceeding has not been conducted in the preceding year, an electric utility may petition to adjust its EECRF on an annual basis.

(6) The commission may approve an energy charge or a monthly customer charge for the EECRF. The EECRF shall be set at a rate that will give the utility the opportunity to earn revenues equal to the sum of the utility's forecasted energy efficiency costs, net of energy efficiency costs included in base rates, the energy efficiency performance bonus amount that it earned for the prior year under subsection (h) of this section and any adjustment for past over- or under-recovery of energy efficiency revenues.

(7) A utility that is unable to establish an EECRF in 2008 due to a rate freeze may defer the costs of complying with this section and recover the deferred costs through an energy efficiency cost recovery factor on the expiration of the rate freeze period.

(8) A utility's program expenditures for 2008 shall not exceed 175% of its program budget for 2007 for residential and commercial customers, as included in its April 1, 2006, filing. A utility's program expenditures for 2009 shall not exceed 250% of its program budget for 2007 for residential and commercial customers, as included in the April 1, 2006, filing.

(9) A utility's application to establish or change an EECRF shall include the information and schedules in any commission approved EECRF filing package, but at a minimum shall include testimony and schedules showing the utility's forecasted energy efficiency costs, energy efficiency costs included in base rates, the Energy Efficiency Performance Bonus amount that it earned for the prior year, any adjustment for past over- or under-recovery of energy efficiency rev-

enues, information concerning the calculation of billing determinants, and the following:

(A) the incentive payments by the utility, by program; the utility's administrative costs for its energy efficiency programs for the most recent year and for the year in which the EECRF is expected to be in effect, including costs for the dissemination of information and outreach; and other major administrative costs, and the basis for the projection;

(B) billing determinants for the most recent year and for the year in which the EECRF is expected to be in effect;

(C) the actual revenues attributable to the EECRF for any period for which the utility seeks to adjust the EECRF for an under- or over-recovery of EECRF revenues; and

(D) any other information that supports the determination of the EECRF.

(10) Upon a utility's filing of an application to establish or change an EECRF, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows, except where good cause supports a different procedural schedule:

(A) within 60 days after the application was filed, if no hearing is requested within 30 days of the filing of the application; or

(B) within 120 days after the application was filed, if a hearing is requested within 30 days of the filing of the application. If a hearing is requested, the hearing will be held no earlier than the first working day after the 45th day after the application was filed.

(11) In any proceeding to establish or change an EECRF, the utility must show that:

(A) the costs to be recovered through the EECRF are reasonable estimates of the costs necessary to provide energy efficiency programs and to meet the utility's goals under this section;

(B) calculations of any under- or over-recovery of EECRF revenues is consistent with this section;

(C) any energy efficiency performance bonus for which recovery is being sought is consistent with this section;

(D) the costs assigned or allocated to customer classes are reasonable and consistent with this section;

(E) the estimate of billing determinants for the period for which the EECRF is to be in effect is reasonable; and

(F) any calculations or estimates of system losses and line losses used in calculating the charges are reasonable.

(12) The scope of a proceeding to establish or adjust an EECRF is limited to the issues of whether the utility's cost estimates are reasonable, calculations of under- or over-recoveries are consistent with this section, the calculation of any energy efficiency performance bonus is consistent with this section, the assignments and allocations to the classes are appropriate, and the calculation of the EECRF is in accordance with this subsection. The commission shall make a final determination of the reasonableness of the costs and performance bonuses that the utility recovered through the EECRF.

(g) Incentive payments. The incentive payments for each customer class shall not exceed 100% of avoided cost, as determined in accordance with this section. The incentive payments shall be set by each utility with the objective of achieving their energy and demand savings goals at the lowest reasonable cost per program. Utilities may adjust incentive payments during the program year, but such adjust-

ments must be clearly publicized in the materials used by the utility to set out the program rules and describe the program to participating energy efficiency service providers.

(h) Energy efficiency performance bonus. A utility that exceeds its demand reduction goal established in this section at a cost that does not exceed the limit established in this section shall be awarded a performance bonus. The performance bonus shall be based on the utility's energy efficiency achievements for the previous calendar year.

(1) The performance bonus shall entitle the utility to receive a share of the net benefits realized in meeting its demand reduction goal established in this section.

(2) Net benefits shall be calculated as the sum of total avoided cost associated with the eligible programs administered by the utility minus the sum of all program costs. Total avoided costs shall be calculated in accordance with this section.

(3) A utility that exceeds 100% of its demand reduction goal (DRG) shall receive a bonus equal to 1% of the net benefits for every 2% that the demand reduction goal has been exceeded, with a maximum of a 20% of net benefits bonus.

(4) A utility that meets at least 120% of its demand reduction goal with at least 10% of its savings achieved through Hard-to-Reach programs shall receive an additional bonus equal to 10% of the bonus calculated under paragraph (3) of this subsection.

(5) Any energy or demand savings achieved in 2007 that are applied to a utility's goal in 2008 are not eligible for a performance bonus.

(i) Utility administration. The cost of administration may not exceed 15% of the total program costs for a utility with 500,000 or more residential and commercial customers. The cost of administration may not exceed 20% of the total program costs for a utility with fewer than 500,000 residential and commercial customers.

(1) Administrative costs include all reasonable and necessary costs incurred by a utility in carrying out its responsibilities under this section, including:

(A) conducting informational activities designed to explain the standard offer programs and market transformation programs to energy efficiency service providers, retail electric providers, and vendors;

(B) providing informational programs to improve customer awareness of energy efficiency programs and measures;

(C) conducting research concerning energy efficiency measures and programs to foster continuous improvement and innovation in the application of energy efficiency technology and energy efficiency program design and implementation.

(D) reviewing and selecting energy efficiency programs in accordance with this section;

(E) providing regular and special reports to the commission, including reports of energy and demand savings; and

(F) any other activities that are necessary and appropriate for successful program implementation.

(2) A utility shall adopt measures to foster competition among energy service providers, such as limiting the number of projects or level of incentives that a single energy service provider and its affiliates is eligible for and establishing funding set-asides for small projects.

(3) A utility may establish funding set-asides or other program rules to foster participation in energy efficiency programs by municipalities and other governmental entities.

(4) Electric utilities shall use standardized forms, procedures, deemed savings estimates and program templates. The electric utility shall file any standardized materials, or any change to it, with the commission at least 60 days prior to its use. In filing such materials, the utility shall provide an explanation of changes from the version of the materials that was previously used.

(j) Standard offer programs. A utility's standard offer program shall be implemented through programs rules and standard offer contracts that are consistent with this section. Standard offer contracts will be available to any energy efficiency service provider that satisfies the contract requirements prescribed by the utility under this section and demonstrates that it is capable of managing energy efficiency projects under an electric utility's energy efficiency program.

(k) Market transformation programs. Market transformation programs are strategic efforts, including, but not limited to, incentives and education designed to reduce market barriers for energy efficient technologies and practices. Market transformation programs shall be designed to obtain energy savings or peak demand reductions beyond savings that would be achieved through compliance with existing building codes and equipment efficiency standards or standard offer programs. Utilities should cooperate with the Retail Electric Providers, and, where possible, leverage existing industry-recognized programs that have the potential to reduce demand and energy consumption in Texas, consider statewide administration where appropriate and, where possible, leverage existing industry-recognized programs that have the potential to reduce demand and energy consumption in Texas.

(l) Requirements for standard offer and market transformation programs. A utility's standard offer and market transformation programs shall meet the requirements of this subsection.

(1) Standard offer and market transformation programs:

(A) shall describe the eligible customer classes and allocate funding among the classes on an equitable basis;

(B) may offer standard incentive payments and specify a schedule of payments that are sufficient to meet the goals of the program, which shall be consistent with this section, or any revised payment formula adopted by the commission. The standard offer incentive payments may include both payments for energy and demand savings, as appropriate;

(C) shall not permit the provision of any product, service, pricing benefit, or alternative terms or conditions to be conditioned upon the purchase of any other good or service from the utility or its competitive affiliate, except that only customers taking transmission and distribution services from a utility can participate in its energy efficiency programs;

(D) shall provide for a complaint process that allows:

(i) an energy efficiency service provider to file a complaint with the commission against a utility; and

(ii) a customer to file a complaint with the utility against an energy efficiency service provider;

(E) may permit the use of renewable DSM and combined heat and power technologies; and

(F) may require energy efficiency service providers to provide the following:

(i) a description of how the value of any incentive will be passed on to customers

(ii) evidence of experience and good credit rating;

(iii) a list of references;

(iv) all applicable licenses required under state law and local building codes;

(v) evidence of all building permits required by governing jurisdictions; and

(vi) evidence of all necessary insurance.

(2) Standard offer programs:

(A) shall require energy efficiency service providers to identify peak demand and energy savings for each project in the proposals they submit to the utility;

(B) shall be neutral with respect to specific technologies, equipment, or fuels. Energy efficiency projects may lead to switching from electricity to another energy source, provided that the energy efficiency project results in overall lower energy costs, lower energy consumption, and the installation of high efficiency equipment. Utilities may not pay incentives for a customer to switch from gas appliances to electric appliances except in connection with the installation of high efficiency combined heating and air conditioning systems;

(C) shall require that all projects result in a reduction in purchased energy consumption, or peak demand, or a reduction in energy costs for the end-use customer;

(D) shall encourage comprehensive projects incorporating more than one energy efficiency measure;

(E) shall be limited to projects that result in consistent and predictable energy or peak demand savings over an appropriate period of time based on the life of the measure; and

(F) may permit a utility to use poor performance, including customer complaints, as a criterion to limit or disqualify an energy efficiency service provider or its affiliate from participating in a program.

(3) A market transformation program shall identify:

(A) program goals;

(B) market barriers the program is designed to overcome;

(C) key intervention strategies for overcoming those barriers;

(D) estimated costs and projected energy and capacity savings;

(E) a baseline study that is appropriate in time and geographic region. In establishing a baseline, the study shall consider the level of regional implementation and enforcement of any applicable energy code;

(F) program implementation timeline and milestones;

(G) a description of how the program will achieve the transition from extensive market intervention activities toward a largely self-sustaining market;

(H) a method for measuring and verifying savings; and

(I) the period over which savings shall be considered to accrue, including a projected date by which the market will be sufficiently transformed so that the program should be discontinued.

(4) A market transformation program shall be designed to achieve energy or peak demand savings, or both, and lasting changes in the way energy efficient goods or services are distributed, purchased, installed, or used over a defined period of time not to exceed five years.

(5) A load-control standard-offer program shall not permit an energy efficiency service provider from receiving incentives under the utility program for the same demand reduction for which it is compensated under a demand response program conducted by an independent organization, independent system operator, or regional transmission operator.

(m) Energy efficiency plans and reports.

(1) Each electric utility shall file by April 1 of each year an energy efficiency plan and report, as described in this subsection. The plan and report shall be filed as a single document.

(2) Each electric utility's energy efficiency plan and report shall describe how the utility intends to achieve the goals set forth in this section and comply with the other requirements of this section. The plan and report shall be based on calendar years. The plan and report shall propose an annual budget sufficient to reach the goals specified in this section. Each electric utility's plan and report shall include:

(A) the utility's total actual and weather-adjusted peak demand and actual and weather-adjusted peak demand for residential and commercial customers for the previous five years;

(B) the demand goal calculated in accordance with this section for the current year and the following year;

(C) the utility's customers' total actual and weather-adjusted energy consumption and actual and weather-adjusted energy consumption for residential and commercial customers for the previous five years;

(D) the energy goal calculated in accordance with this section;

(E) a description of existing energy efficiency programs and an explanation of the extent to which these programs will be used to meet the utility's energy efficiency goals;

(F) a description of each of the utility's energy efficiency programs that were not included in the previous year's plan, including measurement and verification plans if appropriate, and any baseline studies and research reports or analyses supporting the value of the new programs;

(G) an estimate of the energy and peak demand savings to be obtained through each separate energy efficiency program;

(H) a description of the customer classes targeted by the utility's energy efficiency programs, specifying the size of the hard-to-reach, residential, and commercial classes, and the methodology used for estimating the size of each customer class;

(I) the proposed annual budget required to implement the utility's energy efficiency programs, broken out by program for each customer class, including hard-to-reach customers, and any set-asides or budget restrictions adopted or proposed in accordance with this section. The proposed budget shall detail the incentive payments and utility administrative costs, including specific items for research and information and outreach to energy efficiency service providers, and other major administrative costs, and the basis for estimating the proposed expenditures;

(J) a discussion of the types of informational activities the utility plans to use to encourage participation by energy efficiency service providers in energy efficiency programs and to encourage retail electric providers to participate in energy efficiency programs, including the manner in which the utility will provide notice of energy efficiency programs, and any other facts that may be considered when evaluating a program;

(K) the utility's energy goal and demand goal for the prior five years, as reported in annual energy efficiency reports filed in accordance with this section;

(L) a comparison of projected savings (energy and demand), reported savings, and verified savings for each of the utility's energy efficiency programs for the prior two years;

(M) a description of the results of any market transformation program, including a comparison of the baseline and actual results and any adjustments to the milestones for a market transformation program;

(N) expenditures for the prior five years for energy and demand incentive payments and program administration, by program and customer class;

(O) funds that were committed but not spent during the prior year, by program;

(P) a comparison of actual and budgeted program costs, including an explanation of any increase or decreases of more than 10% in the cost of a program;

(Q) information relating to the number of customers served by each program by customer class;

(R) the utility's most recent EECRF, the revenue collected through the EECRF, energy efficiency revenue collected through base rates, and the control number under which the most recent EECRF was established;

(S) the amount of any over- or under-recovery energy efficiency program costs whether collected through base rates or the EECRF; and

(T) beginning with the report filed in 2009, a list of any counties that in the prior year were under-served by the energy efficiency program.

(n) Review of programs. An electric utility's energy efficiency program is subject to review, which may be initiated by an interested person or commission staff filing a petition requesting a review. The commission may formally review an electric utility's energy efficiency program, on its motion or through a petition filed by commission staff or an interested person. The review under this section may relate to an existing program, proposed new programs, or the failure of the utility to implement a program. The initiation of a formal review of a utility's energy efficiency plan does not preclude the utility from carrying out existing or planned programs, unless a presiding officer or the commission issues an order requiring it to make a change in a program.

(o) Inspection, measurement and verification. Each standard offer program shall include an industry-accepted measurement and verification protocol, such as the International Performance Measurement and Verification Protocol, to measure and verify energy and peak demand savings to ensure that the goals of this section are achieved. An energy efficiency service provider shall not receive final compensation until it establishes that the work is complete and measurement and verification in accordance with the protocol verifies that the savings will be achieved. If inspection of one or more measures is a part of the protocol, an energy efficiency service provider shall not receive final com-

compensation until the utility has conducted its inspection on the sample of measures and the inspections confirm that the work has been done.

(1) The energy efficiency service provider is responsible for the measurement of energy and peak demand savings using the approved measurement and verification protocol, and may utilize the services of an independent third party for such purposes.

(2) Commission-approved deemed energy and peak demand savings may be used in lieu of the energy efficiency service provider's measurement and verification, where applicable. The deemed savings approved by the commission before December 31, 2007 are continued in effect, unless superseded by commission action.

(3) An energy efficiency service provider shall require that each customer sign a certification indicating that the measures contracted for were installed before final payment is made to the energy efficiency service provider. Where the customer refuses to sign a certification, the energy efficiency service provider may use other means that are acceptable to the utility to demonstrate that the measures have been installed.

(4) For projects involving over 30 installations, a statistically significant sample of installations will be subject to on-site inspection in accordance with the protocol for the project to verify that measures are installed and capable of performing their intended function. Inspection shall occur within 30 days of notification of measure installation.

(5) Projects of less than 30 installations may be aggregated and a statistically significant sample of the aggregate installations will be subject to on-site inspection in accordance with the protocol for the projects to ensure that measures are installed and capable of performing their intended function. Inspection shall occur within 30 days of notification of measure installation.

(6) The sample size for on-site inspections may be adjusted for an energy efficiency service provider under a particular contract, based on the results of prior inspections.

(p) Weatherization program. Unless funding is provided under PURA §39.903, each unbundled transmission and distribution utility shall include in its energy efficiency plan a targeted low-income energy efficiency program as described by §39.903(f)(2). Savings achieved by the program shall count toward the transmission and distribution utility's energy efficiency goal. Each utility shall include a proposed funding level for the weatherization program in its energy efficiency plan.

(q) Energy Efficiency Implementation Project - EEIP. The commission may use an implementation project involving input by interested persons to make recommendations to the commission with regard to best practices in standard offer programs and market transformation programs, modifications to programs, standardized forms and procedures, deemed savings estimates, and program templates, and the overall direction of the energy efficiency program established by this section. The following functions may also be undertaken in the energy efficiency implementation project:

(1) development and review of statewide standard offer programs;

(2) identification, design, and review of market transformation programs;

(3) determination of measures for which deemed savings are appropriate and participation in the development of deemed savings estimates for those measures;

(4) review of and recommendations on an independent measurement and verification expert's report;

(5) review of and recommendations on incentive payment levels and their adequacy to induce the desired level of participation by energy efficiency service providers and customers;

(6) review of and recommendations on the utility annual energy efficiency plans and reports;

(7) periodic reviews of the cost effectiveness methodology;  
and

(8) other activities as requested by the commission.

(r) Retail providers. Each electric utility in the ERCOT region shall conduct outreach and information programs and otherwise use its best efforts to encourage and facilitate the involvement of retail electric providers as energy efficiency service companies in the delivery of efficiency and demand response programs. Electric utilities outside of the ERCOT region shall provide customers with energy efficiency education materials.

(s) Customer protection. Each energy efficiency service provider that provides energy efficiency services to end-use customers under this section shall provide the disclosures and include the contractual provisions required by this subsection, except for commercial customers with a peak load exceeding 50 kW.

(1) Clear disclosure to the customer shall be made of the following:

(A) the customer's right to a cooling-off period of three business days, in which the contract may be canceled, if applicable under law;

(B) the name, telephone number, and street address of the energy efficiency services provider and any subcontractor that will be performing services at the customer's home or business;

(C) the fact that incentives are made available to the energy efficiency services provider through a program funded by utility customers, manufacturers or other entities and the amount of any incentives provided by the utility;

(D) the amount of any incentives that will be provided to the customer;

(E) notice of provisions that will be included in the customer's contract, including warranties;

(F) any potential adverse environmental or health effects associated with the energy efficiency measures to be installed;

(G) the fact that the energy efficiency service provider must measure and report to the utility the energy and peak demand savings from installed energy efficiency measures;

(H) the liability insurance to cover property damage carried by the energy efficiency service provider and any subcontractor; and

(I) the financial arrangement between the energy efficiency service provider and customer, including an explanation of the total customer payments, the total expected interest charged, all possible penalties for non-payment, and whether the customer's installment sales agreement may be sold;

(J) the fact that the energy efficiency service provider is not part of or endorsed by the commission or the utility; and

(K) a description of the complaint procedure established by the utility under this section, and toll free numbers for the

Office of Customer Protection of the Public Utility Commission of Texas, and the Office of Attorney General's Consumer Protection Hotline.

(2) The energy efficiency service provider's contract with the customer shall include:

(A) work activities, completion dates, and the terms and conditions that protect residential customers in the event of non-performance by the energy efficiency service provider;

(B) provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings and reductions in energy costs; and

(C) a complaint procedure to address performance issues by the energy efficiency service provider or a subcontractor.

(3) When an energy efficiency service provider completes the installation of measures for a customer, it shall provide the customer an "All Bills Paid" affidavit to protect against claims of subcontractors.

(t) Grandfathered programs. An electric utility that offered a load management standard offer programs for industrial customers prior to May 1, 2007 shall continue to make the program available, at 2007 funding and participation levels.

(u) Administrative penalty. The commission may impose an administrative penalty or other sanction if the utility fails to meet a goal for energy efficiency under this section. Factors that may be considered in determining whether to impose a sanction for the utility's failure to meet the goal include:

(1) the level of demand by retail electric providers and competitive energy service providers for program incentives made available by the utility through its programs;

(2) changes in building energy codes;

(3) changes in national or state appliance or equipment efficiency standards; and

(4) the utility's effectiveness in administering its energy efficiency program.

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

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

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Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 936-7223



## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 82. BARBERS

**16 TAC §§82.10, 82.22, 82.29, 82.31, 82.70, 82.71, 82.78, 82.80, 82.100**

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at Title 16, Texas Administrative Code (TAC), §§82.10, 82.22, 82.29, 82.31, 82.70, 82.71, 82.80, and 82.100 and a new rule at 16 TAC §82.78, regarding the regulation of barbering.

These proposed rule changes are the second phase of Department rulemaking necessary to implement changes in law enacted by House Bill 2106, 80th Legislature, and to make certain clean-up changes in the rules for barbering. Also included in these proposed rules are reductions in the application and renewal fees for a Class A barber license.

The provisions of House Bill 2106 became effective on June 15, 2007 and require the Commission of Licensing and Regulation to adopt rules necessary to implement the new legislation by January 1, 2008. These proposed rule changes were recommended by the Advisory Board on Barbering at its meeting on October 15, 2007. Primarily, the rule changes implement provisions of House Bill 2106 that create two new license types, dual shops and mobile shops. A dual shop license will allow a combined barber and beauty shop to operate under one license. Currently, a combined barber and beauty shop must hold both a barbershop permit and a beauty shop license. A mobile shop license will allow a shop offering barbering services to be operated as a mobile unit, rather than in a fixed location.

In §82.10, the definition of "barber establishment" is amended to clarify that the Department's jurisdiction under the barber statute encompasses barber establishments that are not licensed. To implement provisions of House Bill 2106, the definition of "barber establishment" is also amended to include dual shops and mobile shops. The word "manicurist" is stricken to acknowledge that there are now other types of specialty shops in the barber program. The definition of "booth rental permit" is amended to recognize that this type of permit would apply to a hair weaver or hair braider and to a person who works in a dual shop. Definitions are added for the terms "dual shop" and "mobile shop," and the term "self-contained" is added to augment the definition of a mobile shop.

Section 82.22 is amended to add licensing requirements for dual shops and mobile shops. A dual shop must comply with all statutory and rule requirements that apply to barbershops and beauty shops. Because of the unique characteristics of a mobile shop and the Department's need to keep track of the location of a mobile shop for the purpose of conducting inspections or investigating complaints, specific requirements are added for mobile shops. A mobile shop must provide the Department with a permanent physical address from which the mobile unit is dispatched and to which the mobile unit is returned when not in use; provide a permanent mailing address where correspondence from the Department may be received; furnish a detailed floor plan of the mobile shop; and be inspected and approved by the Department before operation of the mobile shop.

Section 82.29 is amended to clarify that the requirements for an establishment that is relocating do not apply to a mobile shop.

Section 82.31 is amended to add dual shops and mobile shops to the list of license types that have a two-year term.

Section 82.70 is amended to add dual shops and mobile shops to the list of individuals and establishments that may advertise in the yellow pages under "Barber."

Section 82.71 is amended to add specific responsibilities that apply to dual shops. Dual shops must comply with all statute and

rule requirements that apply to barbershops and those that apply to beauty salons. In addition, a dual shop that is without the services of at least one licensed barber (or cosmetologist) for a period of 90 days or more may not place any advertisement or display any sign or symbol indicating that the shop offers barbering (or cosmetology) services and must remove any existing sign or symbol indicating that the shop offers barbering (or cosmetology) services.

A new §82.78 is added to establish responsibilities that apply specifically to mobile shops. Generally, a mobile shop must comply with health and safety requirements and all other requirements applicable to barber shops or specialty shops. A mobile shop must maintain a physical address and must notify the Department within 10 days of any change in physical or mailing address. A mobile shop must maintain certain records for one year after the record is made. To facilitate unannounced inspections by the Department, a mobile shop must comply with the following two requirements to enable the Department to track the shop's location. First, the mobile shop must have a Global Positioning System (GPS) tracking device that enables the Department to track the shop over the Internet; and secondly, the mobile shop must submit weekly itineraries to the Department. Specific requirements are included for the equipment and use of a mobile shop. Finally, the proposed new rule specifies that a mobile shop will be subject to periodic inspections at least four times each year.

Section 82.80 is amended to add application and renewal fees for dual shop and mobile shop licenses. Based on the Department's annual fee review conducted pursuant to §51.202, Occupations Code, the Commission of Licensing and Regulation voted at its meeting on September 21, 2007 to reduce the application and renewal fees for a Class A barber license from \$90 each to \$70 each. The proposed rule includes this change. An inspection fee is added for initial inspections of mobile shops. Finally, a provision is added to clarify that fees are generally non-refundable.

Section 82.100 is amended to include certain statutory language in the definition of "sterilize" or "sterilization." The rule now specifies, as stated in §1603.352, Occupations Code, that a sterilizer used to sterilize instruments in nail services must be listed with the United States Food and Drug Administration.

William H. Kuntz, Jr., Executive Director, has determined that, for each year of the first five-year period the proposed amendments and new rule are in effect, the changes to costs and revenues of the state will be as follows. The Department estimates that there are 2,500 combined barber and beauty shops that would be eligible for the new dual shop license upon renewal of the licenses. We assume that, because the licenses are issued for a two-year period, half of that number would renew each year. Since the proposed renewal fee of \$100 for a dual shop license is lower than the \$129 in combined renewal fees for a barbershop license and a beauty shop license, these rule changes will result in an annual decrease in revenue of approximately \$36,250. Offsetting this decrease will be a decrease in the Department's costs due to processing fewer renewal applications. The new mobile shop license is not expected to have a significant impact on costs or revenues to the state because we anticipate a small number of applicants for this type of license. The Class A barber license fee reductions will result in a decrease in revenue to the Department of approximately \$122,020 annually. There will be no changes to costs or revenues of local government as a

result of enforcing or administering the proposed amendments and new rule.

Mr. Kuntz also has determined that, for each year of the first five-year period the proposed amendments and new rule are in effect, the public benefit will be as follows. Combined barber and beauty shops will have decreased licensing costs that may be passed on to customers. The statutory provision for mobile shops will be implemented in a manner that protects public health and safety.

Mr. Kuntz also has determined that, for each year of the first five-year period the proposed amendments and new rule are in effect, there will be decreased costs to shops that provide both barbering and cosmetology services because, beginning May 1, 2008, shops may maintain one dual shop license rather than two separate licenses. The amount of savings for a new license application would be \$36 over a two-year period. The amount of savings for license renewal would be \$29 over a two-year period. Mobile shops, which will probably include small or micro-businesses, will likely have significant start-up costs in obtaining the vehicle and necessary equipment. The amount would likely vary widely, and the Department is unable to provide a comprehensive estimate. As an example, the Department is aware of a GPS tracking device system that would cost \$469.95, plus \$69.95 for service activation and a monthly fee of between \$39.95 and \$49.95.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rule are proposed under Texas Occupations Code, Chapters 51, 1601, and 1603, which authorize the Department to adopt rules as necessary to implement those chapters and any other law establishing a program regulated by the Department. In particular, many of these rule changes are proposed to implement the provisions of House Bill 2106, 80th Legislature.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the proposal.

#### §82.10. Definitions.

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

- (1) (No change.)
- (2) Barber Establishment--A barbershop, ~~manicurist~~ specialty shop, dual shop, mobile shop, or school, that is subject to regulation [licensed] under the Act.
- (3) - (6) (No change.)
- (7) Booth Rental Permit--A permit that allows a barber, ~~manicurist~~, hair weaver, or hair braider to lease space on the premises of a barbershop, ~~manicurist~~ specialty shop, or dual shop to engage in the practice of barbering as an independent contractor.
- (8) - (9) (No change.)
- (10) Dual shop--A dual barber and beauty shop licensed under Texas Occupations Code, §1603.205.
- (11) ~~(10)~~ Hair braider--A person who holds a Hair Braiding Specialty Certificate of Registration from the department to braid hair. Such practice shall not include shampooing, conditioning, drying,



styling, or applying any chemicals, including color chemicals, relaxers, perm solutions, or other preparations to alter the color or to straighten, curl or alter the structure of hair. A hair braider may trim hair extensions only as applicable to the braiding process. Commercial hair may be attached only by braiding and without the use of chemicals or adhesives.

(12) [(41)] Hair Relating to Haircutting--The hair extending from the scalp of the head is recognized as the hair trimmed, shaped or cut in the process of hair cutting.

(13) [(42)] Hair weaver--A person who holds a Hair Weaving Specialty Certificate of Registration from the department to perform the services of a hair braider as defined in this section and, additionally, attach hair by any weaving method. Such practice may include shampooing, conditioning, and drying performed in connection with a hair weaving service. Such practice may not include styling, cutting, or trimming hair except to the extent such activity is incidental to a hair weaving service. Such practice shall not include the application of color chemicals, relaxers, perm solutions, or other preparations to alter the color or to straighten, curl, or alter the structure of hair.

(14) [(43)] License--A license, permit, certificate, or registration issued under the authority of the Act.

(15) [(44)] License by reciprocity--A process that permits a barber license holder from another jurisdiction or foreign country to obtain a Texas barber license without repeating barber education or examination license requirements.

(16) [(45)] Line of Demarcation between "the hair" and "the beard"--The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a horizontal line drawn from the bottom of the ear.

(17) Mobile Shop--A barbershop, specialty shop, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(18) [(46)] Provisional license--A license that allows a person to practice barbering in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(19) [(47)] Registered Examination Proctor--An individual authorized by the Department to evaluate or grade a practical examination for the department for a certificate or license issued under Texas Occupations Code, Chapter 1601.

(20) Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(21) [(48)] Sideburn--Part of a hair cut or style that is a continuation of the natural scalp hair growth, does not extend below the line of demarcation, and is not connected to any other bearded area on the face.

(22) [(49)] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

§82.22. Permit Requirements--Barbershops, Specialty Shops, Dual Shops, Mobile Shops, and Booth Rental.

(a) To be eligible for a Barbershop, [☐] Specialty Shop Permit, a Dual Shop or Mobile Shop License, or a Booth Rental Permit, an applicant must:

- (1) submit the application on a department approved form;
- (2) pay the fee required under §82.80; and

(3) meet other applicable requirements of the Act and this chapter.

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

(d) Dual Shop License--To be eligible for a Dual Shop License, an applicant must comply with the requirements of the Act, this chapter, Texas Occupations Code, Chapter 1602, and 16 TAC Chapter 83 for obtaining a beauty salon license and a barbershop permit;

(e) Mobile Shop License--To be eligible for a Mobile Shop License, an applicant must:

(1) provide a permanent physical address from which the mobile unit is dispatched and to which the mobile unit is returned when not in use;

(2) provide a permanent mailing address where correspondence from the department may be received;

(3) furnish a detailed floor plan of the mobile shop showing compliance with the requirements of the Act and this chapter; and

(4) obtain an inspection of the mobile shop and be approved by the department prior to the operation of the mobile shop. To ensure timely inspection, an applicant should submit a completed application at least 45 days in advance of the anticipated date of beginning operation of the mobile shop.

(f) [(4)] Booth Rental Permit--To be eligible for a booth rental permit, an applicant must hold a valid Department-issued Class A barber certificate, manicurist license, hair weaving specialty certificate of registration, or hair braiding specialty certificate of registration and meet the requirements of this section.

§82.29. Establishment Relocation, Change of Ownership, Owner Death or Incompetency.

(a) (No change.)

(b) If a barber establishment relocates, the licensee must apply for a new barber establishment license and verify that the new establishment meets the requirements of the Act and this chapter. Additionally, a relocated school must be inspected prior to operation under the Act. The requirements of this subsection do not apply to mobile shops.

(c) (No change.)

§82.31. Licenses--License Terms.

(a) The following licenses issued under this chapter shall have a term of two years from the date of issuance:

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

(11) Dual Shop License;

(12) Mobile Shop License;

(13) [(4)] Booth Rental Permit; and

(14) [(4)] Student Permit.

(b) (No change.)

§82.70. Responsibilities of Individuals.

(a) Only a permitted barber school, barbershop, [☐] specialty shop, dual shop, mobile shop, or a licensed barber may advertise in the yellow pages of the telephone directory under "Barber."

(b) - (f) (No change.)

§82.71. Responsibilities of Barbershops, [and] Specialty Shops, and Dual Shops.

(a) - (p) (No change.)

(q) Dual shops shall:

(1) comply with all requirements of the Act and this chapter applicable to barbershops;

(2) comply with all requirements of Texas Occupations Code, Chapter 1602 and 16 TAC Chapter 83 applicable to beauty salons; and

(3) if the shop is without the services of at least one licensed barber (or cosmetologist) for a period of 90 days or more:

(A) not place any advertisement or display any sign or symbol indicating that the shop offers barbering (or cosmetology) services; and

(B) remove any existing sign or symbol indicating that the shop offers barbering (or cosmetology) services.

§82.78. Responsibilities of Mobile Shops.

(a) A mobile shop shall comply with all health and safety requirements and all other requirements of the Act and this chapter for barbershops or specialty shops, as applicable, except as modified by this section or as otherwise indicated.

(b) A mobile shop license holder shall maintain a permanent physical address as required by §82.22(e). The mobile shop shall notify the department in writing of any change in physical or mailing address within 10 calendar days of the change.

(c) Records of appointments, itineraries, license numbers of employees and independent contractors, and vehicle identification numbers of the mobile shop shall be kept within the unit and made available for inspection by department personnel. Records of appointments and itineraries shall be kept for a period of at least one year from the date the record is made.

(d) A mobile shop shall:

(1) have a Global Positioning System (GPS) tracking device that enables the department to track the location of the mobile shop over the Internet and meet the following requirements:

(A) the device shall be on board and functioning at all times the mobile shop is in operation or open for business; and

(B) the mobile shop shall provide the department with all information necessary to track the shop over the Internet; and

(2) submit to the department, in a manner specified by the department, a weekly itinerary showing the dates, exact locations, and times of service to be provided. The license holder shall submit the itinerary not less than 7 calendar days prior to the beginning of service described in the itinerary and shall submit to the department any changes in the itinerary not less than 24 hours prior to the change. A mobile shop shall follow the itinerary in providing service.

(e) Furniture shall be anchored to the unit.

(f) All chemicals in the mobile shop shall be stored in cabinets secured with safety catches and shall be stored separate and apart from other articles or equipment in the shop.

(g) A mobile shop shall display on both sides of the exterior of the mobile shop, the mobile shop's license number and a sign stating the name of the shop.

(h) A mobile shop shall have a water heater that provides fresh, hot water continuously and on demand.

(i) A mobile unit shall have a fresh water tank holding a sufficient amount of fresh water to perform the day's business. If a mobile

unit's fresh water supply is depleted, operation must cease until the supply is replenished.

(j) A mobile shop shall have a functioning restroom within its perimeter, including a self-contained, flush toilet with holding tank.

(k) No services may be performed outside the mobile shop or while the mobile shop is in motion.

(l) A mobile shop may not be used as a residence or for any other purpose besides providing barbering services.

(m) Periodic inspections of mobile shops under §82.52 shall be conducted at least four times each year.

§82.80. Fees.

(a) Application Fees:

(1) Class A Registered Barber License--\$70 [\$90] (includes \$10 newsletter fee)

(2) - (12) (No change.)

(13) Dual Shop--\$130

(14) Mobile Shop--\$175

(b) Renewal Fees:

(1) Class A Registered Barber License--\$70 [\$90] (includes \$10 newsletter fee)

(2) - (12) (No change.)

(13) Dual Shop--\$100

(14) Mobile Shop--\$175

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

(i) Inspection Fees (for each occurrence):

(1) Initial Inspection or Reinspection of school--\$500

(2) Initial Inspection or Reinspection of mobile shop--\$35

(3) [~~2~~] Risk-based Inspection Fees for schools and shops--\$150

(j) All fees are nonrefundable, except as otherwise provided by law or commission rule.

§82.100. Health and Safety Definitions.

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

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

(9) Sterilize or sterilization--To make free from live bacteria or other microorganisms by use of an autoclave, dry heat or ultraviolet light sterilizer that is listed with the United States Food and Drug Administration.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705061

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 463-7348

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## TITLE 22. EXAMINING BOARDS

### PART 11. TEXAS BOARD OF NURSING

#### CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

##### 22 TAC §§217.13, 217.19, 217.20

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

The Texas Board of Nursing (BON) proposes the repeal of §217.13 (Peer Assistance Programs), §217.19 (Incident-Based Nursing Peer Review), and §217.20 (Safe Harbor Peer Review for Nurses). The BON originally proposed an amendment to the §217.13 in the August 3, 2007, edition of the *Texas Register*, but upon further review of the Sunset recommendations, the BON determined that further changes needed to be made. The BON, therefore, determined that it was necessary to withdraw the pending proposed amendment addressing peer assistance programs, and to propose the repeal of the current rule and re-propose a new rule.

House Bill 2426 (Sunset Bill) puts forth several requirements for a peer assistance program utilized by the BON. Concurrent with this proposed repeal of the existing rule is a proposed new rule that implements those requirements listed in the Sunset Bill, amending §301.4106, Texas Occupations Code, of the Nursing Practice Act.

Senate Bill 993 (relating to nursing peer review) implements new changes to the peer review process, so the BON based on a recommendation by its Nursing Practice Advisory Committee, proposes the repeal of the existing peer review rules in order to address these changes. Concurrent with these repeals, the BON will propose new rules addressing peer review, safe harbor, and whistleblower protections.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposal is in effect there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Katherine Thomas has also determined that for each year of the first five years the proposal is in effect, the public benefit will be that the BON will more effectively fulfill its mission. There will not be any effect on small businesses or foreseeable anticipated costs to affected individuals as a result of the implementation of this proposal.

Written comments on the proposal may be submitted to Joy Sparks, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701; by email to [joy.sparks@bon.state.tx.us](mailto:joy.sparks@bon.state.tx.us); or by facsimile to (512) 305-8101.

The proposal is pursuant to the authority of Texas Occupations Code §301.151 which authorizes the BON to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

Texas Occupations Code §§301.4106, 301.401, 301.402, 301.4025, 301.403, 301.404, 301.405, 301.407, 301.413, 301.457, 303.001, 303.0015, 303.005, 303.0075 and 303.011 are affected and implemented by this proposal.

§217.13. *Peer Assistance Programs.*

§217.19. *Incident-Based Nursing Peer Review.*

§217.20. *Safe Harbor Peer Review for Nurses.*

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705068

Katherine Thomas

Executive Director

Texas Board of Nursing

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 305-6823

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##### 22 TAC §§217.13, 217.19, 217.20

The Texas Board of Nursing (BON) proposes new §§217.13 (Peer Assistance Programs), 217.19 (Incident-Based Nursing Peer Review and Whistleblower Protections), and 217.20 (Safe Harbor Peer Review for Nurses and Whistleblower Protections). Concurrent with these proposed new rules are the proposed repeals of the existing rules.

House Bill 2426 (Sunset Bill) puts forth several requirements for a peer assistance program utilized by the BON. The Nursing Practice Act, Texas Occupations Code, §301.4105, requires that the BON be notified when a nurse suspected of impaired behavior is alleged to have also committed a nursing practice violation. In addition, the BON is required in §301.4106 to adopt rules that develop guidelines for its peer assistance programs by: outlining the roles and responsibilities of the board and a peer assistance program; outlining the process for a peer assistance program to refer to the board complaints alleging a violation of the practice of nursing; establishing requirements for successfully completing a peer assistance program and for notifying the board of the successful completion by a nurse the board has ordered to attend or referred to the program; and establishing a procedure for evaluating the success of a peer assistance program established or approved by the board. The proposed new §217.13 attempts to implement these requirements.

At the July 2007 BON meeting, the board charged the Nursing Practice Advisory Committee (NPAC) with the task of revising the nursing peer review rules. The basic rules and concepts of nursing peer review have been in existence since 1987, with "parity of counsel" added in 1995, and safe harbor peer review in 1997. It was not until the Board of Nursing and the Board of Vocational Nurse Examiners combined in February 2004 that safe harbor peer review became applicable and accessible to LVNs. The peer review process is outlined in Texas Occupations Code, ch. 303, Nursing Peer Review. Reporting requirements are found in Tex. Occ., Code ch. 301 (Nursing Practice Act).

In 2001, after a year of deliberations on revisions by NPAC, as well as response to public comments, the board repealed rule §217.17, Minimal Procedural Standards During Peer Review, and adopted two new rules that separated incident-based peer review, the current §217.19, and safe harbor peer review, the current §217.20. (The current rules have been proposed for repeal.)

In response to the first Institute of Medicine (IOM) report "To Err is Human," the concept of having a peer review committee examine external factors contributing to a nursing error was incorporated into §217.19(a)(7) in 2001. As national patient safety efforts continue to focus on external system factors, S.B. 993 amended §301.305(c) to require that a peer review committee examine any required report of a nurse to the board by a nurse's employer or practice setting when a nurse is terminated, suspended for seven or more days, or receives other substantive disciplinary action. The intent is to prevent external factors that negatively impact patient safety from going unchecked and unchanged--the issues and surrounding circumstances do not go away because the nurse was terminated, suspended, made a "do not return," etc. New language in §301.305(c) further mandates that the peer review committee report to a facility's patient safety committee if it is determined that external factors did impact or contribute to the nurse's error.

Revisions to §217.16, Minor Incidents, went into effect May 17, 2006. It included a new section that permits a peer review committee to utilize a smaller workgroup of the committee to engage in fact-finding, analysis, and dialogue with the nurse (§217.16(g)(2)). The workgroup is permitted to use informal processes, and the nurse's rights are protected through review by the full committee prior to any report to the board. Proposed revisions to Incident-Based Peer Review incorporate use of a workgroup and tie in the minor incident rule in evaluation of one or more nursing errors or a request for "safe harbor."

Senate Bill 993, addressing nursing peer review, also added protections for a nurse who reports a nurse, refuses to engage in conduct, or assists a nurse with filing safe harbor because of unsafe conditions for patients. This includes not only protections for the nurse claiming safe harbor or reporting another nurse, but also for the nurse reporting a facility or non-nurse health care provider who the nurse believes in good faith is endangering patient safety. These "whistleblower" protections have been added at the end of each rule, as well as included in the titles for each rule, to assure that nurses are able to easily find and be aware that they do have these protections when upholding their duty to always advocate for patient safety (§217.11(1)(B)).

With regard to Safe Harbor Peer Review (§217.20), besides arranging the rule for better flow and understanding, additions include addressing the nurse's due process rights and providing for a nurse to do a brief "initial" request for safe harbor at the time asked to engage in the conduct, with provision to complete the more detailed request later in the same work period but prior to leaving the work area.

NPAC members also recommended redundancy on the most important step with safe harbor: invoking it at the time the nurse is asked to engage in the conduct or to accept the assignment. The committee agreed that a nurse may be handicapped by the stress of the situation that is creating the danger to patients, while at the same time trying to recall what steps to take to invoke safe harbor. Repeating this vital step in more than one place in the rule is intended to help the nurse find and carry out this step that protects the nurse's license while enabling the nurse to protect the patients. The BON agreed with these recommendations.

Katherine Thomas, Executive Director, has determined that, for the first five-year period the proposal is in effect there will be no additional fiscal implications for state or local government as a result of implementing the proposal.

Katherine Thomas, Executive Director, has determined that, for each year of the first five years the proposal is in effect, the public benefit will be that the BON will more effectively fulfill its mission of protecting members of the public. There will not be any foreseeable effect on small businesses or foreseeable anticipated costs to affected individuals as a result of the implementation of this proposal.

Written comments on the proposal may be submitted to Joy Sparks, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas, 78701; by e-mail to [joy.sparks@bon.state.tx.us](mailto:joy.sparks@bon.state.tx.us); or by facsimile to (512) 305-8101.

The proposal is pursuant to the authority of Texas Occupations Code, §301.151 which authorizes the BON to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. Texas Occupations Code, §§301.4105, 301.4106, 301.401, 301.402, 301.4025, 301.403, 301.404, 301.405, 301.407, 301.413, 301.457, 303.001, 303.0015, 303.005, 303.0075, and 303.011 are affected and implemented by this proposal.

§217.13. Peer Assistance Program.

(a) A peer assistance program for nurses approved by the Board under chapter 467, Health and Safety Code, will identify, monitor, and assist with locating appropriate treatment for those nurses whose practice is impaired or suspected of being impaired by chemical dependency, mental illness or diminished mental capacity so that they may return to practice safe nursing.

(b) Role of the Board of Nursing and Peer Assistance Program.

(1) The Board of Nursing will retain the sole and exclusive authority to discipline a nurse who has committed a practice violation under §301.452(b) of the Nursing Practice Act regardless of whether such violation was influenced by chemical dependency, mental illness, or diminished mental capacity. The Board will balance the need to protect the public and the need to ensure the nurse seeks treatment in determining whether the nurse is appropriate for participation in an approved peer assistance program.

(2) The program shall report to the board, in accordance with policies adopted by the board, a nurse reported to the program who is impaired or suspected of being impaired for chemical dependency, mental illness, or diminished mental capacity if the nurse was reported to the program by third party. A third party report is a report concerning a nurse suspected of chemical dependency, mental illness, or diminished mental capacity that comes to the attention of the program through any source other than a self report.

(c) General Criteria for Approved Peer Assistance Program.

(1) The program will provide statewide peer advocacy services to all nurses licensed to practice in Texas whose practice may be impaired by chemical dependency, certain mental illnesses, or diminished mental capacity.

(2) The program shall have a statewide monitoring system that will be able to track the nurse while preserving confidentiality.

(3) The program shall have a network of trained peer volunteer advocates located throughout the state.

(4) The program shall have a written plan for the education and training of volunteer advocates and other program personnel.

(5) The program shall have a written plan for the education of nurses, other practitioners, and employers.

(6) The program shall demonstrate financial stability and funding sufficient to operate the program.

(7) The program shall have a mechanism for documenting program compliance and for timely reporting of noncompliance to the board.

(8) The program shall be subject to periodic evaluation by the board or its designee in order for the board to evaluate the success of the program.

(d) Evaluation of Peer Assistance Program.

(1) The program shall collect and make available to the board and other appropriate persons data relating to program operations and participant outcomes.. At a minimum, the program shall submit the following statistical information quarterly to the Board for the purpose of evaluating the success of the program:

(A) Number and source of referral;

(B) Number of individuals who sign participation agreements;

(C) Type of participation agreement signed, i.e., Extended Evaluation Program; substance abuse or dependency, dual diagnosis, mental illness;

(D) Number of cases referred to program by Board of Nursing (this number should include all third party referrals that are reported to the board, but remain in participation pending board review);

(E) Number of participants referred to program by Board order;

(F) Number of self referred cases closed and reason(s) for closure;

(G) Number of active cases;

(H) Number of participants employed in nursing;

(I) Number of participants completing program;

(J) Number of participants who are reported back for failing to comply with the participation agreement;

(K) Monitoring activities, including number of drug screens requested, conducted and results of these tests;

(L) All applicable performance measures required by the Legislative Budget Board.

(2) The program shall have a written plan for a systematic total program evaluation. Such plan shall include at a minimum monthly reports of the programs activities showing compliance with this rule, quarterly reports of applicable LBB performance measure data and an annual report of program activities.

(3) The program shall be subject to periodic evaluation by the board or its designee in order for the board to evaluate the success of the program.

(e) Participants entering the approved peer assistance program for chemical dependency or chemical abuse must agree to the following minimum conditions:

(1) The nurse shall undergo, as appropriate, a physical and/or psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care professional(s) with expertise in chemical dependency.

(2) The nurse shall enter into a contract with the approved peer assistance program to comply with the requirements of the program which shall include, but not be limited to:

(A) The nurse will undergo recommended substance abuse treatment by an appropriate treatment facility or provider.

(B) The nurse will agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber for legitimate medical purposes and approved by the program.

(C) The nurse must complete the prescribed aftercare, if any, which may include individual and/or group psychotherapy.

(D) The nurse will submit to random drug screening as specified by the approved monitoring program.

(E) The nurse will attend support groups as specified by the contract.

(F) The nurse will comply with specified employment conditions and restrictions as defined by the contract.

(G) The nurse shall sign a waiver allowing the approved peer assistance program to release, to the extent permitted by federal or state law, information to the Board if the nurse does not comply with the requirements of this contract.

(3) The nurse may be subject to disciplinary action by the Board if the nurse does not participate in the approved peer assistance program, does not comply with specified employment restrictions, or does not successfully complete the program.

(f) Referral to Board of Non compliance with Peer Assistance Program.

(1) A participant may be terminated from the program for the following causes:

(A) Noncompliance with any aspect of the program agreement;

(B) Receipt of information by the board which, after investigation, results in disciplinary action by the board; or

(C) Being unable to practice according to acceptable and prevailing standards of safe nursing care.

(2) The program shall contact the board in accordance with board policies if a nurse under contract fails to comply with the terms of the program agreement or evidences conduct that indicates an inability or unwillingness to comply with the program.

(g) Eligibility for Program Participation.

(1) The program shall contact the board if it receives a third-party referral for a nurse who may have been impaired or suspected of being impaired and who may have failed to comply with the minimum standards of nursing (22 TAC §217.11) and/or committed an act constituting unprofessional conduct (22 TAC §217.12). The program shall send that report to the Board. The Board will balance the need to protect the public and the need to ensure the impaired nurse seeks treatment in determining the whether the nurse is appropriate for participation in an approved peer assistance program.

(2) An individual may not participate in the program if the information reviewed in conjunction with the report indicates to the board that the individual's compliance with the program may not be effectively monitored while participating in the program. This information includes, but is not limited to, the following:

(A) The individual is not currently licensed as a registered nurse or licensed vocational nurse;

(B) The individual is currently using or being prescribed a drug normally associated with chemical dependency or abuse;

(C) The individual has a medical and/or psychiatric condition, diagnosis, or disorder, other than chemical dependency, in which the manifest symptoms are not adequately controlled;

(D) The individual has attempted or completed two or more chemical dependency monitoring programs as of the date of the application, notwithstanding the individual's current chemical dependency treatment plan and related treatment currently submitted for purposes of program eligibility;

(E) The board has taken action against the individual's license to practice nursing as either a registered nurse or a licensed practical nurse in Texas within the last 5 years;

(F) The individual has been convicted of a felony, placed on probation or received deferred adjudication relating to a felony, or felony charges are currently pending, or is currently being investigated for a felony; or

(G) The individual has been convicted or registered as a sex offender.

(h) Successful Completion of the Program. A participant successfully completes the program when the participant fully complies with all of the terms of the program agreement for the period as specified in the agreement. When a participant successfully completes the program, the program shall notify the participant of the successful completion in writing. Once the participant receives this written notification of successful completion of the program, the participant shall no longer be required to comply with the program agreement. The program shall notify the board when a nurse who the board has ordered to attend or referred to the program successfully completes the peer assistance contract.

§217.19. Incident-Based Nursing Peer Review and Whistleblower Protections.

(a) Definitions.

(1) Bad Faith: Taking action not supported by a reasonable factual or legal basis. The term includes falsely portraying the facts surrounding the events under review, acting out of malice or personal animosity towards the nurse, acting from a conflict of interest, or denying a nurse due process.

(2) Chief Nursing Officer (CNO): The registered nurse, by any title, who is administratively responsible for the nursing services at a facility, association, school, agency, or any other setting that utilizes the services of nurses.

(3) Conduct Subject to Reporting is conduct by a nurse that:

(A) violates chapter 301 of the Nursing Practice Act (NPA), or a board rule and contributed to the death or serious injury of a patient;

(B) causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;

(C) constitutes abuse, exploitation, fraud, or a violation of professional boundaries; or

(D) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior. (§301.401(1));

(4) Duty to a Patient: Conduct required by standards of nursing practice (§217.11) or prohibited by unprofessional conduct

(§217.12), including administrative decisions directly affecting a nurse's ability to comply with that duty, as adopted by the board.

(5) Good Faith: Taking action supported by a reasonable factual or legal basis. Good faith precludes falsely portraying the facts surrounding the events under review, acting out of malice or personal animosity towards the nurse, acting from a conflict of interest, or denying a nurse due process.

(6) Incident-Based Peer Review: Incident-based peer review focuses on determining if a nurse's actions, be it a single event or multiple events (such as in reviewing up to 5 minor incidents by the same nurse within a year's period of time) should be reported to the board, or if the nurse's conduct does not require reporting because the conduct constitutes a minor incident that can be remediated. The review includes whether external factors beyond the nurse's control may have contributed to any deficiency in care by the nurse, and to report such findings to a patient safety committee as applicable. (§303.001(5))

(7) Minor incident: conduct by a nurse that does not indicate that the nurse's continued practice poses a risk of harm to a patient or another person as described in §217.16.

(8) Nursing Peer Review (NPR): Consists of chapter 303 of the Texas Occupations Code (TOC) and can only be changed by the Texas Legislature. Nurses involved nursing peer review must comply with the NPR statutes.

(9) Nursing Practice Act (NPA): Includes chapters 301, 304, and 305 of the Texas Occupations Code (TOC) and can only be changed by the Texas Legislature. Nurses must comply with the NPA.

(10) Patient Safety Committee: Any committee established by an association, school, agency, health care facility, or other organization to address issues relating to patient safety that includes:

(A) the entity's medical staff composed of individuals licensed under Subtitle B (Medical Practice Act, Occupations Code §151.001 et seq.);

(B) a medical committee under Subchapter D, Chapter 161, Health & Safety Code (§§161.031 - 161.033); or

(C) a multi-disciplinary committee, including nursing representation, or any committee established by or contracted within the same entity to promote best practices and patient safety, may apply as appropriate.

(11) Peer Review: Defined in Nursing Peer Review Law (NPR law), contained within the Texas Occupations Code (TOC) §303.001(5), it is the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or recommendation regarding a complaint. The peer review process is one of fact finding, analysis and study of events by nurses in a climate of collegial problem solving focussed on obtaining all relevant information about an event.

(12) Texas Occupations Code (TOC): One part of the Texas Statutes, or laws. The Nursing Practice Act (NPA) and Nursing Peer Review (NPR) statutes are but a few of the chapters of Texas laws contained within the TOC.

(13) Whistleblower Protections: protections available to a nurse that prohibit retaliatory action by an employer or other entity for:

(A) a request made by a nurse under TOC §303.005(c) related to invoking safe harbor protections, or

(B) a nurse's refusal under TOC §301.352 to engage in an act or omission relating to patient care that would constitute grounds

for reporting the nurse to the board, that constitutes a minor incident, or that violates the Nursing Practice Act or board rules; or

(C) a report made by a nurse under TOC §301.4025 (report of unsafe practices of non-nurse entities) and subsection (i)(2) of this section, that may also be protected under other laws or regulations, concerning unsafe practitioners or unsafe patient care practices or conditions. Protection from retaliatory action affects a report made to a licensing agency, accrediting body, regulatory entity, or administrative personnel within the facility or organization that the nurse believes has the power to take corrective action.

(b) Purpose. The purpose of this rule is to define minimum due process to which a nurse is entitled under incident-based peer review, to provide guidance to facilities, agencies, schools, or anyone who utilizes the services of nurses in the development and application of incident-based peer review plans, to assure that nurses have knowledge of the plan, and to provide guidance to the incident-based peer review committee in its fact finding process.

(c) Applicability of Incident-Based Peer Review. Nursing Peer Review (TOC) §303.0015 requires a person who regularly employs, hires or contracts for the services of ten (10) or more nurses (for peer review of a RN, at least 5 of the 10 must be RNs) to conduct nursing peer review for purposes of NPA §§301.402(e) (relating to alternate reporting by nurses to peer review), 301.405(c) (relating to peer review of external factors as part of employer reporting), and 301.407(b) (relating to alternate reporting by state agencies to peer review).

(d) Minimum Due Process.

(1) A licensed nurse subject to incident-based peer review is entitled to minimum due process under Nursing Peer Review (TOC) §303.002(e), any person or entity that conducts incident-based peer review must comply with the due process requirements of this section even if they do not utilize the number of nurses described by subsection (c) of this section.

(2) A facility conducting incident-based peer review shall have written policies and procedures that, at a minimum, address:

(A) level of participation of nurse or nurse's representative at an incident-based peer review hearing beyond that required by subsection (d)(3)(F) of this section;

(B) confidentiality and safeguards to prevent impermissible disclosures including written agreement by all parties to abide by Nursing Peer Review (TOC) §303.006 and §303.007;

(C) handling of cases involving nurses who are impaired or suspected of being impaired by chemical dependency, drug or alcohol abuse, substance abuse/misuse, "intemperate use," mental illness, or diminished mental capacity in accordance with the NPA (TOC) §301.410, and subsection (g) of this section;

(D) reporting of nurses to the board by incident-based peer review committee in accordance with the NPA (TOC) §301.403, and subsection (i) of this section; and

(E) effective date of changes to the policies which in no event shall apply to incident-based peer review proceedings initiated before the change was adopted unless agreed in writing by the nurse being reviewed.

(3) In order to meet the minimum due process required by Nursing Peer Review (TOC) chapter 303, the nursing peer review committee must:

(A) comply with the membership and voting requirements as set forth in Nursing Peer Review (TOC) §303.003(a) - (d);

(B) exclude from the committee, including attendance at the incident-based peer review hearing, any person or persons with administrative authority for personnel decisions directly relating to the nurse. This requirement does not exclude a person who is administratively responsible over the nurse being incident-based peer reviewed from appearing before the incident-based peer review committee to speak as a fact witness;

(C) provide written notice to the nurse in person or by certified mail at the last known address the nurse has on file with the facility that:

(i) the nurse's practice is being evaluated;

(ii) that the incident-based peer review committee will meet on a specified date not sooner than 21 calendar days and not more than 45 calendar days from date of notice, unless:

(I) the incident-based peer review committee determines an extended time period (extending the 45 days by no more than an additional 45 days) is necessary in order to consult with a patient safety committee, or is

(II) otherwise agreed upon by the nurse and incident-based peer review committee.

(iii) Said notice must include a written copy of the incident-based peer review plan, policies and procedures.

(D) Include in the written notice:

(i) a description of the event(s) to be evaluated in sufficient detail to inform the nurse of the incident, circumstances and conduct (error or omission), including date(s), time(s), location(s), and individual(s) involved. The patient/client shall be identified by initials or number to the extent possible to protect confidentiality but the nurse shall be provided the name of the patient/client;

(ii) name, address, telephone number of contact person to receive the nurse's response; and

(iii) a copy of this rule (§217.19 of this title) and a copy of the facility's incident-based peer review plan, policies and procedures.

(E) provide the nurse the opportunity to review, in person or by attorney, the documents concerning the event under review, at least 15 calendar days prior to appearing before the committee;

(F) provide the nurse the opportunity to:

(i) submit a written statement regarding the event under review;

(ii) call witnesses, question witnesses, and be present when testimony or evidence is being presented;

(iii) be provided copies of the witness list and written testimony or evidence at least 48 hours in advance of proceeding;

(iv) make an opening statement to the committee;

(v) ask questions of the committee and respond to questions of the committee; and

(vi) make a closing statement to the committee after all evidence is presented;

(G) conclude its review no more than fourteen (14) calendar days from the incident-based peer review hearing, or in compliance with subsection (d)(3)(C)(ii) of this section relating to consultation with a patient safety committee;

(H) provide written notice to the nurse in person or by certified mail at the last known address the nurse has on file with the facility of the findings of the committee within ten (10) calendar days of when the committee's review has been completed; and

(I) permit the nurse to file a written rebuttal statement within ten (10) calendar days of the notice of the committee's findings and make the statement a permanent part of the incident-based peer review record to be included whenever the committee's findings are disclosed;

(J) An incident-based peer review committee's determination to report a nurse to the board cannot be overruled, changed, or dismissed.

#### (4) Nurse's Right To Representation

(A) A nurse shall have a right of representation as set out in this section. The rights set out in this section are minimum requirements and a facility may allow the nurse more representation. The incident-based peer review process is not a legal proceeding; therefore, rules governing legal proceedings and admissibility of evidence do not apply and the presence of attorneys is not required.

(B) The nurse has the right to be accompanied to the hearing by a nurse peer or an attorney. Representatives attending the incident-based peer review hearing must comply with the facility's incident-based peer review policies and procedures regarding participation beyond conferring with the nurse.

(C) If either the facility or nurse will have an attorney or representative present at the incident-based peer review hearing in any capacity, the facility or nurse must notify the other at least seven (7) calendar days before the hearing that they will have an attorney or representative attending the hearing and in what capacity.

(D) Notwithstanding any other provisions of these rules, if an attorney representing the facility or incident-based peer review committee is present at the incident-based peer review hearing in any capacity, including serving as a member of the incident-based peer review committee, the nurse is entitled to "parity of participation of counsel." "Parity of participation of counsel" means that the nurse's attorney is able to participate to the same extent and level as the facility's attorney; e.g., if the facility's attorney can question witnesses, the nurse's attorney must have the same right.

(5) A nurse whose practice is being evaluated may properly choose not to participate in the proceeding after the nurse has been notified under subsection (d)(3)(H) of this section. Nursing Peer Review (TOC) §303.002(d) prohibits nullifying by contract any right a nurse has under the incident-based peer review process. If a nurse elects not to participate in incident-based peer review, the nurse waives any right to procedural due process under TOC §303.002 and subsection (d) of this section.

(e) Use of Informal Work Group In Incident Based Peer Review.

(1) A facility may choose to initiate an informal review process utilizing a workgroup of the nursing incident-based peer review committee provided there are written policies for the informal workgroup that require:

(A) the nurse to be informed of how the informal workgroup will function, and to consent, in writing, to the use of an informal workgroup. A nurse does not waive any right to incident-based peer review by accepting or rejecting the use of an informal workgroup;

(B) if the informal workgroup believes that a practice violation has occurred and suspects that the nurse's practice is impaired

by chemical dependency or diminished mental capacity, the committee chair must be notified to determine if peer review should be terminated and the nurse reported to the board;

(C) the informal workgroup to comply with the membership and voting requirements of subsection (d)(3)(A) and (B) of this section;

(D) the nurse be provided the opportunity to meet with the informal workgroup;

(E) the nurse to have the right to reject any decision of the informal workgroup and to then have his/her conduct reviewed by the incident-based peer review committee, in which event members of the informal workgroup shall not participate in that determination; and

(F) ratification by the incident-based peer review committee chair person of any decision made by the informal workgroup. If the chair person disagrees with a determination of the informal workgroup to remediate a nurse for one or more minor incidents, the chair person shall convene the full peer review committee to review the conduct in question.

(G) the peer review chair person must communicate any decision of the informal work group to the CNO.

(f) Exclusions to Minimum Due Process Requirements. The minimum due process requirements set out in subsection (d) of this section do not apply to:

(1) Peer review conducted solely in compliance with NPA (TOC) §301.405(c) relating to incident-based peer review of external factors, after a report of a nurse to the board has already occurred under NPA (TOC) §301.405(b); or

(2) when during the course of the incident-based peer review process, a practice violation is identified as a possible consequence of the nurse's practice being impaired as described under subsection (g) of this section; or

(3) when a person required to report a nurse believes that a nurse's practice is impaired or suspected of being impaired has also resulted in a violation under NPA (TOC) §301.410(b), that requires a direct report to the board.

(g) Incident-Based Peer Review of a Nurse's Impaired Practice/Lack of Fitness.

(1) Instead of requesting review by a peer review committee, a nurse whose practice is impaired or suspected of being impaired due to chemical dependency, drug or alcohol abuse, substance abuse/misuse, "intemperate use," mental illness, or diminished mental capacity, with no evidence of nursing practice violations, shall be reported, in accordance with NPA (TOC) §301.410(a) (related to reporting of impairment), to either:

(A) the board; or

(B) a board-approved peer assistance program.

(2) If during the course of an incident-based peer review process, there is a reasonable factual basis for a determination that a practice violation occurred due to a nurse's practice impairment or suspected practice impairment or lack of fitness due to chemical dependency, drug or alcohol abuse, substance abuse/misuse, "intemperate use," mental illness, or diminished mental capacity of a reported nurse, the incident-based peer review process shall be suspended, and the nurse reported to the board in accordance with NPA (TOC) §301.410(b) (related to required report to board when practice violations exist with suspected practice impairment/lack of fitness).



(A) Following suspension of peer review of the nurse, the incident-based peer review committee shall proceed to evaluate external factors to determine if:

(i) any factors beyond the nurse's control contributed to a practice violation,

(ii) if any deficiency in external factors enabled the nurse to engage in unprofessional or illegal conduct, and

(iii) if the committee determines external factors do exist for either clause (i) or (ii) of this subparagraph, the committee shall report its findings to a patient safety committee or to the CNO if there is no patient safety committee.

(B) A facility, organization, contractor, or other entity does not violate a nurse's right to due process under TOC §303.002(e) relating to peer review by suspending the committee's review and reporting the nurse to the Board in accordance with paragraph (2) of this subsection.

(3) Neither paragraph (1) or (2) of this subsection above preclude a nurse from self-reporting to a peer assistance program or appropriate treatment facility.

(h) Confidentiality of Proceedings.

(1) Confidentiality of information presented to and/or considered by the incident-based peer review committee shall be maintained and not disclosed except as provided by Nursing Peer Review (TOC) §§303.006, 303.007, and §303.0075. Disclosure/discussion by a nurse with the nurse's attorney is proper because the attorney is bound to the same confidentiality requirements as the nurse.

(2) Sharing of Information: In accordance with Nursing Peer Review (TOC) §303.0075, a nursing incident-based peer review committee and any patient safety committee established by or contracted with the same entity, may share information. A record or determination of a patient safety committee, or a communication made to a patient safety committee, is not subject to subpoena or discovery and is not admissible in any civil or administrative proceeding, regardless of whether the information has been provided to a nursing peer review committee.

(A) The privileges under this subsection may be waived only through a written waiver signed by the chair, vice chair, or secretary of the patient safety committee.

(B) This section does not affect the application of Nursing Peer Review (TOC) §303.007 (relating to disclosures by peer review committee) to a nursing peer review committee.

(C) A committee that receives information from another committee shall forward any request to disclose the information to the committee that provided the information.

(3) A CNO shall assure that policies relating to sharing of documents with the incident-based peer review committee at a minimum, address:

(A) methods in which shared committee communications and documents are labelled and maintained as to which committee originated the documents or communications;

(B) separation of confidential information under incident-based peer review from the nurse's human resource file;

(C) the confidential and separate nature of incident-based peer review as well as documents that are shared with incident-based peer review, and that violations of said policies are subject to being reported to the board,

(i) Committee Responsibility to Evaluate and Report.

(1) In evaluating a nurse's conduct, the incident-based peer review committee shall review the evidence to determine the extent to which any deficiency in care by the nurse was the result of deficiencies in the nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a nurse must be based on the extent to which the nurse's conduct was the result of a deficiency in the nurse's judgment, knowledge, training, or skill.

(2) A incident-based peer review committee shall consider whether a nurse's conduct constitutes one or more minor incidents under §217.16, Minor Incidents, of this title. In accordance with this rule, the incident-based peer review committee may determine that the nurse:

(A) can be remediated to correct the deficiencies identified in the nurse's judgment, knowledge, training, or skill, or

(B) should be reported to the board for either a pattern of practice that fails to meet minimum standards, or for one or more events that the incident-based peer review committee determines cannot be categorized as a minor incident(s).

(3) Report Not Required: A nursing incident-based peer review committee is not required to submit a report to the board if:

(A) the committee determines that the reported conduct was a minor incident that is not required to be reported in accordance with provisions of §217.16, Minor Incidents, of this title; or

(B) the nurse has already been reported to the board under NPA (TOC) §301.405(b) (employer reporting requirements).

(4) If a incident-based peer review committee finds that a nurse has engaged in conduct subject to reporting to the board, the committee shall submit to the board a written, signed report that includes:

(A) the identity of the nurse;

(B) a description of the conduct subject to reporting;

(C) a description of any corrective action taken against the nurse;

(D) a recommendation as to whether the board should take formal disciplinary action against the nurse, and the basis for the recommendation;

(E) the extent to which any deficiency in care provided by the reported nurse was the result of a factor beyond the nurse's control, and

(F) any additional information the board requires.

(5) If an incident-based peer review committee determines that a deficiency in care by the nurse was the result of a factor(s) beyond the nurse's control, in compliance with TOC §303.011(b) (related to required peer review committee report when external factors contributed to a nurse's deficiency in care), the committee must submit a report to the applicable patient safety committee, or to the CNO if there is no patient safety committee. A patient safety committee must report its findings back to the incident-based peer review committee.

(6) An incident-based peer review committee is not required to withhold its determination of the nurse being incident-based peer reviewed, pending feedback from a patient safety committee, unless the committee believes that a determination from a patient safety committee is necessary in order for the incident-based peer review committee to determine if the nurse's conduct is reportable.

(A) If an incident-based peer review committee finds that factors outside the nurse's control contributed to a nurse's error, in addition to reporting to a patient safety committee, the incident-based peer review committee may also make recommendations for the nurse, up to and including reporting to the board.

(B) an incident-based peer review committee may extend the time line for completing the incident-based peer review process (extending the 45 days by no more than an additional 45 days) if the committee members believe they need input from a patient safety committee. The incident-based peer review committee must complete the incident-based peer review of the nurse within this 90-day time frame.

(7) A incident-based peer review committee's determination to report a nurse to the board cannot be overruled, changed, or dismissed.

(j) Nurse's Duty to Report.

(1) A report made by a nurse to a nursing incident-based peer review committee will satisfy the nurse's duty to report to the board under NPA (TOC) §301.402 (mandatory report by a nurse) provided that the following conditions are met:

(A) The reporting nurse shall be notified of the incident-based peer review committee's actions or findings and shall be subject to Nursing Peer Review (TOC) §303.006 (confidentiality of peer review proceedings); and

(B) The nurse has no reason to believe the incident-based peer review committee made it's determination in bad faith.

(2) A nurse may not be suspended, terminated, or otherwise disciplined or discriminated against for filing a report made in good faith under this rule and NPA §301.402(f) (retaliation for a good faith report prohibited). A violation of this subsection or NPA §301.402(f) is subject to NPA §301.413 (retaliatory action prohibited).

(k) State Agency Duty to Report. A state agency that has reason to believe that a nurse has engaged in conduct subject to reporting shall report the nurse in writing to:

(1) the board or

(2) the applicable nursing peer review committee in lieu of reporting to board.

(l) Integrity of Incident-Based Peer Review Process.

(1) NPA chapter 303, requires that incident-based peer review be conducted in good faith. A nurse who knowingly participates in incident-based peer review in bad faith is subject to disciplinary action by the board under the NPA §301.452(b).

(2) The CNO of a facility, association, school, agency, or of any other setting that utilizes the services of nurses is responsible for knowing the requirements of this rule and for taking reasonable steps to assure that incident-based peer review is implemented and conducted in compliance with the NPA, Nursing Peer Review, and this rule.

(3) A determination by an incident-based peer review committee, a CNO, or an individual nurse to report a nurse to the board cannot be overruled, dismissed changed, or reversed. An incident-based peer review committee, CNO, and individual nurse each have a separate responsibility to protect the public by reporting a nurse to the board as set forth in NPA §301.402, §301.405, §217.11(1)(K), and this rule.

(m) Reporting Conduct of other Practitioners or Entities/Whistleblower Protections.

(1) This section does not expand the authority of any incident-based peer review committee or the board to make determinations outside the practice of nursing.

(2) In a written, signed report to the appropriate licensing board or accrediting body, and in accordance with §301.4025 (report of unsafe practices of non-nurse entities), a nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to:

(A) minimum standards of acceptable and prevailing professional practice, for a report made regarding a practitioner; or

(B) statutory, regulatory, or accreditation standards, for a report made regarding an agency or facility.

(i) A nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or accreditation standards. For purposes of this subsection, an employer or entity includes an employee or agent of the employer or entity.

(ii) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who reports, without malice, under this section. A violation of this subsection is subject to §301.413 (retaliatory action prohibited).

§217.20. Safe Harbor Peer Review for Nurses and Whistleblower Protections.

(a) Definitions.

(1) Bad Faith: Taking action not supported by a reasonable factual or legal basis. The term includes falsely portraying the facts surrounding the events under review, acting out of malice or personal animosity towards the nurse, acting from a conflict of interest, or denying a nurse due process.

(2) Chief Nursing Officer (CNO): The registered nurse, by any title, who is administratively responsible for the nursing services at a facility, association, school, agency, or any other setting that utilizes the services of nurses.

(3) Conduct Subject to Reporting means conduct by a nurse that:

(A) violates the Nursing Practice Act (NPA) chapter 301 or a board rule and contributed to the death or serious injury of a patient;

(B) causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;

(C) constitutes abuse, exploitation, fraud, or a violation of professional boundaries; or

(D) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior. (NPA §301.401(1))

(4) Duty to a patient: conduct required by standards of nursing practice (§217.11) or prohibited under unprofessional conduct (§217.12) including administrative decisions directly affecting a nurse's ability to comply with that duty.

(5) Good Faith: Taking action supported by a reasonable factual or legal basis. Good faith precludes falsely portraying the facts surrounding the events under review, acting out of malice or personal animosity towards the nurse, acting from a conflict of interest, or denying a nurse due process.

(6) Minor incident: Conduct by a nurse that does not indicate that the nurse's continued practice poses a risk of harm to a patient or another person as described in §217.16.

(7) Nurse Administrator: Chief Nursing Officer (CNO) or the CNO's designee.

(8) Nursing Peer Review (NPR law): Consists of chapter 303 of the Texas Occupations Code (TOC) and can only be changed by the Texas Legislature. Nurses involved nursing peer review must comply with the NPR statutes.

(9) Nursing Practice Act (NPA): Includes chapter 301 of the Texas Occupations Code (TOC) and can only be changed by the Texas Legislature. Nurses must comply with the NPA.

(10) Patient Safety Committee: Any committee established by an association, school, agency, health care facility, or other organization to address issues relating to patient safety that includes:

(A) the entity's medical staff composed of individuals licensed under Subtitle B (Medical Practice Act, TOC §151.001 *et seq.*);

(B) a medical committee under subchapter D, chapter 161, Health & Safety Code (§§161.031 - 161.033); or

(C) a multi-disciplinary committee including nursing representation, or any committee established by or contracted within the same entity to promote best practices and patient safety, as appropriate.

(11) Peer Review: Defined in the NPR law, contained within Texas Occupations Code (TOC) §303.001(5), it is the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or recommendation regarding a complaint. The peer review process is one of fact finding, analysis and study of events by nurses in a climate of collegial problem solving focused on obtaining all relevant information about an event.

(12) Safe Harbor: a process allowing an individual to request in good faith a review of a situation, action, conduct, or assignment while being protected from retaliation and licensure liability. Safe Harbor must be invoked prior to or at the time the assignment is made or conduct requested. This includes changes in initial practice situation, assignments, or patient acuties that adversely impact the conduct or assignment requested of the nurse such that a nurse believes in good faith that his/her duty to the patient would be violated. This change may occur at any time.

(13) Safe Harbor Peer Review: The determination if the requested conduct or assignment could have potentially endangered a patient, resulting in the nurse violating his/her duty to the patient. A safe harbor peer review committee reviewing a nurse's request for safe harbor must also ascertain if external factors in the systematic approach and/or nursing policies related to the conduct under review could prevent the recurrence of the same or similar unsafe situation. In accordance with Nursing Peer Review (TOC) §303.011(b), if the committee determines that external factors contributed to a nurse's request for safe harbor, the committee is to report to a patient safety committee.

(14) Texas Occupations Code (TOC): One part of the Texas Statutes, or laws. The Nursing Practice Act (NPA) and Nursing Peer

Review (NPR law) statutes are but a few of the chapters of Texas laws contained within the TOC.

(15) Whistleblower Protections: protections available to a nurse that prohibit retaliatory action by an employer or other entity for:

(A) a request made by a nurse under Nursing Peer Review (TOC) §303.005(c) regarding invoking safe harbor protections, or

(B) under the NPA (TOC) §301.352 regarding a nurse's refusal to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the board, that constitutes a minor incident, or that violates the NPA or board rules; or

(C) a report made by a nurse under NPA (TOC) §301.4025 (related to patient safety concerns) and subsection (k) of this section, that may also be protected under other laws or regulations, concerning unsafe practitioners or unsafe patient care practices or conditions. Protection from retaliatory action applies to any report made to a licensing agency, accrediting body, regulatory entity, or administrative personnel within the facility or organization that the nurse believes has the power to take corrective action.

(b) Purpose. The purpose of this rule is to define minimum due process to which a nurse is entitled under safe harbor peer review, to provide guidance to facilities, agencies, employers of nurses, or anyone who utilizes the services of nurses in the development and application of peer review plans; to assure that nurses have knowledge of the plan as well as their right to invoke Safe Harbor, and to provide guidance to the peer review committee in its fact finding process. Safe Harbor must be invoked prior to or at the time the assignment is made or conduct requested. This includes changes in initial practice situation, assignments, or patient acuties that adversely impact the conduct or assignment requested of the nurse such that a nurse believes in good faith that his/her duty to the patient would be violated. This change may occur at any time.

(c) Applicability of Safe Harbor Peer Review:

(1) Nursing Peer Review (TOC) §303.0015 requires a person who regularly employs, hires or contracts for the services of ten (10) or more nurses to permit a nurse to request Safe Harbor Peer Review when the nurse is requested or assigned to engage in conduct that the nurse believes is in violation of his/her duty to a patient.

(2) Any person or entity that conducts Safe Harbor peer review is required to comply with the requirements of this rule.

(d) Invoking Safe Harbor.

(1) Safe Harbor must be invoked prior to or at the time the assignment is made or conduct requested. This includes changes in initial practice situation, assignments, or patient acuties that adversely impact the conduct or assignment requested of the nurse such that a nurse believes in good faith that his/her duty to the patient would be violated. This change may occur at any time.

(2) At the time the nurse is requested to engage in the conduct or assignment, or refuses to engage in the requested conduct or assignment, he/she must notify in writing the supervisor requesting the conduct or assignment that the nurse is invoking Safe Harbor. The content of this notification must at least meet the requirements for an initial written request set out in paragraph (3) of this subsection. Full Detailed documentation of the Safe Harbor request that complies with paragraph (4) of this subsection must be completed before the end of the work period.

(3) An initial written notification or request for Safe Harbor must include:

(A) The nurse(s) name making the safe harbor request and his/her signature(s);

(B) The date and time of the request;

(C) location of where the conduct or assignment is to be completed;

(D) Name of the person requesting the conduct or making the assignment;

(E) A brief explanation of why safe harbor is being requested.

(4) The detailed written account must include at a minimum:

(A) the conduct assigned or requested, including the name and title of the person making the assignment or request;

(B) a description of the practice setting (e.g., the nurse's responsibilities, resources available, extenuating or contributing circumstances impacting the situation);

(C) a detailed description of how the requested conduct or assignment would have violated the nurse's duty to a patient or any other provision of the NPA and Board Rules. If possible, reference the specific standard (§217.11 of this title) or other section of the NPA and/or Board rules the nurse believes would have been violated. If a nurse refuses to engage in the requested conduct or assignment, the nurse must document the existence of a rationale listed under subsection (g) of this section.

(D) any other copies of pertinent documentation available at the time. Additional documents may be submitted to the committee when available at a later time; and

(E) the nurse's name, title, and relationship to the supervisor making the assignment or request.

(5) If the nurse does not submit the initial request for Safe Harbor using the form on the board web site, the facility and nurse shall adhere to the Safe Harbor process as outlined on the board's form.

(6) The nurse invoking Safe Harbor is responsible for keeping a copy of the request for Safe Harbor.

(7) A nurse may invoke Safe Harbor to question the medical reasonableness of a physician's order in accordance with Nursing Peer Review (TOC) §303.005(e). In this situation, the medical staff or medical director shall determine whether the order was reasonable.

(e) Safe Harbor Protections.

(1) To activate protections outlined in Nursing Peer Review (TOC) §303.005(c), the nurse shall:

(A) Invoke Safe Harbor in good faith.

(B) At the time the nurse is requested to engage in the conduct or assignment, notify the supervisor that the nurse intends to invoke Safe Harbor in accordance with subsection (d) of this section. This must be done before accepting or refusing the assignment. This includes changes in initial practice situation, assignments, or patient acuties that adversely impact the conduct or assignment requested of the nurse such that a nurse believes in good faith that his/her duty to the patient would be violated. This change may occur at any time.

(2) A nurse may not be suspended, terminated, or otherwise disciplined or discriminated against for advising a nurse in good faith of the nurse's right to request a determination, or of the procedures for requesting a determination. A violation of this subsection or Nursing Peer Review (TOC) §303.005(h) is subject to NPA (TOC) §301.413.

(3) A nurse's protections from licensure action by the board for a good faith safe harbor request remain in place until 48 hours after the nurse is advised of the peer review committee's determination. This time limitation does not apply to the nurse's protections from retaliation under TOC §303.005(h). Safe Harbor protections also do not apply to any civil action that may result from the nurse's practice.

(f) Exclusions to Safe Harbor Protections.

(1) The protections provided under subsection (e) of this section do not apply to the nurse who invokes Safe Harbor in bad faith, or engages in activity unrelated to the reason for the request for Safe Harbor or that constitutes reportable conduct of a nurse.

(2) In addition to consideration of the nurse's request for Safe Harbor, the safe harbor peer review committee may consider whether an exclusion to Safe Harbor peer review applies, and evaluate whether a nurse has engaged in reportable conduct provided such review is conducted in accordance with the requirements of §217.19 (incident-based peer review) of this title.

(3) If the safe harbor peer review committee determines that a nurse's conduct was not related to the nurse's request for Safe Harbor and would otherwise be reportable to the Board, the committee shall report the nurse to the Board as required in NPA (TOC) §301.403.

(g) Nurse's Decision to Accept or Refuse Assignment When Invoking Safe Harbor and While Awaiting Determination of Safe Harbor Peer Review Committee. A nurse invoking safe harbor may engage in the requested conduct or assignment while awaiting peer review determination unless the conduct or assignment is one in which:

(1) the nurse lacks the basic knowledge, skills, and abilities that would be necessary to render the care or engage in the conduct requested or assigned at a minimally competent level; or

(2) the requested conduct or assignment would constitute unprofessional conduct and/or criminal conduct.

(h) Minimum Due Process.

(1) A person or entity required to comply with Nursing Peer Review (TOC) §303.005(i) shall adopt and implement a policy to inform nurses of their right to request a nursing peer review committee determination (Safe Harbor Peer Review) and the procedure for making a request.

(2) In order to meet the minimum due process required by Nursing Peer Review (TOC) chapter 303, the nursing peer review committee shall comply with the membership and voting requirements as set forth in TOC §303.003(a) - (d);

(3) The peer review committee shall exclude from the committee membership, any persons or person with administrative authority for personnel decisions directly affecting the nurse.

(4) Attendance at the safe harbor peer review hearing by a CNO (administrator) or other persons with administrative authority over the nurse, including the individual who requested the conduct or made the assignment, is limited to appearing before the safe harbor peer review committee to speak as a fact witness.

(5) The nurse requesting safe harbor shall be permitted to:

(A) appear before the committee;

(B) ask questions and respond to questions of the committee; and

(C) make a verbal and/or written statement to explain why he or she believes the requested conduct or assignment would have violated a nurse's duty to a patient.

(i) Safe Harbor Processes.

(1) The following timelines shall be followed:

(A) the safe harbor peer review committee shall complete its review and notify the CNO (nurse administrator) within 14 calendar days of when the nurse requested Safe Harbor;

(B) within 48 hours of receiving the committee's determination, the CNO (nurse administrator) shall review these findings and notify the nurse requesting safe harbor peer review of both the committee's determination and whether the administrator believes in good faith that the committee's findings are correct or incorrect.

(2) The Chief Nursing Officer (CNO) of a facility, association, school, agency, or of any other setting that utilizes the services of nurses is responsible for knowing the requirements of this Rule and for taking reasonable steps to assure that peer review is implemented and conducted in compliance with the Nursing Practice Act (TOC ch. 301) and Nursing Peer Review (TOC ch 303).

(3) Texas Occupations Code chapter 303 (Nursing Peer Review), requires that peer review be conducted in good faith. A nurse who knowingly participates in peer review in bad faith is subject to disciplinary action by the Board under the Texas Occupations Code §301.452(b).

(4) The peer review committee and participants shall comply with the confidentiality requirement of Nursing Peer Review (TOC) §303.006 and §303.007 relating to confidentiality and limited disclosure of peer review information.

(5) If the CNO (nurse administrator) in good faith disagrees with the decision of the peer review committee, the rationale for disagreeing with a peer review committee's determination must be recorded and retained with the peer review records.

(A) If the CNO (nurse administrator) believes the peer review was conducted in bad faith, she/he has a duty to report the nurses involved under NPA (TOC) §301.402 and §217.11(1)(K) of this title.

(B) If a nurse requests a safe harbor peer review determination under Nursing Peer Review (TOC) §303.005(b), and refuses to engage in the requested conduct or assignment pending the safe harbor peer review, the determination of the safe harbor peer review committee shall be considered in any decision by the nurse's employer to discipline the nurse for the refusal to engage in the requested conduct. The determinations of the safe harbor peer review committee are not binding if the CNO (nurse administrator) believes in good faith that the safe harbor peer review committee incorrectly determined a nurse's duty; however, this does not affect protections provided for the nurse under Nursing Peer Review (TOC) §303.005(c) or NPA (TOC) §301.352.

(j) Use of Informal Work Group In Safe Harbor Peer Review. A facility may choose to initiate an informal review process utilizing a workgroup of the nursing peer review committee provided that the final determination of the nurse's duty complies with the time lines set out in this rule and there are written policies for the informal workgroup that require:

(1) the nurse:

(A) be informed how the informal workgroup will function and that the nurse does not waive any right to peer review by accepting or rejecting the use of an informal workgroup, and

(B) consent, in writing, to the use of an informal workgroup.

(2) the informal workgroup comply with the membership and voting requirements of subsection (h) of this section.

(3) the nurse to be provided the opportunity to meet with the informal workgroup;

(4) the nurse has the right to reject any decision of the informal workgroup and have the safe harbor peer review committee determine if the requested conduct or assignment violates the nurse's duty to the patient(s), in which event members of the informal workgroup shall not participate in that determination; and

(5) ratification by the safe harbor peer review committee chair person of any decision made by the informal workgroup. If the chair person disagrees with a determination of the informal workgroup, the chair person shall convene the full peer review committee to review the conduct in question.

(6) the peer review chair person must communicate any decision of the informal work group to the CNO /nurse administrator.

(k) Reporting Conduct of other Practitioners or Entities/Whistleblower Protections.

(1) This section does not expand the authority of any safe harbor peer review committee or the board to make determinations outside the practice of nursing.

(2) In a written, signed report to the appropriate licensing board or accrediting body, and in accordance with §301.4025, a nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to:

(A) minimum standards of acceptable and prevailing professional practice, for a report made regarding a practitioner; or

(B) statutory, regulatory, or accreditation standards, for a report made regarding an agency or facility.

(3) A nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or accreditation standards. For purposes of this subsection, an employer or entity includes an employee or agent of the employer or entity.

(4) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who reports, without malice, under this section. A violation of this subsection is subject to NPA (TOC) §301.413.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705087

Katherine Thomas

Executive Director

Texas Board of Nursing

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 303-6823



## TITLE 28. INSURANCE

### PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

#### CHAPTER 131. BENEFITS--LIFETIME INCOME BENEFITS

##### 28 TAC §131.1

*(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 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 (Division) proposes repeal of §131.1 concerning Initiation of Lifetime Income Benefits. This rule addresses several provisions affecting the initiation and payment of lifetime income benefits. More specifically, §131.1 provides eligibility requirements for lifetime income benefits and addresses when lifetime income benefits begin to accrue and are payable. The rule also provides that a minimum amount of weekly lifetime income benefits is required and reminds a party to a claim of the opportunity for a benefit review conference. The proposed repeal of this rule is primarily the result of conforming the provisions related to the initiation of lifetime income benefits to the court's ruling in *Mid-Century Insurance Company v. Texas Workers' Compensation Commission*, 183 S.W.3d 754 (Tex.App- Austin 2006 no writ). The remaining provisions of the rule are duplicative of the Texas Labor Code or other Division rules.

Labor Code, §408.161, provides that lifetime income benefits are paid until the death of an employee as a result of one of seven specified injuries. In interpreting this statute, the Texas Court of Appeals in the *Mid-Century* case held that lifetime income benefits are to be paid from the date an injured employee is determined to be entitled to lifetime income benefits but not prior to that date. Current §131.1(b) incorrectly provides that lifetime income benefits begin to accrue in accordance with the Texas Workers' Compensation Act and are payable retroactively from the date of disability.

In addition, the remaining provisions of §131.1 are unnecessary as the provisions are reiterated or referenced in the Labor Code or addressed in other Division rules. Section 131.1(a) provides that lifetime income benefits are paid in accordance with the Labor Code and Division rules in effect on the date of injury and includes the list of the seven specified injuries identified at Labor Code, §408.161(a). Similarly, the portion of §131.1(b) that does not violate the court order is not necessary because the remaining provision merely references Labor Code, §408.082, that describes when benefits begin to accrue. Section 131.1(c) restates Labor Code, §408.062, a provision that establishes the minimum weekly income benefit. Also, the availability of a benefit review conference, addressed in §131.1(d), is already included in the dispute resolution rules, as well as addressed in the organizational changes required by House Bill 7, 79th Legislative Session, 2005. Therefore, these provisions are no longer necessary.

Brent Hatch, Policy Advisor, Division of Workers' Compensation, has determined that, for the first first-year period the proposed repeal will be in effect, there will be no fiscal impact to state and local governments as a result of the repeal of the rule. There

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

Mr. Hatch 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 to conform the Division's application of the Labor Code to the court's ruling in the *Mid-Century* case. This clarifies when lifetime income benefits begin to accrue and avoids confusion for system participants.

There will be no anticipated economic costs to persons who are required to comply with the proposed repeal. Insurance carriers that have in the past paid lifetime income benefits from the date of disability, may experience a reduction in the amount of lifetime income benefits they must pay because the Third Court of Appeals has ruled that lifetime income benefits accrue only after the injured employee meets the criteria set out in Labor Code, §408.161.

There will be no adverse economic impact on small businesses or micro businesses as a result of the proposed repeal. There will be no difference in the cost of compliance for small businesses and micro-businesses as compared to large businesses as a result of the proposed repeal.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on December 3, 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, 7551 Metro Center Drive, Austin, Texas 78744, by 5:00 p.m. on December 3, 2007. If a hearing is held, written and oral comments presented at the hearing will be considered.

The repeal is proposed under the Labor Code, §§408.161, 402.00111, and 402.061. Section 408.161 provides that lifetime income benefits are paid until the death of an employee for: (1) total and permanent loss of sight of both eyes; (2) loss of both feet at or above the ankle; (3) loss of both arms at or above the wrist; (4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist; (5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; (6) a physically traumatic injury to the brain resulting in incurable insanity or imbecility; or (7) third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority of either both hands or one hand and the fact. 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 the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

No other code, statute, or article is affected by this action. The following sections are affected by this proposal: Labor Code, §408.161.

##### *§131.1. Initiation of Lifetime Income Benefits.*

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705056

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 804-4715



## CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

### SUBCHAPTER G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH CARE

#### 28 TAC §134.650

*(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, Workers' Compensation Division proposes the repeal of §134.650 concerning Prospective Review of Medical Care Not Requiring Preauthorization. This rule provides a process to resolve disputes of medical necessity in which the insurance carrier has prospectively denied future medical care that does not require preauthorization under §134.600 concerning Preauthorization, Concurrent Review, and Voluntary Certification of Health Care. The proposed repeal of this section is a result of the Division's adoption of §137.100, concerning Treatment Guidelines, which applies to health care provided on or after May 1, 2007.

The purpose of §134.650 was to address the pretreatment impasse between insurance carriers and health care providers regarding health care that did not require preauthorization, but was informally being denied in advance by insurance carriers on the basis of medical necessity and, in some instances, relatedness to the compensable injury. Section 134.650 provided a process to resolve that impasse.

Texas Labor Code, §413.011(e), required the Division to adopt treatment guidelines. Subsequently, §137.100 adopted the *Official Disability Guidelines - Treatment in Workers' Compensation* (ODG) as the treatment guideline for providing non-network health care to injured employees. Treatments and services provided within the ODG are presumed to be reasonable and reasonably required; therefore, preauthorization is not required for treatments provided within the ODG, except in certain circumstances.

Since adoption of the ODG, preauthorization is required when: (1) the treatment or service is on the Division's preauthorization list; (2) the diagnosis is not included in the treatment guidelines; (3) the treatment or service is under study or not recommended in the ODG; or (4) the care exceeds the Division's treatment guidelines in frequency or duration. Treatment not addressed by or that exceeds the Division's treatment guidelines requires preauthorization; therefore, insurance carriers may not informally deny proposed health care in advance. If preautho-

zation is required and denied by the insurance carrier, the Division provides dispute resolution through the Independent Review Organization (IRO) process. Treatment that is preauthorized raises a health care provider's assurance of payment and denial of preauthorization can be appealed. The preauthorization and IRO processes provide remedies that were not previously available in situations where the §134.650 process was commonly used. With the ODG, preauthorization, and IRO processes in place, there is no longer a need for the process provided in §134.650.

Brent Hatch, Policy Advisor, Division of Workers' Compensation, has determined that, for the first five-year period the proposed repeal is in effect, there will be no substantial fiscal implications for state or local governments as a result of the repeal. There will be decreased Division actions with respect to issuance of interlocutory orders for the payment of medical benefits. With the adoption of the ODG, treatment provided that falls within the ODG is presumed to be reasonably required. With the expected decrease in the number of medical interlocutory orders issued, the Division should realize a decrease in appeals and related State Office of Administrative Hearings (SOAH) costs. During the first nine months of the 2007 fiscal year, approximately 160 hours of SOAH time were utilized by the Division for appeals of medical interlocutory orders issued pursuant to §134.650. This time is typically charged to the Division at \$100 per hour. The Division considers all of these eventualities to be positive impacts to the system. There will be no anticipated 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 proposed repeal is in effect, the public benefits anticipated as a result of the repeal will be a better way of addressing the uncertainty of reimbursement for future medical care for compensable injuries through use of the ODG and preauthorization.

Health care providers who, in the past, found it necessary to seek interlocutory orders through §134.650, now have alternative remedies to resolve disputes regarding the medical necessity of treatments and services.

An average of approximately 280 requests for interlocutory orders were made per month in Fiscal Years 2006 and 2007. An average of approximately seven medical interlocutory orders per month were appealed to SOAH in Fiscal Years 2006 and 2007. System participants who sought or opposed the issuance of medical interlocutory orders will not incur the costs of a SOAH proceeding as a result of the repeal of the §134.650 process. However, they may incur costs related to preauthorization disputes for services that now require preauthorization pursuant to the adopted treatment guidelines. These costs are a result of the treatment guideline provisions rather than the proposed repeal of §134.650.

There are no anticipated costs to system participants as a result of the proposed repeals. There is no difference in the cost of compliance between a large and small business as a result of the proposed repeals. 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 December 3, 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, 7551 Metro Center Drive, Austin, Texas 78744, by 5:00 p.m. on December 3, 2007. If a hearing is held, written and oral comments presented at the hearing will be considered.

The repeal is proposed under the Labor Code, §§406.010, 406.031, 408.004, 408.021, 408.025, 413.013, 413.018, and 413.055, 402.0111, and 402.061. Section 406.010 authorized the Commissioner to adopt rules regarding claims service. Section 406.031 holds an insurance carrier liable for compensation for an eligible employee's injury arising out of and in the course and scope of employment. Section 408.004 allows the Commissioner to require injured employees to submit to medical examinations to resolve questions regarding appropriate medical care and similar issues. Section 408.021 provides that the injured employee is entitled to all health care reasonably required by the nature of the injury as and when needed. Section 408.025 authorizes the Commissioner to adopt requirements for reports and records that are required to be filed with the Division by health care providers. Section 413.013 allows the Commissioner to establish programs for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services. Section 413.018 provides that 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. Furthermore, the Commissioner may adopt rules and forms as necessary to implement §413.018. Section 413.055 allows the Commissioner to issue medical interlocutory orders requiring carriers to be liable for specific future medical care. 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, §§406.010, 406.031, 408.004, 408.021, 408.025, 410.002, 413.013, 413.018, and 413.055.

§134.650. *Prospective Review of Medical Care Not Requiring Preauthorization.*

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705057

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4715



## TITLE 34. PUBLIC FINANCE

## PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

### CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

#### 34 TAC §103.10

The Texas County and District Retirement System proposes new rule §103.10 concerning the form and manner of payment of a survivor annuity. The rule is intended to comply with H.B. 1587, as enacted into law by the 80th Legislature, which provides that the survivor annuity benefit be the actuarial equivalent under the system to an annuity based on the accrued benefit of the eligible deceased member. The legislation also requires the board of trustees to authorize by rule the form and manner of payment of the survivor annuity. Previous law limited the survivor annuity benefit to that contingent annuity that would be payable assuming the member had retired and immediately died. This prior law permitted vast disparity in the value of a survivor annuity payable to identically situated beneficiaries of deceased members who were of different ages. Additionally, benefits available to a deceased member's family were significantly less than those benefits available to a retiree and the retiree's family. With the legislative change, beneficiaries will receive the actuarial value of the benefit accrued by the deceased member, resulting in greater parity between the benefits available to the family of a retiree and the family of a deceased member.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that, for the first five-year period the proposed new rule is in effect, outside of the minimal cost associated with the underlying legislation, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that, for each year of the first five years the proposed new rule is in effect the public benefit anticipated as a result of administering the rule will be the availability of the deceased member's entire accrued benefit to the member's survivors. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed new rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The new rule is proposed under the Government Code, §844.407, which mandates the board of trustees to authorize the form and manner for paying a survivor annuity.

The Government Code, §844.407 is affected by this proposed rule.

§103.10. Survivor Annuity.

(a) The beneficiary of a deceased member who had accumulated at least four years of credited service in the system is eligible to apply for and receive a survivor annuity as described in this section.

(b) The annuity payable under this section to an individual beneficiary shall be the actuarial equivalent, as defined in §841.001(1) of the Act, of the allocated shares of the member's individual account balance and total service credit standing to the credit of the member computed as of the last day of the month preceding the member's death.



(c) An individual designated as beneficiary by the member, or an individual designated as beneficiary by law, may elect an annuity to be paid in the form of a life annuity for the beneficiary's life but actuarially reduced to provide a guarantee that the total of all payments will equal or exceed:

(1) the beneficiary's allocated share of the decedent's individual account balance; or

(2) the equivalent of 120 monthly payments; or

(3) the equivalent of 180 monthly payments.

(d) In lieu of an annuity, the beneficiary may elect a refund of the beneficiary's allocated share of the deceased member's individual account.

(e) The annuity shall be calculated using the beneficiary's age on the last day of the month preceding the member's death and computed on the beneficiary's allocated shares of the deceased member's individual account balance and total service credit standing to the credit of the member as of the last day of the month preceding the member's death.

(f) An individual designated as beneficiary by the member, or an individual designated as beneficiary by law, may not renounce, repudiate, or disclaim the benefit provided under this section, except that in lieu of an annuity, an individual beneficiary may apply for a refund of that beneficiary's share of the deceased member's individual account balance.

(g) In the event that multiple persons are designated as beneficiaries by the member, the deceased member's individual account balance and total service credit shall be prorated among all beneficiaries, and each individual beneficiary may select any payment form described in subsection (c) above computed on the shares allocated to that individual. A beneficiary that is not an individual will receive a single payment as described in subsection (g).

(h) A beneficiary other than an individual shall receive a single payment equal to the allocated shares of the member's individual account balance and total service credit standing to the credit of the member as of the last day of the month preceding the member's death.

(i) A trustee of a trust having a single primary beneficiary may elect, in accordance with the rules and regulations under the Internal Revenue Code, that the beneficiary of the trust be considered as a named beneficiary for purposes of selecting an annuity.

(j) An individual beneficiary who dies before filing an application for benefits or who fails to file an application within 90 days following notice from the system that a benefit is payable shall be deemed to have selected the life annuity with the guarantee that the total of all payments will equal or exceed the share of the deceased member's individual account balance allocable to the beneficiary.

(k) No interest shall accrue on any benefit payable under this section.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705046

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System of Texas

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For further information, please call: (512) 328-8889



## CHAPTER 105. CREDITABLE SERVICE

### 34 TAC §105.2

The Texas County and District Retirement System proposes new rule §105.2 concerning the recognition and combining of credited service accumulated with multiple subdivisions for purposes of determining retirement eligibility with a particular subdivision. The proposed new rule is intended to comply with H.B. 1587, as enacted into law by the 80th Legislature, which mandated the board of trustees to establish rules for this purpose. All credited service of the member accumulated in this system may be combined for purposes of meeting the specific eligibility requirements for retirement or a survivor annuity with respect to a particular subdivision. However, to be eligible to retire with a particular subdivision, the member must satisfy the specific vesting requirement of that subdivision. Other service credited under the proportionate retirement program may be recognized and combined only for determining eligibility for service retirement. Proportionate program service may not be combined for purposes of determining eligibility for disability retirement or a survivor annuity. This proposed new rule conforms to the evolving policy that the several subdivisions participating in the system operate independently, one from the others, except for the universal recognition of all service credited in the system. Additionally, this rule eliminates much of the disparate treatment between members who have proportionate retirement program service and members who have service with multiple subdivisions.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that, for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that, for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of administering the rule will be the universal recognition and consistent treatment of all credited service accumulated by members of the system, without regard to the subdivision with which the service was earned, as well as support for the authority of each subdivision to establish its own vesting requirements with respect to such universally recognized service. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the new rule as proposed.

Comments on the proposed new rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The rule is proposed under the Government Code, §844.1021, which requires the board of trustees to established rules for recognizing and combining credited service for purposes of meeting retirement eligibility provisions of the respective subdivisions.

The Government Code, §844.1021 is affected by this proposed new rule.

§105.2. Combining Credited Service with Multiple Subdivisions.

(a) A member must satisfy the retirement eligibility requirement of the particular subdivision with which the member is applying for retirement.

(b) All of a member's credited service in this system, as defined in §841.001(7) of the Act, will be combined and recognized for purposes of determining eligibility for service and disability retirements with respect to each subdivision, and eligibility for the survivor annuity.

(c) All credited service described in subsection (a) will be combined with all other credited service of the member recognized under the proportionate retirement program for purposes of determining eligibility for service retirement with respect to each subdivision.

(d) Credited service of the member recognized under the proportionate retirement program may not be combined with the member's credited service in this system as defined in §841.001(7) of the Act for purposes of determining eligibility for any disability retirement or survivor annuity.

(e) When combining service for purposes of determining eligibility, only one month of credited service may be recognized for any particular calendar month.

(f) A member eligible for disability retirement under §844.302(a) of the Act, is eligible for disability retirement from all subdivisions with which the member has service credit.

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

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TRD-200705047

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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For further information, please call: (512) 328-8889



**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 3. TEXAS YOUTH COMMISSION**

**CHAPTER 97 SECURITY AND CONTROL**

**SUBCHAPTER A. SECURITY AND CONTROL**

The Texas Youth Commission simultaneously proposes the repeal of §97.23 and proposes new §97.23, concerning use of force. The new section will establish the circumstances under which force may be used, the elements constituting the continuum of force, and requirements and restrictions concerning implementation of force.

Robin McKeever, Chief Financial Officer, has determined that for each year of the first five years the section is in effect there is insufficient data to estimate whether the change would have a significant fiscal impact on state government. No fiscal impacts on local units of government are anticipated.

Stan DeGerolami, Director of Residential Services, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased safety. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Manager of Policy, Grants, and Accreditation, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or via email to deanna.lloyd@tyc.state.tx.us.

**37 TAC §97.23**

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

The repeal is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed repeal affects the Human Resources Code, §61.034.

§97.23. Use of Force.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705082

Dimitria D. Pope

Acting Executive Director

Texas Youth Commission

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 424-6301



**37 TAC §97.23**

The new section is proposed under the Human Resources Code, §61.045, which provides that the commission shall have general charge of and be responsible for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the commission.

The proposed rule affects the Human Resources Code, §61.034.

§97.23. Use of Force.

(a) Policy. The Texas Youth Commission (TYC) prohibits the use of force as punishment or discipline and sanctions its use only as a control measure to reasonably ensure the safety and welfare of youth and staff. Force will be used only when necessary and only to the extent necessary to gain compliance and/or prevent harm. Physical restraint is to be used as a last resort and only for purposes justified under this rule.

(b) Applicability. This rule applies to all residential facilities and programs operated by or under contract with TYC.

(c) Definitions. For purposes of this rule, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) Carry-On-Person Aerosol Canister--means an MK-3, MK-4, or MK-9 OC spray canister.

(2) Disruption of Program--youth's behavior requires intervention to the extent necessary to stop its interruption of the current program.

(3) Imminent Harm or Imminent Threat--a reasonable belief that harm to persons or property is about to occur, and the need for action is immediate.

(4) Mental Health Professional--an individual who is a psychiatrist, doctoral level psychologist, masters level associate psychologist, licensed professional counselor, or a licensed social worker with an advanced clinical practitioner (LMSW-ACP) designation.

(5) Positional Asphyxia--the reduction in oxygen in the bloodstream and tissues due to an impairment of a person's respiratory system caused by body positioning or the application of external weight/pressure.

(6) Physical Presence--means the mere presence of staff to include non-verbal gestures made with eyes, hands, head or body, utilizing proximity, standing, eye contact, and/or facial expressions.

(7) Practicable--means something is capable of being done with the means at hand and presenting circumstances.

(8) Reasonable Belief--means facts and circumstances, known to staff at the time of the incident, that would cause a reasonable, trained staff to conclude that an imminent threat exists.

(9) Reasonable Force--the degree of force which a reasonable, trained juvenile corrections staff, in like circumstances, would judge to be reasonably necessary to control and overcome unlawful resistance, protect self, protect third parties, protect youth from self-harm, protect property, compel movement and maintain order and safety.

(10) Security Unit--means the building on a high restriction residential campus that houses any of the following programs: Corsicana Stabilization Unit, Behavior Management Program, Aggression Management Program, Institution Detention Program, Security Program, Security Intake, or Protective Custody.

(11) Threat Assessment--evaluating a youth's opportunity, ability and risk to do harm to self, others, or property and weighing whether or not the behavior reflects only emotional venting or verbal aggression with no physical movement toward a target.

(12) Totality of the Circumstances--means there is no single deciding factor. One should consider all the facts, surrounding circumstances, conditions and conclude from the whole picture the type and degree of force required.

(13) Use of Force--is any physical contact exerted upon a youth to direct, compel, or restrain bodily movement.

(A) Use of force includes:

(i) Mechanical Restraint--use of a mechanical device to control or limit the movement of any portion of youth's body.

(ii) OC Spray--oleoresin capsicum spray, also known as pepper spray. Oleoresin capsicum is a mixture of essential oil and resin found in nature and derived from any plant of the genus capsicum, such as jalapeño, cayenne, or habanero.

(iii) Physical Restraint--restricting a youth's freedom of action by using physical restraint methods.

(iv) Full-Body Restraint--use of a padded cloth or leather mechanical restraint device to secure a youth to a specially designed bed as a means of physical restraint.

(B) For purposes of this rule, the term "use of force" does not include:

(i) application of mechanical restraints to compliant youth during routine transportation; or

(ii) directing a compliant youth from one location to another location via touching of the arm or elbow; or

(iii) movement of compliant youth to a security unit, isolation room, or alternative classroom via use of mechanical restraints.

(14) Verbal Intervention/De-escalation Techniques--includes verbal prompting, directive statements, redirection and coaching, using behavior management skills.

(d) General Provisions.

(1) Staff will use only the least amount and type of reasonable force necessary to control and overcome unlawful resistance, protect persons, protect property and maintain order and safety.

(2) Any staff member must intervene, if a reasonable opportunity exists, when he/she knows or should know that another staff member is using force that is unjustified and/or excessive. Staff must report any violations of this policy before the end of the current shift.

(e) Use of Force Continuum.

(1) Except as otherwise stated within this rule, the below listed actions will be taken in the following order until the youth's behavior no longer justifies use of force:

(A) Physical Presence

(B) Verbal Intervention/De-escalation Techniques

(C) Mechanical Restraint

(D) OC Spray

(E) Physical Restraint

(2) Under circumstances where following the continuum poses an unwarranted risk of imminent harm, the necessary level of force may be used without the use of all prior levels of the continuum.

(f) Situations Authorizing Use of Force. Except as otherwise stated within this rule, use of force is authorized under the following circumstances:

(1) Protection of youth from imminent self-harm;

(2) Protection of self from imminent harm;

(3) Protection of other youth or third parties from imminent harm;

(4) Protection of property from imminent damage;

(5) Prevention of escape or fleeing apprehension;

(6) Movement of a non-compliant youth referred to the security unit, isolation room, or alternative classroom;

(7) Movement of a non-compliant youth within the security unit when the youth's behavior is substantially disruptive and the youth refuses to follow a reasonable request to comply;

(8) Movement of a non-compliant youth from a dangerous or disruptive situation when immediate compliance is necessary;

(9) To allow for a search of a non-compliant youth reasonably believed to be in possession of a weapon or item that can be adapted for use as a weapon, a controlled substance, or other item that poses a risk to the security of the facility;

(10) To allow for a search of a non-compliant youth entering the security unit; or

(11) Administration of medical treatment to a non-compliant youth when, under the circumstances, failure to administer the treatment could have serious health implications as determined by a health-care professional.

(g) Threat Assessment Prior to Implementing Force. Prior to the implementation of force, a threat assessment should be conducted to evaluate the youth's opportunity, ability, and risk to do harm.

(1) Opportunity--whether the youth has a reasonable opportunity to carry out the threat.

(2) Ability--whether the youth presents a threat to safety and security and has a reasonable ability to carry out the threat.

(3) Risk--how serious is the risk of harm to self or others or damage to property if force is or is not used.

(h) Approved Techniques for Use of Force. Techniques that may be used are limited to:

(1) agency-trained:

(A) mechanical restraints;

(B) OC spray;

(C) physical restraint; and

(D) full-body restraints, under certain limited circumstances; and

(2) other non-prohibited methods of physical restraint that under the totality of circumstances existing at the time:

(A) are more practical than the agency-trained method of physical restraint, taking into account the youth's and staff's particular vulnerability to harm;

(B) involve a use of force that is measured and progressive to a degree no greater than that reasonably necessary to achieve the objective; and

(C) do not unduly risk serious harm or needless pain to the youth or staff.

(i) Implementation of Force. When practicable, strategy should be planned in advance and directed by a security staff who is not physically involved. When practicable, the entire use of force should be recorded, including efforts to reason with the youth. In all cases, staff must provide justification for the force applied.

(1) Use of Mechanical Restraints.

(A) Mechanical restraints are temporary restraining devices and provide only limited control. The use of mechanical restraints should be terminated as soon as possible.

(B) Only employees who are trained in the application of mechanical restraints are authorized to carry and use mechanical restraints.

(C) When mechanical restraints are employed, staff will ensure the youth's safety by:

(i) checking the youth for adequate respiration and circulation every 15 minutes until termination of the restraint;

(ii) providing continuous visual supervision; and

(iii) providing assistance, as appropriate, during transportation to the security unit and until the restraining devices have been removed.

(D) Extensions may be granted for additional 30-minute intervals, until termination of restraint. If an extension is granted, medical staff will examine the youth every 15 minutes until termination of restraint.

(2) Use of OC Spray.

(A) Except as indicated in subparagraph (B) of this paragraph, OC spray is authorized for use only in high restriction facilities operated by TYC.

(B) Use of OC spray is prohibited in facilities and programs of less than high restriction which are operated by or under contract with TYC and in high restriction facilities or programs operated under contract with TYC, unless written authorization from the TYC executive director or designee exempts a facility or program from this prohibition.

(C) OC spray is authorized for use only when other less restrictive interventions have failed or are determined to be impracticable.

(D) In high restriction facilities operated by TYC, the following are the only staff authorized to use OC spray and routinely carry it on-person:

(i) facility administrator;

(ii) assistant facility administrator;

(iii) administrative duty officer;

(iv) security personnel whose regular assignment is outside the security unit;

(v) supervisory-level dorm personnel; and

(vi) Juvenile Correctional Officer IV or above in the same line of authority whose regular assignment is inside the security unit.

(E) No staff member is authorized to use or carry OC spray until he/she has completed the agency-approved OC training.

(F) The amount of OC used will be the minimum amount necessary to gain compliance.

(G) After OC has been used and the situation has been brought under control, any youth or area affected by the chemical agent will be properly decontaminated as soon as possible, and any affected youth will be examined by medical staff as soon as possible.

(3) Restrictions on Use of OC Spray.

(A) Unless necessary to prevent loss of life, imminent damage to property, or imminent bodily injury to persons, OC spray should not be used against a youth who has a mental health diagnosis until a mental health staff has been contacted and has attempted to control the situation.

(B) Unless necessary to prevent loss of life, property from imminent damage, or imminent bodily injury to persons, OC spray is not authorized for use on a youth who has been identified by a medical staff as:

(i) having a known allergic reaction to OC; or

asthma; or  
(ii) currently receiving treatment for seizures or  
(iii) having any other obstructive pulmonary condi-  
tion.

(C) OC spray is not authorized for use on a youth in a secure cell or who is properly secured in mechanical restraints except for the following limited purposes:

(i) protection of property from imminent damage;  
(ii) protection of youth or others from imminent  
harm;

(iii) secure an object that is being used as a weapon and is capable of causing serious bodily injury; or

(iv) other circumstances, as approved by the facility administrator or assistant facility administrator on a case-by-case basis.

(D) OC delivery equipment other than carry-on-person aerosol canisters may only be used to the extent reasonably necessary to bring under control a riot that threatens imminent harm to human life or imminent and substantial destruction of property unless otherwise authorized by the facility administrator on a case-by-case basis.

(4) Use of Physical Restraint.

(A) Except as described in subparagraph (E) below, physical restraint is to be used as a last resort when all other less restrictive interventions have failed or are not practicable under the circumstances existing at the time.

(B) When use of physical restraint is necessary, only approved physical restraint techniques are authorized. The amount and type of force should be measured and progressive in nature and will only be conducted by authorized staff who are trained in the agency's approved physical restraint techniques.

(C) When physical restraint is employed, staff will ensure that a youth maintains adequate respiration and circulation during application of physical restraint. The physical restraint will be discontinued as soon as restraining devices have been properly applied.

(D) A youth will be placed in an upright-seated position as soon as practicable once mechanical restraints have been applied.

(E) Physical restraint may be used to remove clothing from a youth who displays suicidal ideation or behavior after verbal attempts to gain compliance have failed.

(F) Any youth involved in a physical restraint will be examined by a medical staff as soon as possible after termination of the restraint.

(5) Prohibited Techniques of Physical Restraint.

(A) Prohibited techniques of physical restraint that unduly risk serious harm or needless pain to the youth include the intentional, knowing, or reckless use of any of the following techniques:

(i) restricting respiration in any way, such as applying a chokehold or pressure to a youth's back or chest or placing a youth in a position that is capable of causing positional asphyxia;

(ii) using any method that is capable of causing loss of consciousness or harm to the neck;

(iii) pinning down with knees to torso, head and/or  
neck;

(iv) slapping, punching, kicking, or hitting;

(v) using pressure point, pain compliance and joint manipulation techniques, other than an approved method for release of a chokehold, bite or hair pull;

(vi) modifying restraint equipment or applying any cuffing technique that connects handcuffs behind the back to ankle restraints;

(vii) dragging or lifting of the youth by the hair or ear or by any type of mechanical restraints;

(viii) using other youth or untrained staff to assist with the restraint;

(ix) securing a youth to another youth or to a fixed object, other than to an agency-approved full-body restraint device; or

(x) administering a drug for controlling acute episodic behavior as a means of physical restraint, except when the youth's behavior is attributable to mental illness and the drug is authorized by a licensed physician and administered by a licensed medical professional.

(B) A physical contact that would otherwise be prohibited under the above paragraph does not include one that is only accidental and momentary.

(6) Use of Full-Body Restraint.

(A) The only justification for full-body restraint is the prevention of serious self-injury.

(B) Full-body restraint is authorized for use only at facilities approved by the executive director that operate programs for youth with mental illness or mental retardation.

(C) Full-body restraint may only be applied by staff who have completed specialized training in the use of such restraints.

(j) Post-Restraint Screening. Following the use of OC spray or physical restraint, a post-restraint screening will be conducted by a staff member not involved with the use of OC spray or physical restraint to assess the youth's emotional status. The youth will be referred to facility clinical services for review and follow-up if:

(1) the youth reports any emotional trauma; or

(2) the staff conducting the screening suspects emotional trauma indicating such evaluation.

(k) Authorized Equipment. Only equipment approved by the executive director as specified in TYC's Use of Force Plan is authorized for use.

(l) Use of Force Plan. TYC operates under a Use of Force Plan that defines staff responsibilities, operational procedures, and limitations concerning the use of force. The plan provides for supervision, monitoring, and assessment of the force deployment. The plan also establishes reporting, documentation, and decontamination requirements.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705081

Dimitria D. Pope  
Acting Executive Director  
Texas Youth Commission

Earliest possible date of adoption: December 2, 2007  
For further information, please call: (512) 424-6301



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.203, 700.1351, 700.1403, and 700.1404, concerning medical consent, in its Child Protective Services chapter. The purpose of the amendments is to update the rules to reflect the changes required in Senate Bill 6 of the 79th Legislative Session, which added Chapter 266 to the Texas Family Code to address medical consent for children in DFPS conservatorship. The major provisions are: (1) requirement for an individual to be authorized by the court or designated by DFPS to consent for medical care for each child in DFPS conservatorship; (2) completion of training on informed consent by the medical consentor; (3) participation in each medical appointment by the medical consentor; (4) informing 16 and 17 year old youth of rights to a court determination of their capacity to consent to some or all of their medical care; (5) requirement to include informed consent training in the PAL curriculum; (6) obtaining medical care in an emergency; (7) judicial review of medical care; and (8) notifying parents of significant medical conditions.

Section 700.203 adds the provision that DFPS may release confidential case record information to the medical consentor, and clarifies that the same restrictions on disclosure of confidential records to DFPS apply to re-disclosure by the party who receives the records.

Section 700.1351 defines medical care, clarifies that consent for medical care for children in DFPS conservatorship must be provided in accordance with Chapter 266 of the Texas Family Code, and deletes the procedures pertaining to medical care that no longer apply.

Section 700.1403 clarifies that DFPS may provide information about the child's AIDS/HIV status to the medical consentor.

Section 700.1404 adds the child's "medical consentor" to the provision that a child's caretaker may release information about a child's HIV status only to certain parties in specific circumstances. Also, TDPRS is changed to DFPS in all of the rules.

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 no fiscal implications for state or local government as a result of enforcing or administering the sections.

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 children in DFPS conservatorship will likely benefit from improved health

outcomes through the provision of consistent, coordinated and informed decisions concerning their health care. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do 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 amendments 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 Kathy Teutsch at (512) 438-5257 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-381, 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*.

#### SUBCHAPTER B. CONFIDENTIALITY AND RELEASE OF RECORDS

##### 40 TAC §700.203

The amendment is 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 amendment implements the Texas Family Code, Chapter 266.

*§700.203. Access to Confidential Information Maintained by the Texas Department of Family and Protective [and Regulatory] Services (DFPS) [(TDPRS)].*

(a) To the extent required by state or federal law, or to the extent deemed necessary by DFPS [TDPRS] for the protection and care of children, DFPS [TDPRS] may release case record information made confidential under §261.201(a) of the Texas Family Code to the following listed persons or entities:

(1) DFPS [TDPRS] staff, including authorized volunteers, as necessary to perform their assigned duties;

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

(5) a local, state, or federal government official, to the extent permitted under federal law, [when specifically required by law or] when deemed necessary for the protection and care of a child;

(6) - (8) (No change.)

(9) an attorney of DFPS [TDPRS], the attorney general of the state, or a county attorney or district attorney, when such attorney represents the state in a proceeding arising out of an investigation of child abuse or neglect or in a proceeding to collect child support for a child in the temporary or permanent managing conservatorship of DFPS [TDPRS];

(10) a member of the state legislature, to the extent permitted under federal law, when necessary to carry out that member's official duties; ~~and~~

(11) the person authorized by the court or designated to give medical consent on the child's behalf; and

(12) ~~[(H)]~~ any other person or entity responsible for the protection, diagnosis, care, treatment, supervision or education of a child who is the subject of a report or record of abuse or neglect, when, in the discretion of DFPS ~~[TDPRS]~~, such information is necessary to properly meet that child's needs.

(b) In accordance with §261.201(f) of the Code, and upon a properly submitted request, DFPS ~~[TDPRS]~~ shall provide access to confidential case records to the parent or other legal guardian of a child who was the alleged or actual victim of child abuse and neglect, provided that the records are redacted as described in §700.204 of this title (relating to Redaction of Records Prior to Release). For purposes of this subsection, a parent or other legal guardian means any parent, adoptive parent, possessory conservator, temporary or permanent managing conservator, legal guardian, or other legal representative of the child, provided that the requestor's parental or other legal relationship to the child has not been terminated at the time the request for information is made. DFPS ~~[TDPRS]~~ may release confidential case records, or information contained therein, to a minor child who is the subject of those records if DFPS ~~[TDPRS]~~ deems the release to be in the best interest of the minor child.

(c) Upon a properly submitted request, DFPS ~~[TDPRS]~~ shall provide access to confidential investigation records to an individual who was alleged or designated by DFPS ~~[TDPRS]~~ to be a perpetrator in that investigation, whether or not that individual is a parent of the alleged victim, provided that the records are redacted as described in §700.204 of this title (relating to Redaction of Records Prior to Release). A release under this subsection is limited to that portion of DFPS's ~~[TDPRS's]~~ records which were developed during the course of an investigation into child abuse or neglect and shall not include records related to the provision of services to a child or the child's family as a result of the investigation.

(d) In accordance with §261.201(c) of the Code, and upon a properly submitted request, DFPS ~~[TDPRS]~~ shall provide access to confidential case records to the adoptive or prospective adoptive parents of a child who was, or to an adult who was as a child, the subject of those records, provided that the records are redacted in accordance with §700.204 of this title (relating to Redaction of Records Prior to Release) and provided that the identity of the child's biological parents is protected. When releasing information under this subsection, DFPS ~~[TDPRS]~~ need not redact the record to protect the identity of a biological parent whose identity is already known to the requestor.

(e) (No change.)

(f) Notwithstanding any other provision in this subchapter, DFPS ~~[TDPRS]~~ shall not disclose any record or information which, if released to the requestor, would interfere with an ongoing criminal investigation or prosecution.

(g) The same restrictions on disclosure of confidential records released by DFPS apply to re-disclosure by the individual or entity that obtains the documents from DFPS.

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

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

TRD-200704982

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 438-3437



## SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

### 40 TAC §700.1351

The amendment is 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 amendment implements the Texas Family Code, Chapter 266.

*§700.1351. Medical and Dental Services for Children in DFPS Conservatorship [Substitute Care].*

(a) The Texas Department of Family and Protective ~~[and Regulatory]~~ Services' (DFPS's) ~~[(TDPRS's)]~~ general responsibilities. DFPS [The Office of Protective Services for Families and Children (PSFC)] must ensure that children in DFPS conservatorship [TDPRS-paid foster care] receive [all the] medical care [and dental services they need]. "Medical care" for the purposes of this rule includes physical, dental, behavioral, vision, and allied health care such as physical therapy, occupational therapy, speech therapy, dietetic and other health related services. Each child's [medical and dental] care must include:

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

(b) Consent for medical care. Consent for medical care provided to children in DFPS conservatorship must be provided in accordance with Chapter 266 of the Texas Family Code and relevant court orders or agreements between DFPS and the person designated to provide consent. [Informing the court and the parents.]

~~[(1) Basic requirement. PSFC must keep the court, the child's attorney ad litem, and the child's parents informed of the occurrence, treatment, progress, and resolution of every serious medical problem that the child experiences.]~~

~~[(2) Exception. PSFC does not notify a child's parents about the child's medical problems if the parents:]~~

~~[(A) cannot be found;]~~

~~[(B) have had their parental rights terminated; or]~~

~~[(C) have executed an affidavit of relinquishment as specified in the Texas Family Code, §161.103.]~~

~~[(e) Consent. Whenever PSFC places a child in substitute care, the child's worker must give the caregiver written authorization to con-~~

sent to medical treatment for the child. After receiving PSFC's written authorization, the caregiver can consent to the child's medical treatments only as specified in paragraphs (1) - (3) of this subsection.}]

{(1) Emergency care.}]

{(A) Necessary conditions. In most medical emergencies, a child's substitute caregiver may consent to the child's medical care only if:}]

{(i) a physician, a dentist, or a mental health professional orders the care; and}]

{(ii) the child's worker or the worker's supervisor cannot be contacted.}]

{(B) Exception. A child's caregiver has the authority to secure medical care immediately if there is not enough time to call PSFC first or if a telephone is not available.}]

{(C) Notification of PSFC. Regardless of the circumstances of the caregiver's consent, the caregiver must notify PSFC of the child's emergency treatment.}]

{(i) immediately if possible; or}]

{(ii) within 24 hours after the initial treatment.}]

{(2) Basic nonemergency care.}]

{(A) Medicaid providers.}]

{(i) The caregiver's authority. If a provider accepts Medicaid, the child's caregiver may directly consent to the provider's nonemergency medical examinations and treatments of the child.}]

{(ii) Exception. A substitute caregiver does not have the authority to consent to major nonemergency treatments as defined in paragraph (3) of this subsection.}]

{(B) Non-Medicaid providers.}]

{(i) Limitation of the caregiver's authority. If a provider does not accept Medicaid, the child's caregiver must arrange for the child's worker or the worker's supervisor to consent to the provider's nonemergency medical examinations and treatments of the child.}]

{(ii) Exception. A substitute caregiver may directly consent to an examination or treatment provided by a non-Medicaid provider if:}]

{(I) the procedure does not constitute a major nonemergency medical treatment as defined in paragraph (3) of this subsection; and}]

{(II) the cost of the procedure will be covered:}]

{(a) through a county medical-services agency;}]

{(b) under health insurance provided through the substitute caregiver; or}]

{(c) by the caregiver himself.}]

{(3) Major nonemergency treatments.}]

{(A) The conservatorship unit's consent. If a child in substitute care needs to undergo a major nonemergency medical treatment, the child's conservatorship unit must arrange the treatment and consent to it.}]

{(B) Definition. Any medical treatment or procedure that may be threatening to the child's life or long-term health constitutes a major treatment. (Examples: Surgeries that require general anesthesia; blood transfusions; procedures that might be dangerous in light of

the child's medical history; procedures that the child's physician considers dangerous.})

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

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 438-3437



## SUBCHAPTER N. AIDS POLICIES FOR CHILDREN IN DFPS'S CONSERVATORSHIP

### 40 TAC §700.1403, §700.1404

The amendments 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 amendments implement the Texas Family Code, Chapter 266.

#### §700.1403. Notification.

(a) Notification about positive results. If a child in the Texas Department of Family and Protective [and Regulatory] Services' (DFPS's) [~~TDPRS's~~] conservatorship has acquired immune deficiency syndrome (AIDS), or if the results of a child's human-immunodeficiency-virus (HIV) antibodies test have been confirmed as positive as specified in §700.1401(e) of this title (relating to Testing Children in TDPRS's Conservatorship for HIV Antibodies), DFPS [TDPRS] must inform the following parties of the child's condition:

(1) the child's legal parents (if their whereabouts are known); [and]

(2) the foster parents, 24-hour child-care providers, prospective adoptive parents, or relatives with whom the child has been placed or with whom DFPS [TDPRS] plans to place the child; and [-]

(3) the person authorized to provide medical consent on the child's behalf under Chapter 266 of the Texas Family Code.

(b) Notification about negative results. If the results of a child's HIV-antibodies test are negative, DFPS [TDPRS] may inform the child's caregivers about the negative results and any related counseling issues if doing so is likely to help the caregivers provide appropriate care.

#### §700.1404. Confidentiality.

(a) When a child has acquired immune deficiency syndrome (AIDS) or has tested positive for human-immunodeficiency-virus



(HIV) antibodies, the child's foster parents or 24-hour child-care provider must keep the child's HIV status confidential. The child's caretaker or medical consentor is permitted to release information about the child's HIV status only to:

(1) (No change.)

(2) individuals, and duly constituted, legally responsible corporate entities (such as schools and day care centers) that the Texas Department of Family and Protective [and Regulatory] Services (DFPS) [(TDPRS)] has authorized to receive the information as specified in subsection (b) of this section.

(b) Before releasing confidential information about a child's HIV status to an individual or corporate entity, DFPS [TDPRS] must:

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

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

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

TRD-200704980

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 438-3437



## SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

### DIVISION 6. HEALTH COVERAGE BENEFIT (HCB) STIPEND

#### 40 TAC §§700.890 - 700.894

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§700.890, 700.891, 700.892, 700.893, and 700.894, concerning the Health Coverage Benefit (HCB) Stipend, in its Child Protective Services chapter. The new sections implement the HCB Stipend program, as required by House Bill 2702 of the 80th Legislative Session, Texas Family Code §162.304. The HCB Stipend program provides \$150 per month toward health care coverage for families who adopt a child in the managing conservatorship of DFPS and whose family income is less than 300% of the federal poverty level. Additionally, the child cannot be eligible for Medicaid under Chapter 32 of the Human Resources Code.

Section 700.890 describes the HCB stipend.

Section 700.891 lists the HCB stipend eligibility requirements.

Section 700.892 lists the documents that must be provided to establish eligibility for the HCB stipend.

Section 700.893 describes when the stipend is paid.

Section 700.894 clarifies that eligibility for the HCB stipend does not confer eligibility for the tuition exemption available under §54.211 of the Education Code.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed new sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the new sections. The effect on state government for the first five-year period that the sections will be in effect is estimated to cost \$196,869 in fiscal year 2008; \$509,400 in fiscal year 2009; \$859,650 in fiscal year 2010; \$1,227,450 in fiscal year 2011; and \$1,611,000 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 new sections are in effect the public benefit anticipated as a result of enforcing the sections will be that additional children will have access to health care coverage. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do 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 Susan Klickman at (512) 438-3302 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-382, 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 the Texas Family Code, §162.304.

§700.890. What is the Health Coverage Benefit (HCB) stipend?

The Health Coverage Benefit (HCB) is a monthly stipend of \$150 designed to assist families with limited financial resources who do not qualify for medical assistance under Human Resources Code, Chapter 32, to obtain health coverage for children adopted from DFPS.

§700.891. Who is eligible for the HCB stipend?

To qualify for the health coverage benefit, an adopted child must:

(1) Have been in the conservatorship of DFPS at the time of adoptive placement;

(2) Be the subject of a final order of adoption entered on or after September 1, 2007;

(3) Be under 18 years of age;

(4) Not be eligible for medical assistance under Chapter 32 of the Human Resources Code; and

(5) Be a member of an adoptive family with a household income less than 300% of the federal poverty level.

§700.892. What documents must an adoptive parent submit to DFPS to establish eligibility for the HCB stipend?

An adoptive parent must submit:

(1) A final adoption order;

(2) Proof of income, such as a W-2 form, verification of earnings statement from an employer, or other reliable source;

(3) Proof of denial of medical assistance benefits under Chapter 32 of the Human Resources Code; and

(4) Proof that the child in question currently has health coverage benefits paid for by the adoptive parent, and the amount of the monthly premium.

§700.893. When is the HCB stipend paid?

(a) Upon receipt of all necessary documents to prove eligibility under §700.892 of this title (relating to What documents must an adoptive parent submit to DFPS to establish eligibility for the HCB stipend?), DFPS will issue a letter confirming initial HCB eligibility. The monthly HCB stipend is payable beginning the first month after the HCB eligibility date.

(b) Continuing eligibility for the monthly HCB stipend requires submission of proof of a child's continued health care coverage at least every 12 months after the initial HCB eligibility date, as required in paragraph (4) of §700.892 of this title.

(c) Failure to submit documentation as required in subsection (b) of this section within 60 days of the date will result in termination of payments. After that date, benefits can be restored on receipt of the required documentation, but no retroactive benefits will be paid.

§700.894. Can a child who receives the HCB stipend qualify for the tuition exemption available under the Education Code, §54.211?

No. The HCB stipend is not "adoption assistance" and eligibility for this benefit does not confer eligibility for the tuition exemption available under Education Code, §54.211.

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

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

TRD-200704979

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 438-3437



## SUBCHAPTER R. STRENGTHENING FAMILIES THROUGH ENHANCED IN-HOME SUPPORT PROGRAM

### 40 TAC §§700.1801 - 700.1805

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§700.1801, 700.1802, 700.1803, 700.1804,

and 700.1805, concerning strengthening families through enhanced in-home support program, in its Child Protective Services chapter. The rules are proposed in new Subchapter R, Strengthening Families Through Enhanced In-Home Support Program. Senate Bill 758, 80th Legislature, requires DFPS to implement an enhanced in-home support program that diverts children from foster care or shortens their stay in substitute care. The Strengthening Families Through Enhanced In-Home Support program will assist certain low-income families and children in child neglect cases in which poverty is believed to be a significant underlying cause of the neglect and in which the enhancement of in-home support appears likely to prevent removal of the child from the home or to speed reunification of the child with the family.

Section 700.1801 provides an overview of the Strengthening Families Through Enhanced In-Home Support program.

Section 700.1802 describes generally what two types of benefits are available: (1) Family Enhancement through monetary assistance; and (2) Family Empowerment through purchasing goods and services.

Section 700.1803 describes the monetary limits and restrictions for the Family Enhancement benefits. The family determines how to make the best use of these benefits, subject to certain legal limitations.

Section 700.1804 describes the monetary limits and restrictions for the Family Empowerment benefits. The family determines how to make the best use of these benefits, subject to certain legal limitations.

Section 700.1805 describes the eligibility requirements for the program.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed new sections will be in effect there is estimated to be a net cost savings for state government as a result of enforcing or administering the sections. The cost of the monetary assistance and provision of goods and services is \$4,426,500 for fiscal year 2008 and \$4,823,000 for each subsequent fiscal year. The anticipated cost savings to foster care attributable to fewer children entering the foster care system and to children leaving foster care sooner to be reunited with their family is \$4,815,147 for fiscal year 2008 and \$5,651,767 for each subsequent fiscal year. The resulting net cost savings to the state for each of the first five fiscal years is as follows: fiscal year 2008 \$388,647; fiscal years 2009 through 2012 \$828,767 each year.

Ms. Brown also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be that children will remain with their families or will return to their families more quickly. There will be no effect on local government or on large, small, or micro-businesses because the proposed new sections do not impose new requirements and do 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 new 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 Stacy Lake at (512) 438-3392 in DFPS's Child Protective Services Division. Electronic comments may be submitted to [Marianne.Mcdonald@dfps.state.tx.us](mailto:Marianne.Mcdonald@dfps.state.tx.us). Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-383, 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 Texas Family Code, §264.2011.

§700.1801. What is the Strengthening Families Through Enhanced In-Home Support Program?

(a) The Strengthening Families Through Enhanced In-Home Support Program is designed to mitigate child neglect, which is exacerbated by poverty, by providing support and benefits to affected families.

(b) In accordance with this subchapter, the Department of Family and Protective Services (DFPS) may assist families receiving Family Based Safety Services or Family Reunification Services.

(c) Any benefits provided under the program are subject to state and federal law and limitations imposed by DFPS in accordance with this chapter or by policy.

§700.1802. What benefits are available?

(a) Subject to the availability of funds, the Department of Family and Protective Services (DFPS) may provide eligible families with:

(1) Family Enhancement benefits, which consist of monetary assistance; and

(2) Family Empowerment benefits, which include purchased goods and services.

(b) Maximum limits for benefits under this program set forth in §700.1803 of this title (relating to What type of Family Enhancement monetary assistance may be provided?) and §700.1804 of this title (relating to What goods and services may be provided to support Family Empowerment?) apply to each eligible family, regardless of the number of DFPS interventions.

§700.1803. What type of Family Enhancement monetary assistance may be provided?

(a) The Department of Family and Protective Services (DFPS) may provide a maximum of \$250 of Family Enhancement monetary assistance to an eligible family.

(b) Subject to restrictions set forth in subsection (c) of this section and DFPS approval, the decision of how to use Family Enhancement funds is made by the family, at a meeting convened by DFPS.

(c) Monetary assistance provided under this program must be used to accomplish one or more objectives related to promoting family stability specifically identified in the family service plan.

§700.1804. What goods and services may be provided to support Family Empowerment?

(a) The Department of Family and Protective Services (DFPS) may provide a maximum of \$3,000 in Family Empowerment purchased goods and services to an eligible family.

(b) Subject to restrictions set forth in subsection (c) of this section and DFPS approval, the decision of what type of goods and services would best meet the family's needs is made by the family, at a meeting convened by the Department of Family and Protective Services.

(c) Goods and services provided under this program must be used to accomplish one or more objective related to promoting family stability specifically identified in the family service plan.

§700.1805. What are the eligibility requirements?

(a) To be eligible to receive benefits under the program, a family must:

(1) be recommended by Department of Family and Protective Services (DFPS) staff to receive Family Based Safety Services or Family Reunification Services and the family must agree to the services;

(2) have the child living in the home or have a family service plan that recommends the child be returned to the home within 180 days;

(3) have a household income at or below 200% of the federal poverty guidelines;

(4) be the subject of a DFPS investigation in which it is determined that neglect is a primary problem for the family;

(5) be a parent by blood, marriage, or adoption or a managing conservator of the child who is the victim of or at risk of neglect;

(6) have an identified problem in the home environment or family that contributed to neglect and can be remedied or mitigated by benefits available under this program; and

(7) have a member that meets applicable citizenship and immigration status requirements.

(b) DFPS may specify in policy procedures for provision of benefits under this program.

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 438-3437



## CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.21, 745.37, 745.115, 745.129, 745.243, 745.301, 745.321, 745.341, 745.343, 745.435, 745.631, 745.8407, 745.9061, 745.9063, 745.9065, 745.9069, 745.9071, 745.9073, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9091, 745.9097,

and 745.9100; new §§745.429, 745.439, 745.461, 745.463, 745.465, 745.467, 745.521, 745.523, 745.9060, 745.9067, 745.9068, 745.9070, 745.9090, 745.9092, 745.9093, 745.9094, 745.9095, and 745.9096; and the repeal of §§745.9067, 745.9093, 745.9095, and 745.9099, in its Licensing chapter. The purpose of the amendments, new sections, and repeals as proposed is to update the rules to reflect changes in the 80th Legislative Session. Proposed changes include: (1) conforming the social study rules with the new legislation, including the minimum qualifications to conduct social studies; (2) investigation of serious incident reports that pertains to a child under the age of six; (3) prohibits a person conducting an adoption home study from considering military membership as a negative factor in the adoption home study; (4) the issuance of a new type of permit to operate an employer-based day-care facility; and (5) exemptions from regulation for a food distribution program.

Section 745.21 adds employer-based child care to Licensing's definitions. Employer-based child care is excluded as a child-care facility, but included as an operation, in the rule. Its permit is called a compliance certificate.

Section 745.37 adds a description of an employer-based child care operation.

Section 745.129 adds an exemption for a food distribution program.

Section 745.243 adds a list of the materials required to apply for a permit to operate an employer-based child care.

Section 745.301 adds a 10-day time frame for Licensing staff to review and accept an application for a permit to operate an employer-based child care, or to return it because it is incomplete.

Section 745.321 adds that the decision to issue or deny a permit to an employer-based child care must be made no later than 30 days after we accept the application.

Section 745.341 adds employer-based child care to the list of those operations that receive a non-expiring permit.

Section 745.343 adds a reference to Division 10 in Subchapter D of Chapter 745 of this title (relating to Relocation of Operation) in order to include information about both a change in the ownership of an operation and a relocation of the operation.

New §745.429 provides direction for an employer-based child care that changes location, in order to establish a business process for this type of occurrence.

Section 745.435 reflects that a change in location for a child-placing agency (CPA) no longer automatically revokes the permit. A CPA that relocates will be processed as an amendment to the permit. The revisions include a time frame for a CPA to notify Licensing of its plan to relocate its operation.

New §745.439 provides direction for an employer-based operation that changes ownership, in order to establish a business process for this type of occurrence.

New §745.461 establishes parameters for a parent, with a child in care, to be in or out of the building where the employer-based child care is located.

New §745.463 establishes the qualifications and training of a caregiver at an employer-based child care.

New §745.465 requires an employer-based child care to report serious incidents to Licensing.

New §745.467 requires the permit holder to inform the employees in an employer-based child care of the duty to report suspected abuse, neglect, or exploitation.

New §745.521 establishes the Licensing fees required for an employer-based child care.

New §745.523 establishes the requirements for background checks for an employer-based child care.

Section 745.631 requires that a licensed center must complete background checks before issuance of a permit.

Section 745.8407 adds: (1) requirements for Licensing staff to investigate an agency foster home and (2) that an inspection will be conducted at an employer-based child care prior to issuance of a permit and as part of an investigation.

New §745.9060 defines a "social study." This term includes pre-adoptive social studies and post-placement adoptive social studies.

Section 745.9065 adds minimum qualifications to conduct an independent social study.

New §745.9067 instructs a person on how to assess situations, reach conclusions, and make recommendations when conducting social studies. Old §745.9067 is repealed because this rule is no longer pertinent.

New §745.9068 adds ethical requirements when conducting a social study, including communication with attorneys.

New §745.9070 prohibits a person conducting an adoption home study from considering military membership as a negative factor in the adoption home study.

Section 745.9073 changes the minimum age for interviewing a child living in the home from three years old to four years old. Other non-substantive language changes are also included.

New §745.9090 allows a combined pre-adoptive and post-placement adoptive study report when the child is already living in the prospective adoptive home.

New §§745.9092, 745.9093, 745.9094, 745.9095, and 745.9096 are proposed in new Division 4, Post-Placement Adoptive Social Study and Report, of Subchapter O, Independent Court-Ordered Social Studies. The proposed new rules repeat the requirements contained in new Division 3, Pre-Adoptive Social Studies, but they relate to post-placement adoptive social studies rather than pre-adoptive social studies. For clarity, rules in this subchapter are now separated by division, so some rules are repeated in both the division for pre-adoptive social studies and the division for post-placement adoptive social studies if the requirements of the rule apply to both types of social study. Old §§745.9093, 745.9095, and 745.9099 are repealed.

Minor, non-substantive changes are made to §§745.115, 745.9061, 745.9063, 745.9069, 745.9071, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9091, 745.9097, and 745.9100.

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 no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that, for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be that the health, safety, and welfare of children in day child-care and

residential child-care will be enhanced and the quality of these operations will improve. Some rules will provide more flexibility to operations that provide care for children needing emergency services and, therefore, provide solutions in case of emergency contingencies. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do 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 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 Indiana Villagarcia at (512) 438-3323 in DFPS's Child Care Licensing 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-370, 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*.

## SUBCHAPTER A. PRECEDENCE AND DEFINITIONS

### DIVISION 3. DEFINITIONS FOR LICENSING

#### 40 TAC §745.21

The amendment is 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 proposed amendment implements HRC, Chapter 42, Subchapter F.

§745.21. *What do the following words and terms mean when used in this chapter?*

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

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

(6) Child-care facility--An establishment subject to regulation by Licensing which provides assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the establishment operates for profit or charges for its services. A child-care facility includes the people, administration, governing body, activities on or off the premises, operations, buildings, grounds, equipment, furnishings, and materials. A child-care facility does not include child-placing agencies, listed family homes, employer-based child care, or maternity homes.

(7) - (26) (No change.)

(27) Operation--A person or entity offering a program that may be subject to Licensing's [Licensing] regulation. An operation

includes the building and grounds where the program is offered, any person involved in providing the program, and any equipment used in providing the program. An operation includes a child-care facility, child-placing agency, listed family home, employer-based child care, or maternity home.

(28) (No change.)

(29) Permit--A license, certification, registration, listing, compliance certificate, or any other written authorization granted by Licensing to operate a child-care facility, child-placing agency, listed family home, employer-based child care, or maternity home. This also includes an [a child-care] administrator's license.

(30) - (32) (No change.)

(33) Regulation--The enforcement of statutes and the development and enforcement of rules, including minimum standards. Regulation includes the licensing, certifying (both state run and employer-based operations), registering, and listing of an operation or the licensing of an [child-care] administrator.

(34) - (37) (No change.)

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



## SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

#### 40 TAC §745.37

The amendment is 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 proposed amendment implements HRC, Chapter 42, Subchapter F.

§745.37. *What specific types of operations does Licensing regulate?*

The charts in paragraphs (1), (2), and (3) of this section list the types of operations for child day care and residential child care that we regulate. Maternity homes, child-placing agencies, and foster homes verified by a child-placing agency are included in the residential child-care chart.

(1) (No change.)

(2) Types of Child Day-Care Operations on and after September 1, 2003.

Figure: 40 TAC §745.37(2)

(3) (No change.)

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 438-3437



### SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION DIVISION 2. EXEMPTIONS FROM REGULATION

#### 40 TAC §745.115, §745.129

The amendments 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 proposed amendments implement HRC, §42.041(b).

*§745.115. What programs regulated by other governmental entities are exempt from Licensing regulation?*

The following programs and facilities are exempt from our regulation: Figure: 40 TAC §745.115

*§745.129. What miscellaneous programs are exempt from Licensing regulation?*

The following miscellaneous programs are exempt from our regulation: Figure: 40 TAC §745.129

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



### SUBCHAPTER D. APPLICATION PROCESS DIVISION 3. SUBMITTING THE APPLICATION MATERIALS

#### 40 TAC §745.243

The amendment is 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 amendment implements HRC, Chapter 42, Subchapter F.

*§745.243. What does a completed application for a permit include?*

Application forms vary according to the type of permit. We will provide you with the required forms. Contact your local Licensing office for additional information. The following table outlines the requirements for a completed application:

Figure: 40 TAC §745.243

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



### DIVISION 5. ACCEPTING OR RETURNING THE APPLICATION

#### 40 TAC §745.301

The amendment is 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 amendment implements HRC, Chapter 42, Subchapter F.

*§745.301. How long does Licensing have to review my application and let me know my application status?*

(a) For all types of permits other than employer-based child care, we [We] have 21 days after receiving your application for a permit

to review the paperwork. After the review, we will notify you in writing that your application is either:

(1) Complete and accepted for processing; or

(2) Incomplete, and/or the materials submitted do not show compliance with relevant statutes, rules, and minimum standards. The notification letter will explain what is needed to complete the application and/or why your materials do not show compliance.

(b) For an employer-based child-care permit, we have 10 days after receiving your application for a permit to review the paperwork. After the review, we will notify you in writing that your application is either:

(1) Complete and accepted for processing; or

(2) Incomplete, and/or the materials submitted do not show compliance with relevant statutes or rules. The notification letter will explain what is needed to complete the application and/or why your materials do not show compliance.

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

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## DIVISION 6. REVIEWING THE APPLICATION FOR COMPLIANCE WITH MINIMUM STANDARDS, RULES, AND STATUTES

### 40 TAC §745.321

The amendment is 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 amendment implements HRC, Chapter 42, Subchapter F.

*§745.321. What will Licensing do after accepting my application?*

After we accept your application, our process of deciding to issue or deny varies depending on the type of permit you requested. For example, we must conduct an on-site inspection before issuing a compliance certificate, registration, or license to determine compliance with licensing minimum standards, rules, and/or [and] statutes. However, unless you are applying for an employer-based child-care permit [regardless of the type of permit you have requested], we will decide to issue or deny the permit no later than two months after we accept your application. For an employer-based child-care permit, we will decide to issue

or deny the permit no later than 30 days after we accept your application.

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## DIVISION 7. THE DECISION TO ISSUE OR DENY A PERMIT

### 40 TAC §745.341, §745.343

The amendments 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 amendments implement HRC, Chapter 42, Subchapter F and §42.054.

*§745.341. What type of permit will Licensing issue me?*

(a) We issue a non-expiring permit for listed family homes, [and] registered child-care homes, employer-based child care, and certified operations [a non-expiring permit].

(b) We issue either an initial permit (time-limited) or a non-expiring permit to all licensed operations [either an initial permit (time-limited) or a non-expiring permit].

*§745.343. What is the difference between an initial and non-expiring permit?*

An initial permit is a time-limited permit allowing you to operate pending the issuance of a non-expiring permit. A non-expiring permit is effective as long as:

(1) (No change.)

(2) You remain at the same location and under the same ownership, with the exception of child-placing agencies and registered and listed homes, who can move locations without applying for a permit (See Division 10, Subchapter D of Chapter 745 of this title (relating to Relocation of Operation)) [(See §745.437 of this title (relating to What is a change in the ownership of an operation?))];

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

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

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Gerry Williams

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## DIVISION 10. RELOCATION OF OPERATION

### 40 TAC §§745.429, 745.435, 745.439

The new sections and amendment 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 and amendment implement HRC, §42.048.

§745.429. What must I do if I relocate my operation after I receive my compliance certificate?

(a) A change in location automatically revokes your certificate.

(b) If you are going to relocate your operation for any reason, you must notify us as early as possible before the move to voluntarily relinquish your permit. You may reapply for a permit to operate at your new location. See Division 3 of this subchapter (relating to Submitting the Application Materials).

(c) If you fail to notify us before you relocate, we may deny you a permit for the new location.

§745.435. What must I do if I relocate my operation after I receive my license or certification?

(a) A change in location automatically revokes your permit unless you are licensed or certified to operate a child-placing agency.

(b) For all operations other than child-placing agencies, if [H] you are going to relocate your operation for any reason, you must notify us as early as possible before the move to voluntarily relinquish your permit. You may reapply for a permit to operate at your new location. See Division 3 of this subchapter (relating to Submitting the Application Materials).

(c) (No change.)

(d) If you are going to relocate your child-placing agency, you must notify us of the move no later than 15 days prior to the move. You must complete a form provided by us showing your new address. We will inspect your new location. If you comply with standards, we will amend the permit to reflect the new address. The issuance date that is on your original permit will remain in effect. There is no additional fee for your change in location.

§745.439. What must I do if the ownership of my employer-based child care changes?

(a) A change in your ownership automatically revokes your permit.

(b) If you are going to change ownership, you must notify us as early as possible before the change. See Division 3 of this subchapter (relating to Submitting the Application Materials).

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

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## DIVISION 11. EMPLOYER-BASED CHILD CARE

### 40 TAC §§745.461, 745.463, 745.465, 745.467

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 HRC, Chapter 42, Subchapter F, and §42.155.

§745.461. Does a parent have to be at the work site when their child is in care?

A parent must:

(1) Work within the same building in which the child care is located;

(2) Routinely be present at the work site for the majority of the time the child is in care;

(3) Be physically accessible to the child, although a parent may be away from the building for a limited period for lunch, a business meeting, doctor appointment, or to attend training; and

(4) A parent may not be away from the building for more than four hours in a day or for more than eight hours in a week.

§745.463. What are the qualifications to be a caregiver at an employer-based child care?

A caregiver must:

(1) Be at least 18 years of age;

(2) Have a high school diploma or its equivalent, and upon request verify completion of any high school equivalency program with original documentation to us. A high school equivalent is a program recognized by the Texas Education Agency (TEA) or other public educational entity outside of Texas, which offers training similar to reading, writing, and problem-solving skills taught at the high school level, such as a General Educational Development (GED) certificate;



(3) Meet the requirements in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(4) Before being counted in the caregiver-to-child ratio, complete an orientation for caregivers to include at least the following:

(A) A presentation of your operational policies including discipline, guidance, and the release of children;

(B) An overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these;

(C) The procedures to follow in handling emergencies, which may include, but are not limited to, fire, explosion, tornado, toxic fumes, volatile persons, and severe injury or illness of a child or adult; and

(D) The use and location of fire extinguishers and first-aid equipment;

(5) Before being counted in the caregiver-to-child ratio, complete eight hours of pre-service training, as specified in §746.1305 of this title (relating to What must be covered in the eight clock hours of pre-service training for caregivers?), unless exempted as specified in §746.1307 of this title (relating to Are any caregivers exempt from the pre-service training?);

(6) Obtain at least 15 clock hours of training each year as specified in §746.1309 of this title (relating to How many clock hours of annual training must be obtained by caregivers?), §746.1313 of this title (relating to When must annual training for my caregivers and director be obtained?), §746.1317 of this title (relating to Must the training for my caregivers and the director meet certain criteria?), §746.1323 of this title (relating to If I hire a caregiver or a director that received training at another child-care center, may these hours count towards the annual training requirement at my center?), §746.1325 of this title (relating to What is self-instructional and instructor-led training?), and §746.1327 of this title (relating to How many annual training clock hours may caregivers obtain from self-instructional materials?);

(7) Obtain first-aid and CPR training as specified in §746.1315 of this title (relating to Who must have first-aid and CPR training?); and

(8) Have a Child Development Associate, a Certified Child-Care Professional credential, or a day-care administrator's credential issued by a professional organization or educational institution and approved by Licensing based on criteria specified in Subchapter P of Chapter 745 of this title (relating to Day Care Administrator's Credential Program). These credentials require documentation and periodic renewal to remain qualified.

§745.465. When must my employer-based child care report a serious incident to Licensing?

(a) You must report the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting must be within the specified time frames: Figure: 40 TAC §745.465(a)

(b) You must report the following types of serious incidents involving your operation or an employee to the following entities within the specified time frame: Figure: 40 TAC §745.465(b)

§745.467. What are my responsibilities regarding the report of abuse, neglect, or exploitation?

In addition to reporting serious incidents, you must inform your employees of the duty to report suspected abuse, neglect, or exploitation as required by the Texas Family Code, §261.401.

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

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## SUBCHAPTER E. FEES

### 40 TAC §745.521, §745.523

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 HRC §42.054.

§745.521. What fees must I pay to apply for and to maintain a certificate of compliance?

The following chart contains fees required for your employer-based child care, when the fees are due, and the consequences for failure to pay on time:

Figure: 40 TAC §745.521

§745.523. Who must I submit background checks on, and when must they be submitted?

You must submit background checks on the persons, as applicable, and within the timeframes as required for a licensed child-care center in Subchapter F of this chapter (relating to Background Checks).

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

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## SUBCHAPTER F. BACKGROUND CHECKS DIVISION 2. REQUESTING BACKGROUND CHECKS

#### 40 TAC §745.631

The amendment is 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 amendment implements HRC, §42.056.

*§745.631. Must Licensing complete the background check(s) before issuing my permit?*

If you are applying to operate a licensed child-care home or center, a registered child-care home, a listed family home, an independent foster home or a foster group home, we must receive the results from the background checks before issuing you a permit. For all other permits, we may issue a permit to an applicant before we receive the results of the background checks.

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

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### SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS

#### DIVISION 1. OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

##### 40 TAC §745.8407

The amendment is 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 amendment implements HRC, Chapter 42, Subchapter F, and §42.044.

*§745.8407. When will Licensing inspect and/or investigate an operation?*

Please refer to the following chart:

Figure: 40 TAC §745.8407

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### SUBCHAPTER O. INDEPENDENT PRE-ADOPTIVE HOME SCREENING AND INDEPENDENT POST-PLACEMENT ADOPTIVE REPORT

#### 40 TAC §§745.9067, 745.9093, 745.9095, 745.9099

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

The repeals 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 repeals implement the Family Code, §107.0513(c), (e), and (f).

*§745.9067. May someone who does not meet minimum qualifications help me conduct a pre-adoptive home screening or a post-placement adoptive report?*

*§745.9093. What are the requirements for registration regarding a post-placement adoptive report?*

*§745.9095. What issues must an interview for a post-placement adoptive report address?*

*§745.9099. What ethical requirements must I follow when conducting a pre-adoptive home screening, or a post-placement adoptive report?*

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

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SUBCHAPTER O. INDEPENDENT  
COURT-ORDERED SOCIAL STUDIES  
DIVISION 1. DEFINITIONS

**40 TAC §§745.9060, 745.9061, 745.9063**

The new section and amendments 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 proposed new section and amendments implement the Family Code, §107.050.

§745.9060. What is a social study?

(a) A social study is an evaluative process through which information and recommendations regarding adoption of a child, conservatorship of a child, or possession of or access to a child may be made to a court, the parties, and the parties' attorneys.

(b) A social study must contain documentation of the following elements:

(1) A personal interview with each party to the suit;

(2) An interview, conducted in a developmentally appropriate manner, of each child at issue in the suit who is at least four years old;

(3) Observation of each child at issue in the suit, regardless of the age of the child;

(4) Information obtained from relevant collateral sources;

(5) Evaluation of the home environment of each party seeking conservatorship of, possession of, or access to the child at issue in the suit, unless the condition of the home environment is identified as not being in dispute in the court order requiring the social study;

(6) For each individual residing in a home subject to evaluation, consideration of any criminal history information and any contact with the Department of Family and Protective Services or a law enforcement agency regarding abuse or neglect;

(7) Assessment of the relationship between each child at issue in the suit and each party seeking conservatorship of, possession of, or access to the child;

(8) The name, license number, and basis for qualification under §745.9065 of this title (relating to What qualifications must I meet to conduct a social study?) of each person who conducted any portion of the social study; and

(9) Telephone numbers for entities where it is appropriate for the subject of the social study to file complaints about how the social

study was conducted (see §745.9100 of this title (relating to Whom must I contact with a complaint about how an independent social study was conducted?)).

(c) A social study may also contain the following elements:

(1) Balanced interviews and observation of each child at issue in the suit, so a child who is interviewed or observed while in the care of one party to the suit is also interviewed or observed while in the care of each other party to the suit;

(2) An interview of each individual residing in a home subject to the evaluation; and

(3) Evaluation of the home environment of each party seeking conservatorship of, possession of, or access to the child at issue in the suit, regardless of whether the home environment is in dispute.

(d) The person(s) conducting a social study may not offer an opinion regarding conservatorship of, possession of, or access to the child at issue in a suit unless each element of a social study under subsection (b) of this section has been completed. A social study evaluator shall identify in the report any additional element of a social study under subsection (c) of this section that was not completed and shall explain the reasons that the element was not completed.

(e) A pre-adoptive social study or post-placement adoptive social study must also comply with all other relevant rules of this subchapter.

§745.9061. What is a pre-adoptive social study [home screening]?

A pre-adoptive social study [home screening] is conducted for a child who is being adopted. The social study [screening] contains documentation of the following:

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

§745.9063. What is a post-placement adoptive social study and report?

A post-placement adoptive social study and report is required after the placement of the child. It is a written summary of all of the information and assessments regarding the child and the family, including the pre-adoptive social study [home screening], and a written evaluation regarding the:

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

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DIVISION 2. MINIMUM QUALIFICATIONS  
AND OTHER REQUIREMENTS

**40 TAC §§745.9065, 745.9067, 745.9068**

The amendment and 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 proposed amendment and new sections implement the Family Code, §107.0511.

*§745.9065. What qualifications must I meet to conduct a social study [evaluate and approve a finalized independent pre-adoptive home screening or independent post-placement adoptive report]?*

(a) Each person conducting [evaluating and/or approving] any portion of a social study [an independent pre-adoptive home screening or post-placement adoptive report] must have qualifications that meet one of the following options:  
[Figure: 40 TAC §745.9065]

(1) Bachelor's degree from an accredited college or university in a human services field and a license to practice in Texas as a social worker, professional counselor, marriage and family therapist, or psychologist and:

(A) Have two years of full-time experience or equivalent part-time experience under professional supervision during which the individual performed functions involving the evaluation of physical, intellectual, social, and psychological functioning and needs and the potential of the social and physical environment, both present and prospective, to meet those needs; and

(B) Have participated in the performance of at least 10 court-ordered social studies under the supervision of an individual qualified under this section;

(2) Meet the requirements of paragraph (1)(A) of this subsection and be practicing under the direct supervision of an individual qualified under this section in order to complete at least 10 court-ordered social studies under supervision; or

(3) Be employed by a domestic relations office, provided that the individual conducts social studies relating only to families ordered by a court to participate in social studies conducted by the office.

(b) In subsection (a) of this section, the following terms are defined as follows:

(1) "Full-time experience" means a period during which an individual works at least 30 hours per week.

(2) "Human services field of study" means a field of study designed to prepare an individual in the disciplined application of counseling, family therapy, psychology, or social work values, principles, and methods.

(c) In addition to the qualifications in subsection (a) of this section, an individual must complete at least eight hours of family violence dynamics training provided by a family violence service provider to be qualified to conduct a social study.

(d) The minimum qualifications prescribed in subsections (a) and (c) of this section do not apply to an individual conducting a social study:

(1) In connection with a suit pending before a court located in a county with a population of less than 500,000;

(2) In connection with an adoption governed by rules adopted under §107.0519(a) of the Texas Family Code;

(3) As an employee or other authorized representative of a licensed child-placing agency;

(4) As an employee or other authorized representative of the Department of Family and Protective Services; or

(5) If no individuals meeting these qualifications are available in a county, and the court determines the individual to be otherwise qualified to conduct the study.

(e) Persons conducting a pre-adoptive home screening or post-placement adoptive report as an employee or other authorized representative of a licensed child-placing agency must comply with all requirements of Chapter 749 of this title (relating to Child Placing Agencies).

*§745.9067. How does a person conducting a social study assess situations, reach conclusions, and make recommendations for the social study?*

(a) To the extent possible, a person conducting a social study shall verify each statement of fact pertinent to a social study and shall note the sources of verification and information in the study.

(b) To the extent possible, a person conducting a social study shall follow evidence-based practice methods and make use of current best evidence in making assessments and recommendations.

(c) A person conducting a social study shall state the basis for his conclusions or recommendations in the study. A person conducting a social study who has evaluated only one side of a disputed case shall refrain from making a recommendation regarding conservatorship of a child or possession of or access to a child, but may state whether the party evaluated appears to be suitable for conservatorship, possession, or access.

*§745.9068. What ethical requirements must I follow when conducting a social study?*

(a) A person's actions while conducting a social study must conform with the person's professional standard of care applicable to the person's licensure and any additional administrative rules, ethical standards, or guidelines adopted by the state agency that licenses the person, unless otherwise directed by a court or prescribed by a rule in this subchapter.

(b) A person conducting a social study shall disclose to each attorney of record any communication regarding a substantive issue between himself and an attorney of record representing a party in a disputed suit. This subsection does not apply to a communication between a person conducting a social study and an attorney ad litem or amicus attorney.

(c) A person conducting a social study must not have a conflict of interest with any party in a disputed suit. A conflict of interest includes any previous knowledge of any party that was not exclusively obtained through a social study. If a conflict exists, then you must:

(1) Decline to conduct the social study for the suit; or

(2) Disclose to the court any issue or concern relating to such a conflict before accepting an appointment.

(d) A person conducting a social study who has previously conducted a social study for a suit may conduct all subsequent evaluations in the suit, unless the court finds that the person has a conflict of interest.

(e) You must report to us any foster or adoptive placement that appears to have been made by someone other than the child's parents or a child-placing agency.

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### DIVISION 3. PRE-ADOPTIVE SOCIAL STUDIES

#### 40 TAC §§745.9069 - 745.9071, 745.9073, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9090

The amendments and 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 proposed amendments and new sections implement the Family Code, Chapter 107.

*§745.9069. What information must be included in the pre-adoptive social study [home screening]?*

You must obtain, document, and assess the following information about a prospective adoptive home:  
Figure: 40 TAC §745.9069

*§745.9070. May I consider a prospective adoptive parent's membership in a military organization as a factor in recommending an adoptive placement?*

Section 162.0025 of the Texas Family Code prohibits any person conducting a pre-adoptive social study from considering membership in the armed forces of the United States, Texas National Guard, National Guard in another state, or in a reserve component of the armed forces of the United States as a negative factor in determining whether the adoptive parent would be a suitable parent or whether an adoption is in the best interests of the child.

*§745.9071. How do I obtain a criminal history or central registry background check for an independent pre-adoptive social study [home screening or independent post-placement adoptive report]?*

(a) (No change.)

(b) You obtain a central registry background check from us by contacting [; contact] our local branch office.

*§745.9073. Whom must I interview when conducting a pre-adoptive social study [home screening or a post-placement adoptive report]?*

Interviews for a pre-adoptive social study [an adoptive home screening] must include at least one:

(1) (No change.)

(2) Individual interview with each child four [three] years or older living in the home either full or part time;

(3) - (6) (No change.)

*§745.9075. What must I document regarding interviews that I conduct for a pre-adoptive social study [home screening or a post-placement adoptive report]?*

You must document all interviews and attempts to complete interviews. The documentation must be part of the adoptive home record and include:

(1) (No change.)

(2) The dates of each interview [the interviews];

(3) Who was present at each interview [the interviews] and their relationship to the adoptive applicants; and

(4) A summary of each interview [the interviews].

*§745.9077. What are the requirements for visiting the home during a pre-adoptive social study [home screening or a post-placement adoptive report]?*

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

*§745.9079. What are the additional requirements for a pre-adoptive social study [home screening] if adoptive applicants previously adopted a child from a child-placing agency or were previously foster parents for a child-placing agency?*

(a) (No change.)

(b) If provided, you must evaluate the information as part of your social study [screening] and placement decisions regarding the home. You must use the information to evaluate the family's ability to work with specific kinds of behaviors and backgrounds.

*§745.9081. Must the pre-adoptive social study [home screening] include information about birth parents?*

You must obtain the following information about the birth parents:

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

*§745.9083. How do I obtain information about the birth parents?*

If you are conducting an independent pre-adoptive social study [home screening], you must make a diligent effort to obtain the information from the birth parents unless their parental rights have been terminated. Document in the pre-adoptive social study [home screening] all your efforts to obtain the information. If appropriate, include reasons why you could not obtain the information.

*§745.9085. What happens if a child is not placed with the adoptive applicants within six months after the pre-adoptive social study [home screening] has been completed?*

For a child not placed with the adoptive applicants within six months after the completion of the adoptive social study [screening], it is recommended that an updated social study [screening] be completed within the 30-day period before a child is placed in the home. The court that is hearing the adoption suit should make the final decision on whether an update is required.

*§745.9087. Must I complete a pre-adoptive social study [home screening] update if the prospective adoptive parents plan to adopt another child?*

Yes. If prospective adoptive parents plan to adopt another child, either in addition to or instead of the child for whom the social study [screening] was done, you must complete a written pre-adoptive social study [home screening] update.

§745.9089. *What information must an update of the pre-adoptive social study [home screening] include?*

It must include:

(1) A review and any necessary updating of each category of information in the pre-adoptive social study [home screening] (See §745.9069 of this title (relating to What information must be included in the pre-adoptive social study [home screening]?)); and

(2) (No change.)

§745.9090. *Can the pre-adoptive social study and post-placement adoptive social study and report be combined?*

Yes. In a suit filed after the child is placed in the prospective adoptive home, the pre-adoptive social study and post-placement adoptive social study and report may be combined in a single study. However, the combined study must be completed after the child is placed in the home, and the combined study must meet the requirements of this subchapter for both studies.

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



## DIVISION 4. POST-PLACEMENT ADOPTIVE SOCIAL STUDY AND REPORT

### 40 TAC §§745.9091 - 745.9097

The amendments and 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 proposed amendments and new sections implement the Family Code, §107.052(b).

§745.9091. *When must I conduct a post-placement adoptive social study and report?*

You must conduct the interviews for a post-placement adoptive social study and report after the child has resided with the prospective adoptive parent or conservator for at least five months, unless otherwise directed by the court. However, you may start the post-placement adoptive social study and report, such as the gathering of written information, after the placement of the child.

§745.9092. *What issues must an interview for a post-placement adoptive social study and report address?*

Each interview must focus on the adjustment of the family and the child following the placement of the child. You must also address any items required by §745.9061 of this title (relating to What is a pre-adoptive social study?) and §745.9069 of this title (relating to What information must be included in the pre-adoptive social study?) that have not been adequately addressed.

§745.9093. *How do I obtain a criminal history or central registry background check for an independent post-placement adoptive social study and report?*

(a) You obtain a criminal history check from the Texas Department of Public Safety and, if appropriate, the Federal Bureau of Investigation (FBI).

(b) You obtain a central registry background check from us by contacting our local branch office.

§745.9094. *Whom must I interview when conducting a post-placement adoptive social study and report?*

Interviews for a post-placement adoptive social study and report must include at least one:

(1) Individual interview with each prospective adoptive parent;

(2) Individual interview with each child four years or older living full- or part-time in the home;

(3) Individual interview with any other person living full- or part-time in the home;

(4) Joint interview with the adoptive applicants;

(5) Family group interview with family members living in the home; and

(6) Interview, by telephone, in person or by letter, with any minor child 12 years old or older or adult child of the adoptive applicants not living in the home. If you cannot reach an adult child to interview, you must document your diligent efforts.

§745.9095. *What must I document regarding interviews that I conduct for a post-placement adoptive social study and report?*

You must document all interviews and attempts to complete interviews. The documentation must be part of the adoptive home record and include:

(1) The dates and methods used to contact the required persons;

(2) The date of each interview;

(3) Who was present at each interview and their relationship to the adoptive applicants; and

(4) A summary of each interview.

§745.9096. *What are the requirements for visiting the home during a post-placement adoptive social study and report?*

(a) You must visit the home at least once.

(b) All members of the household must be present for the visit, unless the foster care family that is providing foster care to the child prior to the consummation of the adoption is the family that is adopting the child.

(c) You must document in the record the date, persons present, their relationship to the prospective adoptive family, and observations made during the visit.

§745.9097. *What information must the post-placement adoptive social study and report include?*

(a) It must include the following documented information:

(1) (No change.)

(2) A summary of all assessments, interviews, and available information about the prospective adoptive parents including:

(A) The pre-adoptive social study [home screening] (see §745.9061 of this title (relating to What is a pre-adoptive social study [home screening]?) and §745.9069 of this title (relating to What information must be included in the pre-adoptive social study [home screening]?));

(B) The birth parents' expectations for adoptive placement and further involvement (see §745.9081 of this title (relating to Must the pre-adoptive social study [home screening] include information about birth parents?));

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

(E) Interviews of persons specified in §745.9073 of this title (relating to Whom must I interview when conducting a pre-adoptive social study [home screening or a post-placement adoptive report]?) and §745.9094 of this title (relating to Whom must I interview when conducting a post-placement adoptive social study and report?); and

(F) Visits [A visit] to the home (see §745.9077 of this title (relating to What are the requirements for visiting the home during a pre-adoptive social study [home screening or a post-placement adoptive report]?) and §745.9096 of this title (relating to What are the requirements for visiting the home during a post-placement adoptive social study and report?));

(3) - (7) (No change.)

(b) All persons involved in the preparation and evaluation of the social study must sign the report.

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

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Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Earliest possible date of adoption: December 2, 2007  
For further information, please call: (512) 438-3437



## DIVISION 5. COMPLAINTS

### 40 TAC §745.9100

The amendment is 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 proposed amendment implements the Family Code, §107.0519(f) and §107.052(b).

*§745.9100. Whom must I contact with a complaint about how an independent social study [pre-adoptive home screening or independent post-placement adoptive report] was conducted?*

You, or if applicable your attorney, must contact the court that ordered the social study [pre-adoptive home screening or post-placement adoptive report]. You may also contact the board that licenses the person who conducted the social study [home screening or adoptive report], and/or you may contact us. Before conducting the social study [pre-adoptive home screening or post-placement adoptive report], the person must give you telephone numbers for other entities where it is appropriate to file complaints, which must also be included in the social study [pre-adoptive home screening and post-placement adoptive report].

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

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Gerry Williams  
General Counsel  
Department of Family and Protective Services  
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## CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.201, 746.611, and 746.1311, concerning what are my responsibilities as the permit holder, must I have a health statement for children in my care, and how many clock hours of training must my child-care center director obtain each year, in its Minimum Standards for Child-Care Centers chapter. The purpose of the amendments is to ensure that child-care operations provide inclusive care to children with special needs. Enforcement of federal laws lies with the U.S. Department of Justice, Civil Rights Division.

Section 746.201 is revised to require permit holders to report any substantive Department of Justice (DOJ) complaints about Title III of the Americans with Disabilities Act to DFPS. Currently, there is not a requirement for permit holders to report DOJ Title III complaints to DFPS.

Section 746.611 is revised to delete the word "physically" from the description of a health statement. The current rule describes a health statement as a written statement from a health-care professional who has examined the child within the past year, indicating the child is "physically" able to take part in the child-care program.

Section 746.1311 is revised to include an additional topic, related to serving children with special care needs, to the annual training requirements for directors.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments will

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

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 to promote awareness of the Americans with Disabilities Act. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do 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 amendments 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 Indiana Villagarcia at (512) 438-3323 in DFPS's Child Care Licensing 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-371, 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*.

## SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

### DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

#### 40 TAC §746.201

The amendment is 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 amendment implements Human Resources Code §42.042. §746.201. *What are my responsibilities as the permit holder?*

You are responsible for the following:

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

(6) Maintaining liability insurance as required by the Human Resources Code, §42.049, if we license you to care for 13 or more children; ~~and~~

(7) Complying with the child-care licensing law found in Chapter 42 of the Human Resources Code, the applicable minimum standards, and other applicable rules in the Texas Administrative Code; and [-]

(8) Reporting any Department of Justice substantiated complaints related to Title III of the Americans with Disabilities Act, which applies to commercial public accommodations, to DFPS.

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

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## SUBCHAPTER C. RECORD KEEPING DIVISION 1. RECORDS OF CHILDREN

### 40 TAC §746.611

The amendment is 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 amendment implements Human Resources Code §42.042.

§746.611. *Must I have a health statement for children in my care?*

(a) A health statement is:

(1) A written statement, from a health-care professional who has examined the child within the past year, indicating the child is [physically] able to take part in the child-care program;

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

(b) (No change.)

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

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General Counsel

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## SUBCHAPTER D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT

### 40 TAC §746.1311



The amendment is 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 amendment implements Human Resources Code §42.042. §746.1311. *How many clock hours of training must my child-care center director obtain each year?*

(a) (No change.)

(b) At least six clock hours of the annual training must be in one or more of the following topics:

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

(3) Age-appropriate curriculum; ~~and~~

(4) Teacher-child interaction; and [-]

(5) Serving children with special care needs.

(c) - (g) (No change.)

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

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## SUBCHAPTER R. HEALTH PRACTICES DIVISION 1. ENVIRONMENTAL HEALTH

### 40 TAC §746.3427

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §746.3427, concerning must I use a licensed exterminator to treat my child-care center for insects, rodents, and other pests, in its Minimum Standards for Child-Care Centers chapter. The purpose of the amendment is to also reference the Texas Department of Agriculture, because the Texas Structural Pest Control Board has been transferred to the Texas Department of Agriculture, as required by House Bill 2458 of the 80th Legislature.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated

as a result of enforcing the section will be that the health, safety, and welfare of children day child-care will be enhanced and the quality of these operations will improve. 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 section.

HHSC 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 §2007.043, Government Code.

Questions about the content of the proposal may be directed to Indiana Villagarcia at (512) 438-3323 in DFPS's Child Care Licensing 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-370, 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 amendment is 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 amendment implements Chapter 1951 of the Occupations Code, and HRC §42.042(a).

§746.3427. *Must I use a licensed exterminator to treat my child-care center for insects, rodents, and other pests?*

You may treat your center for pests only if you are certified as a non-commercial applicator by the Structural Pest Control Board. Otherwise, you must use a pest control operator licensed by the Texas Structural Pest Control Board or the Texas Department of Agriculture to prevent, control, or eliminate pest infestations at your child-care center, including the use of over-the-counter products designed for controlling insects, rodents, and other pests. [Refer to the Structural Pest Control Act and related regulation for further information on pest control before treating your child-care center.]

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

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## CHAPTER 748. GENERAL RESIDENTIAL OPERATIONS AND RESIDENTIAL TREATMENT CENTERS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.103, 748.109, 748.1203, and 748.3019, concerning what are my operational responsibilities as the permit holder, may I exceed my operation capacity, what children may I admit, and must I use a licensed exterminator to treat my operation for insects, rodents, and other pests, in its General Residential Operations and Residential Treatment Centers chapter. The purpose of the amendments is to reflect changes in the 80th Legislative Session.

Sections 748.103, 748.109, and 748.1203 are revised to allow a residential facility providing emergency care services to go over its licensed capacity for 48 hours.

Section 748.3019 is revised to reference the Texas Department of Agriculture, because the Texas Structural Pest Control Board is transferred to the Texas Department of Agriculture, as required by House Bill 2458 of the 80th Legislature.

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 no fiscal implications for state or local government as a result of enforcing or administering the sections.

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 the health, safety, and welfare of children in residential child-care will be enhanced and the quality of these operations will improve. Some rules will provide more flexibility to operations that provide care for children needing emergency services, and therefore, provide solutions in case of emergency contingencies. 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 amendments 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 Indiana Villagarcia at (512) 438-3323 in DFPS's Child Care Licensing 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-370, 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*.

### SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

#### DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

##### 40 TAC §748.103, §748.109

The amendments 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 amendments implement HRC §42.042(a) and (r).

*§748.103. What are my operational responsibilities as the permit holder?*

(a) When you begin operating, you must:

(1) Designate a full-time child-care administrator who meets the minimum qualifications of §748.531 of this title (relating to What qualifications must a child-care administrator meet?);

(2) Operate according to the written policies and procedures adopted by the governing body;

(3) Maintain true, current, accurate, and complete records at your operation for us to review;

(4) Ensure that all required documentation is current, accurate, and complete;

(5) Allow us to inspect your operation during its hours of operation;

(6) Display your permit at the operation;

(7) Observe the conditions and restrictions of your permit, except as described in subsection (b) of this section;

(8) Not offer unrelated types of services that conflict or interfere with the best interests of a child in care, a caregiver's responsibilities, or operation space. If you offer more than one type of service, you must determine and document that no conflict exists;

(9) Maintain liability insurance as required by the Human Resources Code, §42.049;

(10) Comply with Chapters 42 and 43 of the Human Resources Code and the rules of this chapter, and all other applicable laws and rules of the Texas Administrative Code;

(11) Prepare the annual budget and controlling expenditures to ensure the needs of the children are met; and

(12) Ensure that no member of the governing body, member of the executive committee, member of management, or employee is listed as a sustained controlling person.

(b) If you are licensed to provide emergency care services, you may temporarily exceed your licensed capacity for not more than 48 hours to provide temporary care for a child needing emergency care services. You must notify Licensing within 24 hours of the child's placement that you have temporarily exceeded your licensed capacity.

*§748.109. May I exceed my operation capacity?*

No, the number of children in your care must not exceed the capacity stated on your permit, except as described in §748.103(b) of this title (relating to What are my operational responsibilities as the permit holder?). For the purpose of determining whether you exceed your capacity, the number of children in your care includes a caregiver's own children who are at the operation, if they share general living

space, bedroom, and/or bathroom space with children in care, and any children receiving respite child-care services at an operation providing emergency care services.

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

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General Counsel  
Department of Family and Protective Services  
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## SUBCHAPTER I. ADMISSION, SERVICE PLANNING, AND DISCHARGE DIVISION 1. ADMISSION

### 40 TAC §748.1203

The amendment is 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 amendment implements HRC §42.042(a) and (r).

§748.1203. *What children may I admit?*

(a) You may only admit children who meet your admission policy guidelines and whose needs you can meet. If you adopt a change in your admission policies that requires a change in the conditions of your permit, you must request an amendment to your permit with us. You can only accept:

(1) The maximum number of children specified on your permit, except as described in §748.103(b) of this title (relating to What are my operational responsibilities as the permit holder?);

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

(b) (No change.)

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

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## SUBCHAPTER O. SAFETY AND EMERGENCY PRACTICES DIVISION 1. SANITATION AND HEALTH PRACTICES

### 40 TAC §748.3019

The amendment is 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 amendment implements Occupations Code, Chapter 1951 and HRC §42.042(a).

§748.3019. *Must I use a licensed exterminator to treat my operation for insects, rodents, and other pests?*

(a) You may treat your operation for pests only if the Structural Pest Control Board or Texas Department of Agriculture has certified you as a noncommercial applicator.

(b) Otherwise, you must use a pest control operator licensed by the Texas Structural Pest Control Board or Texas Department of Agriculture to prevent, control, or eliminate pest infestations at your operation. [Refer to the Structural Pest Control Act and related regulation for further information on pest control before treating your operation.]

(c) (No change.)

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

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

TRD-200704956  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Earliest possible date of adoption: December 2, 2007  
For further information, please call: (512) 438-3437



## CHAPTER 749. CHILD-PLACING AGENCIES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.103, 749.2445, 749.2447, 749.2473, 749.2475, 749.2489, 749.2961, 749.2967; and new §749.3624, in its Child-Placing Agencies chapter. The purpose

of the amendments and new section is to update the rules to reflect changes in the 80th Legislative Session. Changes include: (1) eliminating DFPS's restrictions on foster parents possession of firearms, while adding rules on safety and proper storage of firearms and ammunition; (2) obtaining law enforcement family violence information before issuing a license or verifying a foster home; (3) not considering military membership when conducting an adoption home study; (4) a verified agency foster home transfer process, notifications on Licensing violations, and past citations; and (5) a change in the location of a child-placing agency no longer automatically revokes the permit.

Section 749.103 is revised to allow a child-placing agency to change location without having to apply for a new license. The rule is amended to include a requirement that the child-placing agency notify Licensing of a change in location prior to the move.

Section 749.2445 adds the requirement that the child-placing agency submit to Licensing any family violence information obtained on a prospective foster home, regardless of whether the child-placing agency decides to verify the home.

Section 749.2447 is revised to require a child-placing agency to obtain information from a potential foster home about family violence reports at the home to which a law enforcement agency has responded during the previous 12 months. The revision also requires the child-placing agency to follow up with the appropriate law enforcement agency if any incidents are disclosed.

Section 749.2473 is revised to increase the requirements related to a foster home that transfers from one child-placing agency to another. The agency seeking to verify the home must send a written request for transfer to the agency that currently verifies the home.

Section 749.2475 is revised to increase the requirements related to a foster home that transfers from one child-placing agency to another. The child-placing agency must request the following when verifying the transferring foster home: any corrective action plan(s), an annual development plan, or a description of any imposed or potential service limitations related to the foster home. The revision also adds the requirement that a child-placing agency release background information on a foster home to a second child-placing agency as soon as the first agency becomes aware of the foster home's intent to transfer to the second agency.

Section 749.2489 is revised to increase the information that a child-placing agency must report regarding closure of a foster home. This rule is amended to include the additionally required information, which is the reason for the closure and a contact person. The rule is also revised to add the requirement that child-placing agencies report to Licensing the denial of a foster home verification and the reason for the denial.

Section 749.2961 is revised to delete the paragraph that prohibits firearm possession if the foster home provides treatment services. Storage requirements are being added to this rule based on storage requirements already in effect in other states. Specifically, the following is being added: (1) locked storage must be made of unbreakable material; (2) locked storage with a glass front or enclosure must have guns secured with a locked cable or chain through the trigger guards; and (3) firearms which are inoperable and solely ornamental are exempt from storage requirements.

Section 749.2967 is revised to clarify that a caregiver can now transport a child with legal firearms that are not loaded and inaccessible to the child.

New §749.3624 is added to prohibit a person conducting an adoption home study from considering military membership as a negative factor in the home study.

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 no fiscal implications for state or local government as a result of enforcing or administering the sections.

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 the health, safety, and welfare of children in residential child-care will be enhanced and the quality of these operations will improve. Some rules will provide more flexibility to operations that provide care for children needing emergency services, and therefore, provide solutions in case of emergency contingencies. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do 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 amendments and new section 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 Indiana Villagarcia at (512) 438-3323 in DFPS's Child Care Licensing 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-370, 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*.

## SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

### DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

#### 40 TAC §749.103

The amendment is 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 amendment implements HRC §42.042(a) and §42.048(e).

§749.103. *What are my operational responsibilities as the permit holder?*

When you begin operating, you must:

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

(15) Prepare the annual budget and control expenditures to ensure needs of the children are met; ~~and~~

(16) Ensure that no member of the governing body, member of the executive committee, management staff, or employee is listed as a sustained controlling person; ~~and~~ [-]

(17) Notify us that you are relocating your child-placing agency at least 15 days prior to the move.

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

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

TRD-200704955  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Earliest possible date of adoption: December 2, 2007  
For further information, please call: (512) 438-3437



## SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS DIVISION 2. FOSTER HOME SCREENINGS

### 40 TAC §749.2445, §749.2447

The amendments 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 amendments implement HRC §42.042(a) and §42.0561.

§749.2445. *What is a foster home screening?*

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

(d) You must report to Licensing all information obtained under §749.2447(7) of this title regarding the prospective foster family's domestic violence history, as applicable. You must report this information regardless of whether you verify the home.

§749.2447. *What information must I obtain for the foster home screening?*

You must obtain, document, and assess the following information about a prospective foster home:  
Figure: 40 TAC §749.2447

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

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

TRD-200704953  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Earliest possible date of adoption: December 2, 2007  
For further information, please call: (512) 438-3437



## DIVISION 3. VERIFICATION OF FOSTER HOMES

### 40 TAC §§749.2473, 749.2475, 749.2489

The amendments 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 amendments implement HRC §§42.042(a), 42.0535(e) and 42.0536.

§749.2473. *What must I do to verify a foster home that another child-placing agency has previously verified?*

(a) When a home has previously been verified by another agency, you may:

(1) Complete an entirely new screening and home study to comply with the requirements in §749.2471 of this title (relating to What must I do to verify a foster home?); or

(2) You may use the foster home screening and home study the previous child-placing agency conducted as a basis for meeting the requirement. You must update the information for every required section. You must describe any changes from the previous information. This verification will require you to:

(A) Conduct new interviews as specified in §749.2449 of this title (relating to Whom must I interview when conducting a foster home screening?);

(B) Conduct new criminal history and central registry background checks for foster home members, with results documented in the foster home record. Homes transferring from one agency to another, with children in care, may be verified by the receiving agency prior to completion of background checks;

(C) Document current fire and health inspections;

(D) Ensure that all appropriate household members have had a tuberculosis screening as required in §749.1417 of this title (relating to Who must have a tuberculosis (TB) examination?);

(E) Ensure that any unresolved deficiencies have been addressed;

(F) Conduct a new evaluation of all areas required for the foster home screening and verification, and make recommendations regarding the home's ability to work with children with respect to their age, gender, number of children, and services to be provided; and

(G) Obtain review and approval of the screening, home study, and the recommended verification of the home by child placement management staff.

(b) If the foster home is transferring from another child-placing agency, you must submit a written request to the agency that the foster home is transferring from requesting the background information required in §749.2447(23) of this title (relating to What information must I obtain for the foster home screening?).

§749.2475. *To whom must I release information regarding a family on which I previously conducted a foster home screening, pre-adoptive home screening, post placement adoptive report, or home study?*

(a) (No change.)

(b) Background information must also be released to independent contractors who are hired or required by the court to conduct a social study under Chapter 107 of the Texas Family Code ~~[foster home screening, pre-adoptive home screening, post placement adoptive report, or home study].~~

(c) You [An agency] must release the background information to the requesting agency within 10 days after receiving the written request, including generally informing the requesting agency of any unresolved investigations and/or deficiencies. After the resolution of the investigations and/or deficiencies, you [the agency] must release the remaining background information to the requesting agency within 10 days after the resolution of the investigations and/or deficiencies. If a foster home verified by you is transferring to another child-placing agency, you must send the background information noted in subsection (d) of this section as soon as you become aware of the foster home's intent to transfer.

(d) Background information is any information that must be obtained by §749.2447(23) of this title (relating to What information must I obtain for the foster home screening?). In addition to the items noted in §749.2447(23), the background information for a transferring foster home must also include, if applicable:

- (1) An annual development plan;
- (2) Any corrective action plan(s); and
- (3) A description of any imposed or potential service limitation.

§749.2489. *What information must I submit to Licensing about a foster home's verification status?*

You must submit information to us within two working days of:

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

(4) Changing conditions of the verification for an existing home; ~~[or]~~

(5) Closing a foster home, including: ~~[-]~~

(A) The reason the foster home closed; and

(B) The name and contact information of a person at your agency who may be contacted by another child-placing agency to obtain records relating to the closed foster home; or

(6) The denial of a verification of a foster home, and the reason for the denial.

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

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 438-3437



## SUBCHAPTER O. FOSTER HOMES: HEALTH AND SAFETY REQUIREMENTS, ENVIRONMENT, SPACE AND EQUIPMENT DIVISION 3. WEAPONS, FIREARMS, EXPLOSIVE MATERIALS, AND PROJECTILES 40 TAC §749.2961, §749.2967

The amendments 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 amendments implement HRC §42.042(a) and (e-1).

§749.2961. *Are weapons, firearms, explosive materials, and projectiles permitted in a foster home?*

(a) Generally, weapons, firearms, explosive materials, and projectiles (such as darts or arrows), are permitted, however, there are some specific restrictions:

~~{(1) Weapons, firearms, explosive materials, and projectiles are not permitted at a foster home providing treatment services unless one of the foster parents is employed as a law enforcement official;}~~

(1) ~~{(2)}~~ If you allow weapons, firearms, explosive materials, projectiles, or toys that explode or shoot, you must develop a policy identifying specific precautions to ensure children do not have unsupervised access to them, including locked storage and separate locked storage for the weapons and ammunition;

(2) Locked storage must be made of strong, unbreakable material;

(3) If the locked storage has a glass or another breakable front or enclosure, the guns must be secured with a locked cable or chain placed through the trigger guards;

(4) ~~{(3)}~~ You must determine that it is appropriate for a specific child ~~[receiving only child-care services]~~ to use the weapons, firearms, explosive materials, projectiles, or toys that explode or shoot; and

(5) ~~{(4)}~~ No child may use a weapon, firearm, explosive material, projectile, or toy that explodes or shoots, unless the child is directly supervised by a qualified adult.

(b) Your policies must require foster parents to notify you if there is a change in the type of or an addition to weapons, firearms, explosive materials, or projectiles that are on the property where the foster home is located.

(c) Firearms that are inoperable and solely ornamental are exempt from the storage requirements in this rule.

*§749.2967. May a caregiver transport a child in a vehicle where firearms, other weapons, explosive materials, or projectiles are present?*

~~{(a) A caregiver may not transport a child in a vehicle where a handgun is present, unless the handgun has been issued to the caregiver as part of that person's employment as a law enforcement official.}~~

~~{(b)} A caregiver may transport a child in a vehicle where firearms (not handguns), other weapons, explosive materials, or projectiles are present if:~~

~~{(1) The child is only receiving child-care services;}~~

~~(1) [(2)] All firearms are not loaded; [and]~~

~~(2) [(3)] The firearms, other weapons, explosive materials, or projectiles are inaccessible to the child; and [-]~~

~~(3) Possession of the firearm is legal.~~

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

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

TRD-200704952

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 2, 2007

For further information, please call: (512) 438-3437



SUBCHAPTER S. ADOPTION SERVICES:  
ADOPTIVE PARENTS  
DIVISION 2. PRE-ADOPTIVE HOME  
SCREENING

**40 TAC §749.3624**

The new section is 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 section implements the Family Code, §162.0025.

*§749.3624. May I consider a prospective adoptive parent's membership in a military organization as a factor in approving an adoptive home screening?*

Section 162.0025 of the Texas Family Code prohibits any person conducting an adoptive home study from considering membership in the armed forces of the United States, Texas National Guard, National Guard in another state, or in a reserve component of the armed forces of the United States as a negative factor in determining whether the adoptive parent would be a suitable parent or whether an adoption is in the best interests of the child.

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: December 2, 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 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 August 24, 2007, issue of the *Texas Register* (32 TexReg 5255).

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705037

Susan K. Durso  
General Counsel

Texas Residential Construction Commission

Effective date: October 22, 2007

For further information, please call: (512) 463-2886



## TITLE 22 EXAMINING BOARDS

### PART 11. TEXAS BOARD OF NURSING

#### CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

##### 22 TAC §217.13

The Texas Board of Nursing withdraws the proposed amendments to §217.13 which appeared in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4707).

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705059

Katherine Thomas  
Executive Director

Texas Board of Nursing

Effective date: October 22, 2007

For further information, please call: (512) 305-6823





# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 61. CRIME VICTIMS' COMPENSATION

##### SUBCHAPTER A. SCOPE AND CONSTRUCTION OF RULES AND GENERAL PROVISIONS

###### 1 TAC §61.3

The Office of the Attorney General (OAG) adopts an amendment to Subchapter A (Scope and Construction of Rules and General Provisions), §61.3, concerning Closing Claims. The amendment is adopted without changes to the proposed text as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4119) and will not be republished.

The amendment is adopted to accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

Section 61.3 authorizes the OAG to close claims in which a victim or claimant fails to report collateral sources or if a victim dies and there is no claimant on the application.

The public comment period began July 6, 2007 and ended August 6, 2007. The following is a summary of Comments received and corresponding Agency responses regarding the proposed amendment.

Comment. The Texas Council on Family Violence (TCFV) expressed that the reporting of a collateral source defined in Article 56.32(a)(3) of the Texas Code of Criminal Procedure is reasonable. However, the reporting of "any other source of income" seems overly burdensome and intrusive because victims of family violence often resort to borrowing money from family or friends, working a temporary job, or other means to support themselves and their children. TCFV suggests that a more reasonable approach would be to require the reporting of only those "other sources of income" that provide over \$300 from any one source.

Agency Response. The Agency disagrees and declines to make the suggested change. Compensation may only be awarded for actual loss arising from criminally injurious conduct. If a victim or claimant earns income there is no loss of income upon which to base a compensation claim. As to money donated to the victim

or claimant, existing administrative rule, §61.406, provides that donative gifts are not considered a collateral source.

The amendment is adopted under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

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

Filed with the Office of the Secretary of State on October 19, 2007.

TRD-200705029

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Effective date: November 8, 2007

Proposal publication date: July 6, 2007

For further information, please call Lauri Saathoff, Agency Liaison, at (512) 463-2096



##### SUBCHAPTER B. DEFINITIONS

###### 1 TAC §61.101

The Office of the Attorney General (OAG) adopts an amendment to Subchapter B, §61.101, concerning Definitions. The amendment to §61.101 is adopted without changes to the proposed text as published in July 6, 2007, issue of the *Texas Register* (32 TexReg 4120) and will not be republished.

The amendment is adopted to accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Chapter 2001.

Section 61.101 clarifies that CVC can pay one time only for medically prescribed assistive or adaptive items.

The public comment period began July 6, 2007 and ended August 6, 2007. The following is a summary of Comments received and corresponding Agency responses regarding the proposed amendment.

Comment. The Texas Council on Family Violence recommends that the OAG look at the need for medically-prescribed assistive or adaptive items on a case-by-case basis and approve claims on a one-time basis "or more often if new incidences arise, as deemed appropriate by the OAG."

Agency Response. The Agency agrees but declines to make the suggested change, as the rules already allow for flexibility. Administrative rule §61.1(d) provides that the Agency may suspend the administrative rules if good cause is shown that compliance would result in an injustice to any party. The Agency reviews all claims on a case-by-case basis, and if good cause is shown the Agency may approve additional payment for medically prescribed assistive or adaptive items.

The amendment is adopted under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

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

Filed with the Office of the Secretary of State on October 19, 2007.

TRD-200705030

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Effective date: November 8, 2007

Proposal publication date: July 6, 2007

For further information, please call Lauri Saathoff, Agency Liaison, at (512) 463-2096



## PART 10. DEPARTMENT OF INFORMATION RESOURCES

### CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

#### 1 TAC §201.19

The Department of Information Resources (department) adopts the repeal of 1 TAC §201.19, concerning establishment of quality assurance guidelines for projects in Texas state agencies. Section 201.19, which established DIR model quality assurance guidelines for agencies to develop internal quality assurance procedures, will be superseded by new project management practices rules at 1 TAC Chapter 216, §§216.1 - 216.3; §§216.10 - 216.12; and §§216.20 - 216.22, published separately in this issue of the *Texas Register*. The repeal is adopted without changes to the proposal as published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6225).

No comments were received regarding adoption of the repeal.

The repeal is adopted under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act, and pursuant to §2054.153, Texas Government Code, which requires the department to adopt rules that establish guidelines for project management practices.

No other statutes are affected by repeal of this rule.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705085

Renée Mauzy

General Counsel

Department of Information Resources

Effective date: November 11, 2007

Proposal publication date: September 14, 2007

For further information, please call: (512) 475-4700



## CHAPTER 216. PROJECT MANAGEMENT PRACTICES

The Department of Information Resources (department) adopts new 1 TAC Chapter 216, Subchapter A, §§216.1 - 216.3; Subchapter B, §§216.10 - 216.12; and Subchapter C, §§216.20 - 216.22, concerning project management practices applicable to state agencies and institutions of higher education. The rules are promulgated to implement Section 6 of House Bill 1789, 80th Legislative Session, which amended §§2054.151 - 2054.157, Texas Government Code, relating to project management practices. In a separate rulemaking, the department repealed 1 TAC §201.19, concerning quality assurance guidelines. These rules are adopted without changes to the proposed text as published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6225).

Section 216.1 sets forth applicable terms and technologies for project management practices. Section 216.2 defines state agencies, other than institutions of higher education. Section 216.3 defines institutions of higher education.

Section 216.10 requires each agency to have a policy that communicates an agency-wide approach for project management practices. Section 216.11 requires each agency to manage information resources projects based on project management practices that meet certain criteria. Section 216.12 requires each agency to identify and adopt one or more standards to meet project management requirements in certain knowledge areas.

Section 216.20 requires each institution of higher education to have a policy that communicates an institution-wide approach for project management practices. Section 216.21 requires each institution of higher education to manage information resources projects based on project management practices that meet certain criteria. Section 216.22 requires each institution of higher education to identify and adopt one or more standards to meet project management requirements in certain knowledge areas.

One comment was received concerning the proposed rules. Staff disagrees with the proposed change, because it would require agencies to identify and adopt at least one standard for each of the nine knowledge areas set out in §216.12 rather than adopting one or more standards that are comprehensively applicable to all nine of the knowledge areas. The proposed change also would eliminate "as a basis for project management practices," which is language staff intentionally used and believes is necessary in the rule.

### SUBCHAPTER A. DEFINITIONS

#### 1 TAC §§216.1 - 216.3

The new rules are adopted under §2054.153(a), Texas Government Code, which requires the department to adopt rules

that establish guidelines for project management practices and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

No other statutes are affected by these rules.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705073

Renée Mauzy

General Counsel

Department of Information Resources

Effective date: November 11, 2007

Proposal publication date: September 14, 2007

For further information, please call: (512) 475-4700



## SUBCHAPTER B. PROJECT MANAGEMENT PRACTICES FOR STATE AGENCIES

### 1 TAC §§216.10 - 216.12

The new rules are adopted under §2054.153(a), Texas Government Code, which requires the department to adopt rules that establish guidelines for project management practices and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

No other statutes are affected by these rules.

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

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TRD-200705083

Renée Mauzy

General Counsel

Department of Information Resources

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For further information, please call: (512) 475-4700



## SUBCHAPTER C. PROJECT MANAGEMENT PRACTICES FOR INSTITUTIONS OF HIGHER EDUCATION

### 1 TAC §§216.20 - 216.22

The new rules are adopted under §2054.153(a), Texas Government Code, which requires the department to adopt rules that establish guidelines for project management practices and §2054.052(a), Texas Government Code, which authorizes the

department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

No other statutes are affected by these rules.

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

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TRD-200705084

Renée Mauzy

General Counsel

Department of Information Resources

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For further information, please call: (512) 475-4700



## TITLE 7. BANKING AND SECURITIES

### PART 1. FINANCE COMMISSION OF TEXAS

#### CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

##### SUBCHAPTER B. CONTESTED CASE HEARINGS

###### 7 TAC §9.26

The Finance Commission of Texas (the commission) adopts amendments to §9.26, concerning the applicability of the Texas Rules of Evidence. The amended sections are adopted without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5542). The text will not be republished.

Section 9.26 provides that the Texas Rules of Evidence apply in contested cases and prohibits the administrative law judge from admitting letters and affidavits into evidence in contested case hearings unless the letters or affidavits satisfy an exception to the hearsay rule or come into evidence without objection. The adopted amendments reconcile the §9.26 evidentiary limitation with §§2001.081 - 2001.087, Government Code, containing provisions of the Texas Administrative Procedures Act (APA) related to the applicability of the Texas Rules of Evidence and the admission and exclusion of evidence in contested cases, and also reconciles the requirement in §53.023(a)(6) of the Occupations Code that an agency consider letters of recommendation in determining whether to issue a license to an applicant with a prior criminal conviction.

The administrative law judge conducts contested case hearings in which a person appeals an adverse licensing action taken by one of the finance agencies under the jurisdiction of the commission based upon the person's criminal conviction. These hearings are subject to the §9.26 limitation regarding the admission into evidence of letters and affidavits.

These hearings are also subject to Chapter 53, Occupations Code, which applies to contested case proceedings in which a licensing authority suspends or revokes a license, disqualifies a person from receiving a license, or denies to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. In determining whether a convicted person is fit to perform the duties and discharge the responsibilities of the licensed occupation, §53.023(a)(6) of Chapter 53 directs the licensing authority to consider evidence of the convicted person's fitness that includes letters of recommendation from prosecutors, law enforcement and correctional authorities, and any other person in contact with the convicted person. Additionally, under §53.023(b), the convicted person is responsible for obtaining and providing the recommendations to the licensing authority.

Section 53.024 of Chapter 53 provides that an appeal from a licensing authority's adverse decision based upon a person's conviction is governed by the APA. One of the main features of hearings conducted under the APA is found in §2001.081, Government Code, which states the rules of evidence apply in the same manner as in a trial without a jury in state court. The hearsay rule is a part of the rules of evidence that applies in the same manner in administrative hearings as it does in a state court non-jury trial. In addition, §2001.087 of the APA specifically guarantees that parties may conduct cross-examination as required for a full and true disclosure of the facts.

The administrative law judge has considered statutory language, apparent legislative intent, and relevant case law. To harmonize and reconcile the §53.023(a)(6) requirement that the agency consider ex parte letters that are clearly hearsay in ruling on applications submitted by applicants with criminal records on the one hand and the APA provision related to the rules of evidence and inadmissibility of hearsay on the other, the administrative law judge has interpreted §53.023(a)(6) of Chapter 53 to require the agency to consider any letters of recommendation that an applicant might offer during the preliminary or investigatory stage prior to the agency making its initial decision on the application. However, consistent with the APA, the administrative law judge does not allow such letters to be admitted into evidence in contested case hearings, unless they satisfy an exception to the hearsay rule or come into evidence without objection. Rather, the applicant must have all witnesses give testimony in person or, with advance notice to opposing counsel, by telephone in accordance with §9.32 of this chapter. The administrative law judge liberally allows character witnesses to testify by telephone. In this manner, the judge accommodates witnesses and allows the parties to easily place in the hearing record the same type of information as contained in the recommendation letters, but also ensures that witnesses are available for cross-examination and to respond to clarifying questions from the judge.

Under the adopted amendments, an applicant appealing an agency's adverse decision based upon the applicant's prior criminal conviction must have all witnesses give hearing testimony in person or by telephone. The amendments adopt by rule the administrative law judge's current procedure that allows the parties to easily place in the hearing record the same type of information as contained in recommendation letters, but ensures that witnesses are available for cross-examination and to respond to clarifying questions from the judge. The adopted amendments also make several non-substantive revisions to

§9.26 in recognition that former Texas civil and criminal rules of evidence have been combined into the Texas Rules of Evidence.

No comments regarding the proposed amendments were received by the commission during the 30-day comment period.

The amendments are adopted pursuant to Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are also adopted under specific rulemaking authority contained in the substantive statutes administered by the finance agencies under the jurisdiction of the commission, including Finance Code, §§11.301, 11.302, 11.304, 11.306, 14.157, 31.003, 66.002, 96.002, 151.102, 154.051, 156.102, 181.003, 201.003, 342.551, 348.513, 371.006, and 396.051, and Health and Safety Code, §711.012(a) and §712.008.

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

Filed with the Office of the Secretary of State on October 19, 2007.

TRD-200705027

A. Kaylene Ray

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Finance Commission of Texas

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For further information, please call: (512) 475-1300

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## 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 (commission), on behalf of the Department of Banking (department), adopts the repeal of §25.10, concerning recordkeeping requirements for insurance-funded prepaid funeral benefits contracts, without changes to the proposal as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5544).

Chapter 25 implements Finance Code, Chapter 154 (Chapter 154), which regulates the sale of prepaid funeral benefits contracts (prepaid contract).

Section 25.10 establishes the recordkeeping requirements that apply to insurance-funded prepaid contracts. In 2006, the department initiated a project to revise §25.10 and the commission published proposed amendments to the section in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10473). The commission thereafter withdrew the proposed amendments to permit the department to continue considering the input of Chapter 154 insurance permit holders and further refine the section's requirements. At the conclusion of that process, the commission

published proposed new §25.10 and the proposed repeal of existing §25.10. In conjunction with the adoption of the repeal of existing §25.10, the commission is adopting new §25.10, published in this issue of the *Texas Register*.

The commission received no comments regarding the proposed repeal.

The repeal is adopted under Finance Code, §154.051(b), which authorizes the commission to adopt reasonable rules regarding the keeping and inspection of records relating to the sale of prepaid funeral benefits and the filing of contracts and reports.

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

Filed with the Office of the Secretary of State on October 19, 2007.

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General Counsel

Texas Department of Banking

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## 7 TAC §25.10

The Finance Commission of Texas (commission), on behalf of the Department of Banking (department), adopts new §25.10, concerning recordkeeping requirements for insurance-funded prepaid funeral benefits contracts, with changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5544).

Chapter 25 implements Finance Code, Chapter 154 (Chapter 154), which regulates the sale of prepaid funeral benefits contracts, sometimes referred to as prepaid or preneed contracts. The purpose of Chapter 154 is to provide a regulatory framework to allow a person to arrange and pay for a funeral in advance, to provide safeguards to protect prepaid funds, and to ensure that funds are available to pay for the prearranged funeral benefits at the time of need. Further, Chapter 154 imposes a duty upon the department and grants the department the authority to regulate sellers of prepaid funeral benefits contracts to ensure that (1) the prepaid contract is performed in accordance with its terms and the funeral merchandise and services are provided as specified in the contract; and (2) funds are available to pay for the contracted funeral merchandise and services.

New §25.10 establishes the recordkeeping requirements that apply to insurance-funded prepaid funeral benefits contracts. In conjunction with adoption of new §25.10, the commission has also adopted the repeal of existing §25.10, concerning recordkeeping requirements for insurance-funded contracts, which appears in this issue of the *Texas Register*.

In 2006, the department initiated a project to revise existing §25.10 that resulted in proposed amendments to the section published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10473). The department received comments in response to the published notice and also met with several permit holders that sell insurance-funded prepaid contracts (insurance permit holders). The commission thereafter withdrew

the proposed amendments in the June 29, 2007, issue of the *Texas Register* (32 TexReg 2438) to permit the department to continue considering the input of Chapter 154 insurance permit holders and further refine the section's requirements. The department determined that certain of the existing requirements should be eliminated and others clarified. Because of the extent of these and other, nonsubstantive revisions, the commission is proposing a new version of §25.10 and the simultaneous repeal of existing §25.10.

In developing revisions to previous §25.10, the department has been sensitive to insurance-funded permit holder concerns regarding regulatory burden and has sought to reduce recordkeeping requirements to the extent possible and in a manner consistent with the department's basic regulatory construct: the department must have the information it considers necessary to verify that insurance-funded prepaid funeral benefits contracts are performed and funded in accordance with their terms and Chapter 154.

The department believes that new §25.10 achieves an appropriate balance. As a general matter, the new section provides increased clarity and does not impose any new substantive requirements compared to the previous version of the section. The requirements are set out specifically and reflect the department's current construction and application of the requirements carried over from previous §25.10. The new section also applies plain language writing principles by using direct language, eliminating unnecessary verbiage, using terms consistently, and incorporating current terminology. Additionally, in response to input from insurance permit holders, new §25.10 eliminates a number of existing recordkeeping requirements the department has agreed are no longer necessary. The new section also provides permit holders with more flexibility with respect to how records are maintained and, as a general matter, shortens the retention period for certain records, such as documentation of a contract status change, from a period of three years to the period since the previous examination. However, new §25.10 continues to require permit holders to maintain the records necessary for the department to compare the preneed contract and the at-need performance to ensure that the prepaid contract was performed and funded in accordance with its terms and the law.

The commission received two comments regarding the proposal. A comment from American Memorial Life Insurance Company expressed unqualified support for adoption of the section as proposed. The second comment, made on behalf of the "Texas Pre-Need Coalition" (TPNC), is against adoption of the proposed rule.

TPNC observes in its comment letter that many of the concerns it expressed in the past have not been fully addressed in new §25.10. For this reason, TPNC attached and incorporated by reference its comment letter dated February 8, 2007, submitted with respect to previously proposed amendments to §25.10 published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10473) and subsequently withdrawn by notice published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3975). Several of the prior comments relate to provisions that do not appear in the new section. Other prior comments relate to former proposed provisions that were modified in the new proposal, several of which were modified directly in response to the prior expressed concerns of TPNC. Because the comments in the February 8, 2007 letter do not relate to the proposal published in the August 31, 2007, issue of the *Texas Register* (32

TexReg 5544), the commission is unable to respond to the comments.

In general, TPNC comments that, because insurance-funded permit holders sell prepaid funeral benefits contracts but do not perform funerals, the department should regulate permit holders "only for what they are permitted to do under Article 154.203." (Finance Code, §154.203, requires insurance-funded permit holders to promptly remit collected premiums to the insurance company that issues the funding insurance policy.) If the permit holder is an insurance company (or its affiliate), TPNC asserts that the department should defer to regulation and examination of its activities as an insurer by the Texas Department of Insurance (TDI). If the department believes a funeral provider is not fully honoring its obligations under a prepaid funeral benefits contract, TPNC suggests that the department take action to facilitate increased regulation of funeral provider activities by the Texas Funeral Service Commission.

The commission disagrees with the fundamental premise asserted by TPNC to support its objections and believes the premise is flawed. TPNC essentially argues that a permit holder's role under Chapter 154 is to serve as a broker of prepaid funerals, facilitating the combination of purchaser, funeral provider, and insurance company into a mutually beneficial contractual relationship and that what happens among those parties after the prepaid contract is signed is not the responsibility of the permit holder. This view is not supported by Chapter 154, a regulatory system that focuses on the permit holder.

The purpose of Chapter 154 is to provide a regulatory framework to allow a person to arrange and pay for a funeral in advance, to provide safeguards to protect prepaid funds, and to ensure that funds are available to pay for the prearranged services at the time of need. Chapter 154 imposes a duty upon the department and grants the department the authority to regulate sellers of prepaid funeral benefits to ensure that (1) the prepaid funeral benefits contract is performed in accordance with its terms and the funeral merchandise and services are provided as specified in the contract; and (2) funds are available to pay for the contracted funeral merchandise and services.

The permit holder is the essential party to a prepaid funeral benefits contract, a contract that could not legally exist or even be offered for sale but for the state's grant of authority to the permit holder. Under Chapter 154, the permit holder is the focus of regulation, and the responsibilities of a permit holder do not *end* upon sale of prepaid funeral benefits to a purchaser, they *begin*. Finance Code, §154.107, requires a permit holder that discontinues the sale of prepaid funeral benefits, but has outstanding contracts, to renew the seller's permit until the contracts are fully discharged. Similarly, Finance Code §154.052(b) requires a permit holder that discontinues the sale of prepaid funeral benefits but has outstanding contracts remaining to submit an annual report until the contracts are fully discharged. Most importantly, Finance Code, §154.053(a), requires a permit holder that has outstanding contracts for prepaid funeral benefits to maintain "any record required by the department to determine whether the seller is complying with this chapter." To that end, the commission is empowered by Finance Code, §154.051(b)(2), to adopt rules concerning "the keeping and inspection of records relating to the sale of prepaid funeral benefits."

*Summary of Adopted Section and Response to Comments*

§25.10(a)

New §25.10(a) consolidates into one subsection the general requirements applicable to the place and manner in which records must be kept and produced for department examination. TPNC comments that subsection (a)(1) represents a significant change in the Department's position on conducting examinations because it requires records to be produced at a physical location in Texas for examination. The commission disagrees. The opening paragraph of new subsection (a) recognizes that a permit holder may obtain an exception in accordance with new §25.10(g)(3) and (h). Absent an exception, the records must be made available at the physical location in Texas previously designated by the permit holder in writing. The operation of this provision does not differ from the manner in which the section operated previously. Previously approved exceptions to the required location of records or examinations remain valid.

TPNC comments that §25.10(a)(1), (g)(3), and (h) as proposed do not provide for a process to address concerns of permit holders that the department may unjustly deny exceptions or withdraw previously approved exceptions in the future. TPNC argues that a permit holder should be given a reasonable amount of time to move the physical records and make them available if the department changes or revokes an exemption. The commission disagrees. The commission included in previous §25.10 and in this new §25.10 a process for requesting an exception that permits records to be maintained and examined at an out-of-state location in order to ease regulatory burden when feasible. The ability of the department to grant exceptions is necessarily dependent upon obtaining biennial legislative waivers of the "out-of-state travel cap" imposed on state agencies by Section 5.08 in Article IX of the Texas General Appropriations Act. The department intends to continue to perform out-of-state examinations as long as it has this waiver, which must be requested from the legislature each biennium, but no assurances can be offered that the waiver will be renewed. If department staff is not authorized to travel out-of-state, the department will be required to conduct examinations in Texas. It is for this reason that every exception letter authorizing maintenance of records out-of-state states that the authorization can be revoked at any time upon written notice to the permit holder. Exceptions to the requirements that records be examined in Texas can only be allowed when it is feasible for examinations to occur out of state. Permit holders have no legal right to challenge denial or revocation of an exception.

Section 25.10(a)(2) and (a)(3) require a permit holder to provide pre-requested records to examiners at the beginning of the examination, and to provide records requested during the examination "in a manner that does not impede the efficient conduct of the examination." TPNC criticizes the highlighted phrase as overly subjective and requests that the phrase be removed or else expanded to include specific standards of determination for whether the requirement has or has not been met. The commission disagrees. The rule language is designed to ensure that the examination is conducted in a manner that is most productive and efficient for both the permit holder and the examiners. Experience has demonstrated that a few permit holders will on occasion delay delivery of records the permit holder knows will open an avenue for investigation or will subject the permit holder to regulatory criticism. These delays impede the examination process and, in some cases, records not made available until the close of an examination cannot be adequately reviewed. Specific standards cannot be established because the effect of delay in producing documents will vary with each examination, depending on the type of information not provided and the time

of delay. The language of the rule reflects the longstanding policy of the department.

#### §25.10(b)

New §25.10(b) establishes recordkeeping requirements with respect to a permit holder's general files, and eliminates many former requirements. For example, a permit holder will no longer be required to maintain the latest approved renewal permit application, its last filed annual report, its current permit, each department-approved agent appointment and resignation within the past three years, or a list of and related orders approving each trust to insurance conversion for the past three years. New §25.10(b) clearly identifies and requires a permit holder to maintain certain prepaid contract forms, insurance depository letters, financial statements, TDI approval letters and certain other insurance regulatory documentation, and specified department-related documentation, including examination report acknowledgments, correspondence, and approvals or directions upon which a permit holder relies in connection with its current operations. The new subsection also requires a permit holder to maintain price lists or alternative documentation for certain outstanding prepaid contracts.

New §25.10(b)(4) requires the signatures and acknowledgement of the permit holder's board of directors on an examination report. TPNC comments that this requirement is not supported by statutory authority or rule and cannot be required of the permit holder. The commission disagrees. The commission is authorized by Finance Code, §154.051(b)(5), to adopt rules concerning any matter relating to the enforcement and administration of Chapter 154. Efficient enforcement and administration of Chapter 154 is enhanced by requiring senior management of a permit holder to review examination reports and participate in development of corrective action plans when necessary. The commitment to regulatory compliance begins with senior management who, without this requirement, may be unaware of the status of the company's permit and the department's views of the company's compliance practices. Moreover, for several years all incorporated permit holders, including members of TPNC, have complied with this identical requirement as set forth in department supervisory memorandum 1018, last revised February 20, 2004.

#### §25.10(c)

New §25.10(c) requires a permit holder to maintain a prepaid contract file on each contract purchaser. The new subsection specifies how the file must be maintained and the general individual contract records that must be included in the file. New §25.10(c)(2) and (3) also clearly identify the specific records that must be maintained with respect to each outstanding contract, each matured contract performed by the contracted funeral provider or under a successor provider assignment, and each matured contract performed by some other person. A somewhat related provision in new §25.10(b)(10) requires a permit holder to maintain a general file of the merchandise price lists and descriptions provided by each contracted funeral provider with respect to new prepaid contracts sold since the last examination.

TPNC objects to these requirements, stating that proposed §25.10(b)(10) and (c) would require maintenance of numerous records "that are not records of the permit holder and which the permit holder has no right, and may not have the means, to obtain." With respect to delivery of the contracted funeral benefits, TPNC asserts that the department should obtain related records

for examination directly from funeral providers, rather than permit holders. TPNC states that "maintenance of the proposed documentation alone would be an enormous logistical burden for permit holders that are not also funeral providers and would have a chilling effect on the market. The implied responsibilities for the permit holder are also beyond the permit holder's means of performance since they are actions performed by others."

The commission disagrees with the commenter's contention that a permit holder cannot obtain the required documentation because the records belong to other entities. The funeral provider cannot sell prepaid funeral benefits on its own and must be delegated the authority to do so on behalf of the permit holder. Circumstances in which the permit holder would not be entitled to obtain relevant records of the funeral provider could only arise if the permit holder delegated its responsibilities to the funeral provider without imposing appropriate and necessary controls. With respect to compliance with Chapter 154, the funeral provider selected by the permit holder is the permit holder's agent. Permit holders should require appropriate, contractually-imposed limitations and responsibilities on its agents, including the responsibility to furnish records required to determine the permit holder's compliance with Chapter 154. Further, permit holders have complied with very similar documentation requirements for many years, see §25.10 as originally adopted at *Texas Register* (20 TexReg 9417), November 14, 1995. The department requires the documentation for examination to confirm that the contracted for benefits were performed and the contract was correctly funded, as Chapter 154 requires. Compliance with Chapter 154 is the permit holder's responsibility, and the permit holder, not the funeral provider, will be held accountable for noncompliance.

Specifically with regard to new §25.10(c)(3)(A), TPNC comments that permit holders should be allowed a reasonable period of time after payment of the claim to attain the documentation required for matured files, rather than being required to obtain these records prior to payment of the claim. TPNC argues that the commission fails to recognize the "rapid claims payment" practice that is widely used by preneed insurers for the benefit of Texas consumers and funeral providers, a unique feature of the preneed market that the rules should recognize rather than restrict. The commission disagrees. The requirement to document performance of the funeral before claims payment is statutory in origin, see Finance Code, 154.207. In addition, the documentation requirements of §25.10(c)(3)(A) are not new and are carried over from previous §25.10.

New §25.10(c)(4) specifies the records that must be maintained in a contract file pertaining to a canceled contract and §25.10(c)(5) addresses required contract file records pertaining to a contract for which the funding insurance policy has changed status since the previous examination. TPNC suggests that the requirements of §25.10(c)(4) should be deleted because the consideration for the contract, the funding insurance policy, has been removed and the contract is invalidated. According to TPNC, the department should trust that the documentation of premium payments, any issues regarding surrender values, and other matters regarding the insurance policy will be compliant with Texas insurance regulations because they are subject to a comprehensive regulatory scheme under the jurisdiction of TDI. In the opinion of TPNC, all the department really needs to know is that the contract has been terminated. Similarly, TPNC believes the requirements of §25.10(c)(5) involve matters that should be left to insurance regulation by TDI because they relate to how insurers must communicate with purchasers regarding

changes in policy status, the dates of those communications and their content. Further, TPNC does not believe that permit holders should be required to inform a purchaser that preneed benefits may not be honored by the funeral provider due to the "non-forfeiture or delinquent status of the funding policy."

The commission disagrees. Chapter 154 is designed to protect the expectations of purchasers of prepaid funeral benefits. The department cannot discharge its statutory duties in this regard unless records for examination accurately reflect the acquisition, servicing, and disposition of every prepaid funeral benefits contract. If a purchaser no longer wants the contract, documentation of the cancellation process must be created and maintained by the permit holder for examination. Similarly, the commission believes that a purchaser of prepaid funeral benefits should be informed of how a change in status of the funding insurance policy affects the validity of the prepaid funeral contract, and that imposing a notice requirement is consistent with the purpose and policy underlying Chapter 154. This requirement is imposed on the permit holder with regard to the prepaid contract and does not infringe upon insurance regulation of the funding insurance policy. To the extent a permit holder is subject to both regulatory regimes, it is the responsibility of the permit holder to coordinate compliance with both.

#### §25.10(d)

New §25.10(d) continues requirements from previous §25.10 that a permit holder maintain certain ledgers and reports regarding its prepaid funeral benefits operations for both new and conversion contract sales. Paragraph (1) of subsection (d) requires a permit holder to maintain a historic contract register that reflects all prepaid contracts and insurance policies with notations regarding contract status and other specified information. Paragraph (2) of subsection (d) requires that detailed individual payment receipt records be kept. Paragraphs (3) and (4) of subsection (d) require and specify the information that must be maintained in an in-force policy register and in reports detailing out-of-force and non-forfeiture policies, respectively. Paragraphs (1), (3) and (4) also describe how the required registers and reports must be maintained, totaled, balanced and formatted.

New §25.10(d)(5) requires a permit holder to maintain an activity reconciliation report that reflects what has occurred with respect to an insurance policy that moves from in-force to out-of-force or non-forfeiture status during the reporting period. Specifically, the report must show the activity related to each in-force policy identified in the in-force policy register required under paragraph (3) of subsection (d), and must balance to the corresponding policy subsequently identified in the out-of-force and non-forfeiture policy reports required under paragraph (4) of subsection (d). The permit holder must provide documentation to support the reported activity and the report must be balanced as of June 30 and December 31 of each year.

TPNC contends that subsection (d) generally would require the permit holder to produce reports that include information the permit holder does not have and may have no way to obtain, including information regarding the insurance policy number, status, date of claim, amount of funds paid, individual payment receipt records, initial collection of the down payment, subsequent premium payments, and name of the insured. Further, TPNC believes that an insurance company providing this information to a permit holder may be a breach of privacy regulations.

The commission disagrees. The permit holder is charged by Chapter 154 and new §25.10 with documenting the relevant attributes of an insurance-funded prepaid funeral benefits contract, including the current status of the funding insurance policy, and making the documentation available for examination by the department. The permit holder can and should contractually obtain the necessary cooperation of the insurance company. But for its association with a permit holder, an insurance company could not sell preneed policies in Texas. The commission also notes that in most cases, a permit holder that sells insurance-funded prepaid contracts is also either the funding insurance company or an affiliate of the funding insurance company. In these situations, the designated agents acting on behalf of the permit holder to sell the prepaid funeral benefits contracts (funeral providers or employees of funeral providers) are also acting as agents of the insurance company with respect to the sale of the funding insurance policy. Because of these relationships, the permit holder can contractually require the information. In addition, permit holders have complied with very similar documentation requirements since 1995, see §25.10 as originally adopted at *Texas Register* (20 TexReg 9417), November 14, 1995.

With regard to privacy concerns, TPNC does not specify the privacy regulations with which it is concerned. Although the insurance company and the permit holder are both "financial institutions" that are obligated to protect the "nonpublic personal information" of their customers under Title V of the Gramm-Leach-Bliley Act (codified at 15 U.S.C. §§6801 - 6809), restrictions on sharing such information do not apply to sharing among affiliates. Further, the restrictions do not apply to sharing nonpublic personal information as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with servicing or processing a financial product or service requested or authorized by the consumer, or with the consent or at the direction of the consumer, see 15 U.S.C. §6802(e). TDI regulations are in accord, see 28 TAC §22.18 and §22.19(a)(1).

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) apparently would not apply because the required documentation does not appear to relate to "the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual," see 28 TAC §22.52(11). However, if HIPAA applies, an exception exists permitting a disclosure that is required, or is a lawful or appropriate method, to enforce the covered entity's rights or the rights of other persons engaged in carrying out a transaction or providing an insurance product or service that the consumer requests or authorizes, 28 TAC §22.57(a)(28). Further, the purchaser can sign an appropriate authorization executed at the time the prepaid contract and the funding insurance policy is acquired, see 28 TAC §22.53.

Specifically with regard to new §25.10(d)(5), TPNC expresses concerns that the required "activity reconciliation report" is a new report that contains information already required in other reports, and should be eliminated because reports are expensive for permit holders to produce and maintain. Further, TPNC is concerned that the rule does not provide sufficient time for permit holders to make programming changes prior to the effective date of a revised or new required report.

The commission believes these concerns are not warranted. Insurance-funded permit holders have been required to reconcile and balance the insurance-related records since at least 1995.



The term "activity reconciliation report" is used to consolidate and more accurately capture pre-existing requirements of previous §25.10 to reconcile and balance insurance-related information and does not require a permit holder to create a new report.

§25.10(e) - (i)

New §25.10(e) specifies the records a permit holder must maintain regarding trust-funded contracts that have been converted to insurance funding.

New §25.10(f) requires a permit holder to maintain, and make available for examination, corporate minutes and records related to actual or anticipated regulatory action or litigation that could result in the permit holder's insolvency.

New §25.10(g) authorizes certain exceptions from the section's recordkeeping requirements. Subsection (g)(1) confirms that a permit holder that sells only insurance-funded contracts need not maintain records applicable only to trust-funded contracts. Subsection (g)(2) explains the records that must be kept with respect to prepaid contracts sold prior to the effective date of the section. Finally, subsection (g)(3) authorizes a permit holder to apply to the commissioner for an exception to the section's recordkeeping requirements, and provides that an exception may be granted or revoked for good cause by the commissioner's prior written direction.

New §25.10(h) pertains to the relocation of records. A permit holder that wishes to change the location where records are maintained or the examination is conducted must give the department written notice specifying the new address. Additionally, if a permit holder wishes to maintain records or have an examination conducted outside of Texas, the permit holder must first request and obtain an exception under new §25.10(g)(3). New subsection (h) also reserves to the commissioner the right to deny or revoke an outstanding records relocation approval if such action is necessary to effectively regulate the permit holder and examine records. The department does not anticipate having to deny or revoke a relocation approval except in unusual circumstances. A relocation approval might need to be revoked if, for example, legislative actions preclude department examiners from traveling out-of-state to conduct examinations.

New §25.10(i) requires that the documents and records required to be maintained by the permit holder be filed within 30 days of receipt, and specifies the time within which cash and other forms of payment and cash withdrawals must be posted.

§25.10(j)

New §25.10(j) requires a permit holder that maintains records electronically to provide evidence of a disaster recovery plan or compliance with TDI business continuity planning requirements, regarding all records and documentation related to prepaid contracts. The plan should also include off-site data storage capabilities. TPNC observes that subsection (j) can be read to require evidence of a disaster recovery plan *and* evidence of offsite data storage capabilities, or it can be read to require evidence of a disaster recovery plan that *includes* offsite data storage capabilities. The commission agrees. An essential part of any disaster recovery plan is off-site storage capabilities. The commission has therefore revised subsection (j) to clarify its meaning.

New §25.10 is adopted under Finance Code, §154.051(b), which authorizes the commission to adopt reasonable rules regarding the keeping and inspection of records relating to the sale of prepaid funeral benefits and the filing of contracts and reports.

§25.10. Recordkeeping Requirements for Insurance-Funded Contracts.

(a) Application and general requirements. This section applies to a permit holder that sells or maintains insurance-funded prepaid funeral benefit contracts (prepaid contracts). Unless the commissioner grants an exception as provided for in subsections (g)(3) and (h) of this section, a permit holder must maintain and produce for examination the records as specified in this section. The permit holder:

(1) must make the records available to the department for examination at the physical location in Texas that the permit holder has designated in written notice to the department on file at the time of the examination;

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

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

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

(1) each department-approved prepaid contract form currently used or approved for sales since the last examination, unless no outstanding contracts exist using the form;

(2) all department-approved insurance depository letters pertaining to outstanding prepaid contracts;

(3) if the permit holder is an insurance company or an entity that controls or is controlled by an insurance company, the most current consolidated financial statement or the most recent annual statement filed with the insurance regulatory agency of the insurance company's state of domicile;

(4) the examination report acknowledgments, signed by the permit holder's board of directors, for the last examination report;

(5) the Texas Department of Insurance (TDI) approval letter for each policy form issued to fund any outstanding prepaid contract or prepaid contract that was sold and has matured since the last examination;

(6) a copy of the final post-conversion summary for each trust-to-insurance conversion approved by the department since the last examination;

(7) all correspondence with the department since the last examination;

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

(9) if the permit holder is an insurance company or an entity that controls or is controlled by an insurance company, a copy of the examination reports of the insurance regulatory agency of the insurance company's state of domicile for the period since the last examination, and the responses to the regulatory agency regarding examination report findings that are pertinent to the prepaid funeral benefits business, unless the law of the state of domicile prohibits disclosure of the examination reports and related correspondence to the department; and

(10) for any outstanding prepaid contract with a funeral provider that has an issue date since the last examination, either:

(A) general, casket, outer burial container, and urn price lists for the corresponding or contracted funeral provider; or

(B) alternative documentation that demonstrates compliance with required casket, outer-burial container and urn merchandise descriptions.

(c) Individual files.

(1) A permit holder subject to this section must maintain a prepaid contract file on each purchaser. The file must either be maintained separately or be capable of retrieval separately for outstanding contracts and may be maintained either chronologically, alphabetically or serially by policy number. Each file must contain all correspondence pertaining to the contract, including documentation to evidence that the executed prepaid contract has been issued to the contract purchaser and the funding policy has been issued to the contract purchaser or policy owner within 30 days of the receipt of the initial down payment and insurance application.

(2) Each file pertaining to an outstanding prepaid contract must contain a copy of the contract, any irrevocable assignments, and the data face sheet of the insurance policy or annuity contract funding the contract.

(3) Each file pertaining to a matured prepaid contract must be retained for the period since the last examination. The file must contain copies of all documents required for an outstanding prepaid contract, and must also contain a fully completed department withdrawal form, or evidence of department withdrawal approval, or a proof of claim form prepared and completed by the permit holder which contains all the required information included on the department's prescribed withdrawal form. In addition:

(A) a matured-contract file for which services were provided by the contracted funeral provider or under an executed successor provider assignment accepted by all contracting parties must contain:

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

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

(iii) a copy of a certified death certificate;

(iv) the certificate of performance of contract services executed by the decedent's personal representative;

(v) evidence of payment of the policy(s) death benefits to the servicing funeral provider, e.g., a copy of payment check or check stub;

(vi) documentation of premium payment history;

(vii) documentation that reflects the balance owing, if any, on the funding policy(s) and the death benefits available at the time of claim; and

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

(B) a matured contract file for which services were provided by a person other than a person listed in subparagraph (A) of this paragraph must contain:

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

(ii) evidence of payment to the servicing funeral provider;

(iii) a copy of a certified death certificate; and

(iv) documentation of premium payment history which reflects the balance owing, if any, on the funding policy(s) and the death benefits available at the time of claim.

(4) Each file pertaining to a canceled prepaid contract must be retained for the period since the last examination. The file must contain copies of all documents required for an outstanding contract, a completed departmental withdrawal form or evidence of departmental withdrawal approval, documentation of premium payment history to support the available cash surrender value, and evidence of payment of cancellation benefit, e.g., a copy of payment check or check stub.

(5) Each file pertaining to a prepaid contract whose funding insurance policy has changed status since the last examination, for example, to a reduced paid-up, lapsed, or extended term insurance policy, must be retained for the period since the last examination. The file must contain copies of all documents required for an outstanding contract and a copy of the permit holder's letter to the purchaser informing the purchaser of contract status. The letter must state the date of the status change and, if applicable, the reduced death benefit coverage amount and the termination date of such coverage. The letter must also inform the purchaser that the prepaid benefits may not be honored by the funeral provider due to the non-forfeiture or delinquent status of the funding policy. Each reduced paid-up or extended term policy file must also include copies of an election form indicating the purchaser has chosen reduced paid-up or extended term status, unless the policy has automatic non-forfeiture provisions.

(d) Records. A permit holder subject to this section must maintain the following records regarding its prepaid funeral benefits operations for both new and conversion sales:

(1) an historical contract register maintained chronologically or by policy number or by contract number reflecting all prepaid contracts and policies, and a notation of the status of the contracts and policies as outstanding, matured, canceled, or reduced paid-up. Contracts may be removed from the register when three years or more has elapsed from the date of final disposition. The contract register must be formatted in columns with headings that accurately describe the information set out in each column. The specific information required to be included in separate columns is:

(A) the prepaid contract and corresponding policy number(s);

(B) the prepaid contract purchase date;

(C) the purchaser's name;

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

(E) the prepaid contract total; and

(F) the final disposition of the prepaid contract, including notations as to whether the contract and policy are matured, canceled, surrendered, lapsed, reduced paid-up, extended term, voided, or not taken. The notation must also include the date of withdrawal claim

and the amount of funds paid; or, in lieu thereof, a record separate from the register, listing matured, canceled, surrendered, lapsed, reduced paid-up, extended term, voided, or not taken contracts and policies for the examination period and setting out the contract and/or policy number, contract purchaser, date of the withdrawal claim paid, and amount of the withdrawal claim paid;

(2) detailed individual payment receipt records to document the date of initial collection of the down payment on the funding application and subsequent premium payments from the contract purchaser by the permit holder or its agent;

(3) an in-force policy register, maintained either chronologically by date of policy issuance, alphabetically by the insured's name, or serially by policy number. The in-force register must balance to the policy activity report required under paragraph (5) of this subsection, and must accumulate to grand totals for all policies with respect to the information required under subparagraphs (C), (E), (F), and (G) of this paragraph. The in-force register must be formatted in columns with headings that accurately describe the information set out in each column. The specific information required to be included in separate columns is:

- (A) the insured's name;
- (B) the policy number or numbers;
- (C) the prepaid contract total;
- (D) the date of policy issuance;
- (E) the death benefit, or insurance in force, whichever is applicable;
- (F) growth, e.g., dividends and interest, attributable to outstanding policies for the reporting period; and
- (G) cumulative growth totals for each outstanding policy;

(4) reports detailing out-of-force and non-forfeiture policies, subtotaled in count and reduced coverage amount by status codes for death maturity, canceled, surrendered, lapsed, reduced paid-up, extended term, voided, not taken, or such other codes which may be used to designate policies no longer in force, maintained either chronologically by date of policy issuance, alphabetically by the insured's name, or serially by policy number. If the reports cannot be sub-totaled, a separate report must be generated for each type of termination status or non-forfeiture change. The reports must balance to the policy activity report required under paragraph (5) of this subsection. The reports must be formatted in columns with headings that accurately describe the information set out in each column. The specific information required to be included in separate columns is:

- (A) the insured's name;
- (B) the date of policy issuance;
- (C) the policy number or numbers;
- (D) the date the policy matured, lapsed, or was surrendered or canceled; and
- (E) the amount of in-force coverage or face value of insurance that has been paid, reduced, deleted, or transferred.

(5) an activity reconciliation report that shows the activity related to each policy that was identified in the in-force policy register required under paragraph (3) of this subsection and balances to the corresponding policy subsequently identified in the out-of-force and

non-forfeiture policy reports required under paragraph (4) of this subsection. The permit holder must provide documentation to support the reported activity and may use the department's Annual Report Recapitulation of Policy Activity format to complete this report. The report must be balanced as of June 30 and December 31 of each year.

(e) Conversions. A permit holder subject to this section shall maintain a file copy of the original trust-funded prepaid funeral contracts that have been converted to insurance funding and the payment history records for each converted contract prior to conversion.

(f) Corporate records. Corporate records of a permit holder subject to this section pertaining to actual or anticipated regulatory action or litigation that could result in the permit holder's insolvency and all corporate minutes must be maintained and made available to the department at each examination.

(g) Exceptions.

(1) A permit holder that sells only insurance-funded contracts is not required to maintain records that are applicable only to trust-funded contracts.

(2) With respect to contracts sold prior to the effective date of this section, a permit holder will not violate this section if it cannot produce records required under this section which were not previously required by statute or rule. However, basic reporting of in-force benefit amounts and policy activity from the last examination date to the current examination date will be required of all permit holders for insurance companies that have outstanding insurance policies funding prepaid contracts in Texas.

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

(h) Relocation of records. Prior to changing the location where required records are maintained or where the examination is to be performed pursuant to §154.053(a) of the Texas Finance Code, a permit holder must notify the department, specifying the new address in writing, and, if the change in location requires the granting of an exception, comply with subsection (i)(3) of this section before required records are moved to the new location. The commissioner may revoke a records location if the commissioner determines that such action is necessary to effectively regulate the permit holder and examine the records.

(i) Maintenance of files. Documents and records required to be maintained under this section must be filed within 30 days of receipt. Cash and other forms of payments received must be posted within 30 days of receipt, and cash withdrawn on death maturity must be posted within 30 days of actual withdrawal.

(j) Disaster recovery plan. If required records are maintained electronically, the permit holder must provide evidence of a disaster recovery plan, or compliance with TDI business continuity planning requirements if applicable, that includes offsite data storage capabilities regarding all records and documentation related to prepaid contracts.

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

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



## 7 TAC §25.23, §25.24

The Texas Finance Commission (commission), on behalf of the Department of Banking (department), adopts amendments to §25.23, concerning application fees, and §25.24, concerning examination costs and assessment fees. The amended sections are adopted without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5549). The text will not be republished.

Section 25.23 establishes the application and renewal fees a person must pay to the department to obtain and maintain a license to sell prepaid funeral benefits contracts (prepaid contracts) under Finance Code, Chapter 154 (Chapter 154). Section 25.24 requires a Chapter 154 permit holder to pay an annually assessed examination fee (annual assessment). The commission amends §25.23(b)(2) and §25.24(b) to change the basis for determining renewal fees and examination fees.

Section 25.23(b)(2) specifies the basis on which a renewal fee is calculated. Previously, the fee was based upon a permit holder's total number of outstanding prepaid contracts as of the permit holder's last department examination. The amendment to paragraph (2) provides that the amount of the fee is based on the total number of outstanding prepaid contracts as reflected on the most recent annual report filed by the permit holder with the department.

Section 25.24(b) establishes the fees a permit holder must pay for department examinations pursuant to Finance Code, §154.054. Section 25.24(b)(1) establishes an annual assessment as an examination fee and sets out the basis and formula for calculating the assessment. The amendments to paragraph (1) provide that the amount of the annual assessment is based on the permit holder's total number of outstanding prepaid contracts as reflected on the most recent annual report filed with the department. The amendments add an assessment schedule. Amendments to §25.24(b)(1) create a tiered assessment structure for annual assessments and generally increase the assessment a permit holder must pay. Basing fees on the total number of outstanding prepaid contracts as of the permit holder's most recent annual report rather than the last department examination is intended to provide greater consistency with respect to the calculation of annual assessments because the prior examination dates may not reflect the current volume of business. The amendments also allow the department to more accurately assess the prepaid funeral benefits contracts industry to recover the costs of administering and enforcing Chapter 154 based upon their current volume of business.

Previously, annual assessments were based upon a rate of up to \$3.00 for each contract outstanding as of the permit holder's last examination, subject to a minimum and maximum assessment. The amendments to paragraph (1) create a tiered assessment structure by establishing dollar amounts and a corresponding assessment based on the number of outstanding contracts a permit holder has reported on its most recent annual report. An assessment amount is set for each range as set out in the sched-

ule. For example, if a permit holder's total number of outstanding contracts is between 1,000 and 1,999, the annual assessment is \$3,100 plus an amount that represents the number of outstanding contracts over 1,000 multiplied by \$2.00, the specified factor for that range. The amendments to paragraph (1) also increase the minimum assessment from \$100 to \$150 and the maximum assessment from \$7,350 to \$15,000 to increase the revenue to the department in order to cover department costs.

The amendments to §25.24(b) also delete the statement in existing paragraph (3) that examination fees cannot be reduced or waived because this language was unnecessary and redundant. The amendments to paragraph (3) replace that statement with the requirement that a new Chapter 154 permit holder that has not yet filed the first annual report required by Finance Code, §154.052, must pay an examination fee of \$600 per day for each examiner and all associated travel expenses. Finally, the amendments to §25.24(c) clarify in paragraph (1) that the referenced "annual examination fee" is the annual assessment.

As a general matter, the amendments to §25.24(b)(1) may significantly increase the annual assessment a Chapter 154 permit holder must pay. The department has determined that the increase is necessary to comply with the Finance Code, §154.054, mandate that the commission impose upon and collect from Chapter 154 permit holders fees sufficient to cover the cost of examination (including salary and travel expenses for department employees and other expenses reasonably incurred in conducting the examination) the equitable or proportionate cost of maintaining and operating the department, and the cost of enforcing Chapter 154.

The commission has for a number of years successfully avoided raising assessments despite inflation and rising program costs. The amount of the annual assessment charged to Chapter 154 permit holders has not increased since 1994. The reason for increasing the amounts collected from permit holders at this time is attributable to several factors. The primary factor would be the employment of additional examiners in order to complete examinations within the time parameters established by the department's statutorily mandated performance measures. In addition, for the past several years, the department has collected administrative penalties from permit holders that have repeatedly violated Chapter 154 and 7 TAC Chapter 25 and has used the penalties to offset the department's overall Chapter 154 costs. The department expects compliance to improve and does not anticipate the collection of significant administrative penalties in the future. As a result, the department must compensate for lost revenue.

Based upon the number of Chapter 154 permit holders and the department's experience in regulating and examining them, the department believes that the annual assessments established by the proposed amendments to §25.24(b) will provide the funding required to administer and enforce Chapter 154 and will do so in a manner that is fair and equitable to all permit holders. In determining the amount of the proposed assessments, the department has adhered to the limitation that only such funds as are necessary to defray Chapter 154 administrative and enforcement costs, the cost of examination, and the proportionate cost of maintenance and operation of the department may be imposed and collected, and that the department is statutorily prohibited from retaining excess revenue.

The renewal fee and assessments provided for in the amendments are established by the commission and comply with the mandate by the Legislature that the commission impose fees suf-

ficient to cover the cost of administering and enforcing Chapter 154.

The department received one comment regarding the proposed amendments during the 30 day comment period from the Texas Pre-Need Coalition. The commenter opposed the fees suggesting the proposed fee structure be revised to provide for a contract fee to be paid by a consumer upon entering into a prepaid contract transaction. A portion of the fee would be paid to the department to offset examination costs and support the costs associated with servicing prepaid contracts abandoned by permit holders through bankruptcy. The department disagrees with the commenter's suggested change. The department does not have a mechanism in place at this time to administer such a fee program and feels the burden of the cost of regulation should be borne by the permit holders. The department does not have the staff to administer a contract fee charged to each purchaser. However, a permit holder is not precluded from assessing a contract processing fee to consumers to help offset the increase in assessments.

The amendments are adopted under the authority of the Finance Code, §154.051, which authorizes the commission to adopt rules establishing fees to defray the costs of administering Chapter 154, and §154.054, which directs the commission to establish an annually assessed examination fee sufficient to cover the costs of examination, the equitable or proportionate cost of maintaining and operating the department, and the cost of enforcing the chapter.

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

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Texas Department of Banking

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## CHAPTER 26. PERPETUAL CARE CEMETERIES

### 7 TAC §26.1

The Texas Finance Commission (commission), on behalf of the Department of Banking (department), adopts amendments to §26.1, concerning fees. The amended sections are adopted without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5551). The text will not be republished.

Section 26.1(b) establishes the fees a person must pay the department to operate a perpetual care cemetery (PCC) under Health and Safety Code, Chapter 712 (Chapter 712), and requires a PCC certificate holder to pay an annual fee and an annually assessed examination fee (annual assessment). The amendments to §26.1(b) change the basis for determining annual fees and annual assessments. Additionally, the amendments create a tiered assessment structure for annual

assessments and provide generally for increased assessments. The revisions are intended to provide greater consistency with respect to the calculation of assessments and allow the department to more accurately assess the perpetual care cemetery industry. The amendments will also enable the department to recover its costs in administering and enforcing Chapter 712.

Despite inflation and rising program costs, the amount of the annual assessments charged to perpetual care cemeteries has not increased since 2004. The need to now increase assessments is attributable to several factors. The department has had to employ additional examiners in order to complete examinations within the time parameters established by the department's statutorily mandated performance measures. Additionally, the time required to complete on-site PCC examinations has increased because the department must verify compliance with state laws and regulations that have been passed and adopted within the past several years. For example, the department must confirm compliance with the requirement that a PCC timely order and set markers and monuments and respond to consumer complaints.

The amendments create a tiered assessment structure, instead of the existing structure that only allows for a minimum and a maximum assessment range. The assessment will now be based upon the required perpetual care fund balance taken from the most recent filed annual statement of funds with the department instead of the required fund balance reported as of the date of the last examination. This change will provide for better consistency on how assessments are calculated and allow the department to more accurately assess the perpetual care cemetery industry.

Based upon the number of PCC certificate holders and the department's experience in examining them and regulating PCC's, the department believes that the annual assessments established by the amendments to §26.1(b) will provide the funding required to administer and enforce Chapter 712 and to do so in a manner that is fair and equitable to all certificate holders. In determining the amount of the assessments, the department has adhered to the limitation that only such funds as are necessary to defray the cost of enforcing and administering Chapter 712, the cost of examination, and the equitable and proportionate cost of maintenance and operation of the department may be imposed and collected, and that the department is statutorily prohibited from retaining excess revenue.

Section 26.1(b)(2) specifies the basis on which the annual fee is calculated. Previously, the fee was based upon the perpetual care fund balance as of the date of the PCC certificate holder's last examination. The amendment to paragraph (2) provides that the amount of the fee is based on the fund balance as reflected on the most recent annual statement of funds report filed by the PCC certificate holder with the department.

Section 26.1(b)(3) specifies the basis and formula for calculating the annual assessment. As does the revision to paragraph (2), the amendments to paragraph (3) provide that the amount of a certificate holder's annual assessment is based on the fund balance as reflected on the most recent annual statement of funds report filed with the department. Additionally, the amendments revise the formula for determining the amount of the annual assessment and add an assessment schedule. Previously, annual assessments were based upon a flat rate of \$0.0030 per dollar of the fund balance. The adopted amendments create a tiered assessment structure by establishing ranges of fund based dollar amounts and a corresponding assessment for each range as set

out in the schedule. For example, if the total amount of a PCC required fund balance is between \$100,000 and \$199,999.99, the annual assessment is \$650 plus the amount of the required fund balance over \$100,000 multiplied by .0035, the specified factor for that range. The amendments to paragraph (3) also increase the minimum assessment from \$115 to \$200 and the maximum assessment from \$6400 to \$7600.

Finally, the amendments add a new paragraph (4) to §26.1(b). The new paragraph requires a new PCC certificate holder that has not yet filed the first annual statement of funds report to pay an examination fee of \$600 per day for each examiner and all associated travel expenses, and to pay subsequent annual assessments in accordance with the tiered assessment structure provided for in the amendments to paragraph (3).

As a general matter, the amendments to §26.1(b) may increase the annual assessment a PCC certificate holder must pay. The department has determined that the increase is necessary to comply with the statutory mandate of Health and Safety Code, §§712.008, 712.042, and 712.044(b), that the commission by rule adopt fees to defray the cost of enforcing and administering Chapter 712, the cost of examination, and the equitable and proportionate cost of maintenance and operation of the department.

The assessments provided for in the amendments are established by the commission and comply with the mandate by the Legislature that the Commission impose fees sufficient to cover the cost of administering and enforcing Chapter 712.

No comments regarding the proposed amendments were received by the commission during the 30 day comment period.

The amendments to §26.1(b) are adopted under the authority of Health and Safety Code, §§712.008, 712.042, and 712.044(b), which authorize the commission to adopt rules providing fees to defray the cost of enforcing and administering Chapter 712, the cost of examination, and the equitable and proportionate cost of maintenance and operation of the department.

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

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## PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

### CHAPTER 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

The Finance Commission of Texas ("Finance Commission") adopts amendments to the following sections of 7 TAC Chapter 80, Mortgage Broker and Loan Officer Licensing: 7 TAC §80.1, Scope; 7 TAC §80.2, Definitions; 7 TAC §80.3, Licensing -

general; 7 TAC §80.4, Qualifications for obtaining licenses; 7 TAC §80.5, Renewals; 7 TAC §80.6, Sponsorship and termination thereof; 7 TAC §80.7, Background checks; 7 TAC §80.12, Display of license certificates; change of address; 7 TAC §80.13, Books and records; License record changes; 7 TAC §80.20, Inspections; 7 TAC §80.21, Investigations; and 7 TAC §80.23, Annual Reports. Sections 80.3 - 80.5 are adopted with nonsubstantive changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5552). Sections 80.1, 80.2, 80.6, 80.7, 80.12, 80.13, 80.20, 80.21, and 80.23 are adopted without changes and will not be republished.

In response to comments, nonsubstantive modifications to the proposed rule amendments have been made to §80.4(a)(5) and §80.5(a)(2). Proposed §80.5(a)(3) is being deleted. The text of the rules as adopted with the nonsubstantive modifications is republished below.

These amendments are adopted in order to implement the provisions of House Bill (HB) 2783 and HB 1716 as passed by the 80th Legislature. These bills make substantial modifications to the Mortgage Broker License Act, *Finance Code* Chapter 156 relating to the licensing and regulation of mortgage brokers. In addition, the amendments are being adopted to update outdated language and to respond to evolving regulatory concerns in combating mortgage fraud and predatory lending. Other sections are being amended to streamline administrative functions to better serve the public and the constituents of the regulated community.

The amendment to §80.1(6) reflects the changes to exemptions language in *Finance Code* §156.202 as amended by HB 2783 and HB 1716. Currently, persons who finance property which they own and sell are not required to be licensed. Under *Finance Code* §156.202, as amended by HB 2783, the exemption will now apply only to owners who make no more than five such loans in any 12 month period. HB 1716 creates an exemption from licensing for exclusive agents of registered financial services companies. The amendments incorporate this new exemption in §80.1(6)(A)(vi).

The amendments to §80.2(1) and (4) reflect the change to agency name made in the 2003 legislative session from the Savings and Loan Department to Department of Savings and Mortgage Lending.

The amendment to the definition of a mortgage loan in §80.2(5) conforms the definition to *Finance Code* §156.002(10) as amended by HB 2783 by eliminating the word "first." This modification expands the definition of mortgage loans to include all residential mortgage loans regardless of their priority. HB 2783 provides that licensed mortgage brokers will no longer be required to have a separate Chapter 342 license to originate second lien loans with interest greater than 10 percent and designates the Savings and Mortgage Lending Commissioner as the officer responsible for overseeing Chapter 342 loans originated by licensed mortgage brokers.

The amendment to the definition of "mortgage banker" in §80.2(7) adds the word "unconditional" and is intended to clarify the definition of direct endorsement authority for HUD-authorized originators.

The amendment to the definition of a "physical office" in §80.2(9) is intended to more clearly describe the manner of posting business hours for offices which may be located in shared facilities, such as an executive office suite arrangement, or when a mort-

gage broker operates out of his or her residence. The amendment further requires that a licensee provide on-site staff during all posted hours of business. These amendments are intended to insure that consumers know when the mortgage originator is open for walk-in traffic and that there will be assistance available during those hours.

The amendments to the definition of criminal offense in §80.2(13) reflect the current definition that the Department of Savings and Mortgage Lending considers criminal offenses related to the business of a mortgage broker. The Commissioner believes that non-financial related offenses, such as drug dealing and crimes involving weapons pose danger to the public at large and to consumers in particular. Further, the Commissioner believes that a pattern of misdemeanor convictions may evidence such disregard for authority as to cause concern that the person would be more likely to disregard laws regulating mortgage lending, therefore placing consumers at risk. The amendments simply formalize the approach the Commissioner and Department have taken in dealing with these types of offenses.

The amendments to §80.3(a) eliminate the language that only individuals may be licensed, consistent with the new statutory provisions for entity licensing. Additionally, the amendments clarify the application procedure and more accurately reflect current processes.

The amendments to §80.3(b) for provisional licenses reflect changes mandated by new *Finance Code* §156.2011 relating to provisional licensing for those persons with recent experience as loan officers with exempt entities. The intent is to provide an expedited license process for these persons as they move from exempt entities to a licensed activity.

The amendments to §80.3 add a new subsection (c) which brings together in one subsection the provisions on license application fees and how they are established.

The amendments to §80.4 conform the rule to the amended language in *Finance Code* §156.202 as amended by HB 2783. The amendments also clarify the requirements for acceptable surety bonds which may be used in lieu of the mortgage broker net worth requirements. New subsection (c) provides for entity licensing as required by HB 2783. The statutory change did not specifically address whether the entity must independently meet the financial requirements of a mortgage broker. The amendment provides that an entity will be deemed to satisfy the net worth requirement so long as the mortgage broker serving as the designated representative meets the requirement.

The amendments to §80.5 update and correct internal statutory citations, and update and clarify the procedures for license renewals. The amendments also update the grounds for denying a renewal to conform to the statutory provisions found in amended *Finance Code* §156.208. Amended §80.5(b)(3) provides that a person may be denied for engaging in conduct which reflects a lack of trustworthiness, integrity, or honesty. The Department considers that this is consistent with the amended statutory language which provides for denial of a license if the licensee has engaged in activity which would have been grounds for denial of an original license. If the act is committed by a current licensee, the act should be considered as grounds for denial of the renewal.

The amendments to §80.5(c) remove outdated language and provide for the option of establishing staggered license renewal dates for entity licenses.

The amendments to §80.6 update the names of currently used forms. The amendments provide that loan officers may be sponsored by either the licensed entity or by an individual mortgage broker. This option provides flexibility to the newly licensed entities as to how loan officers may be sponsored, and is considered especially favorable to providing flexibility to small business operations.

The amendments to §80.7 provide that the process for criminal background checks for exclusive agents of registered financial services companies will be that used for licensees. This amendment implements the provisions of HB 1716. The proposal also updates existing language to incorporate the use of fingerprint scans as well as cards. This reflects the Department's use of this new technology.

The amendments to §80.12 are intended to eliminate the need for the issuance of a paper license. If adopted, license verification certificates will be provided online, and may be downloaded and printed for display.

In addition, the amendments update §80.12 to conform to amendments to *Finance Code* §156.211, which provide for notice to the Department and payment of fees for name changes, address changes, and notice of use of assumed names.

The amendment to §80.13(1)(A) adds a new provision to require that licensees retain a copy of the notice to be given to applicants under *Finance Code* §343.105. This new statutory provision requires a notice to be signed by mortgage applicants advising them of the possible criminal consequences of making a misrepresentation in connection with a loan application. It is part of the 80th Legislature's mortgage fraud prevention initiative authored by Representative Solomons in HB 716.

The amendments to §80.20 provide that advance notice of an inspection of a licensee need not be given when the Department believes the advance notice would compromise the inspection by providing an opportunity for a licensee to purge files or otherwise obstruct the examination of records. This is of particular concern when the Department has reason to suspect that the licensee is engaged in mortgage fraud.

The amendment also provides that when advance notice is given, it may be given by e-mail. This reflects the broad current use of e-mail as a primary means of communication for many persons.

The amendments to §80.21 are intended as implementation provisions for entity licensing. The language is modeled on similar provisions found in the regulations of real estate licenses subject to jurisdiction of the Texas Real Estate Commission. The language provides that the designated representative of a licensed entity is individually responsible for the acts of loan officers acting on behalf of the entity.

The amendments to §80.23 establish by rule a fixed annual date for the filing of annual reports. Traditionally, the Commissioner has announced the date on an annual basis as the last business day of February. This proposal eliminates the need for the Commissioner to establish the date each year, and it provides greater direction to the regulated community.

In a record vote held on September 19, 2007, the Mortgage Broker Advisory Committee voted to recommend adoption of the rules as published, subject to such nonsubstantive changes as the Department staff deemed appropriate to respond to public changes. The vote was 4 to 1. Connie Hearn cast the dissenting vote with the notation that she supported the rules except for

her continuing objection to mandatory licensing of the business entities through which the brokers conduct business.

The Department received comments on the proposed rule changes from the Texas Association of Mortgage Brokers, the DFW Association of Mortgage Brokers, David Dulock of Black, Mann, & Graham, which is a law firm representing over 250 mortgage clients, and from the Surety and Fidelity Association of America. The Department also received a letter from an individual mortgage broker on behalf of herself.

Comments from the Texas Association of Mortgage Brokers urged adoption of the proposed rule amendments without changes. Comments from the DFW Association of Mortgage Brokers were directed to the amount and frequency of imposition of the entity licensing fee.

The amount of the fees is not established by the proposed rule, but is to be determined as all other fees which are to be determined by the Commissioner. The request that the fee be a one-time fee for the life of the entity is a statutory matter which cannot be addressed by rule. The DFW Association of Mortgage Brokers suggested that the term of the entity license be tied to the date of the individual license of the designated representative of the entity. The Department believes that this is best accomplished administratively on the first renewal date of the entity license as in the proposed rule. Further, the suggestion assumes that the designated representative will always be a principal of the entity. The Department believes that this assumption will not be true in all cases. The comments of Ms. Minnis, an individual mortgage broker, are substantially those made by DFW Association of Mortgage Brokers or are related to operational implementation of the rule rather than the rule itself.

Mr. Dulock suggested that proposed §80.2(9), which defines a "physical office", be amended to exclude the residence of a loan officer who simply works from home. The Finance Commission declines to make the change. Every broker is required to maintain a "physical office" in Texas. The proposed rule simply defines the characteristics which are necessary for a designated address to satisfy the statutory requirement. The rule does not require that all locations from which a broker or loan officer work meet these requirements. The rule simply sets the parameters for an office which serves as the "official office" for the broker.

Proposed §80.2(13)(G) amends the definition of a criminal offense relevant to the conduct of the business of a mortgage broker to include an offense that "when considered in connection with several other violations committed by the same person over a period of time forms part of a pattern showing a lack of respect for, disregard for, or, apparent inability to follow, the criminal law." Mr. Dulock suggests the proposed language be amended to specifically identify all of the possible crimes that might constitute "violations" and a precise definition of the phrase "over a period of time." The Finance Commission declines to adopt this change because the proposed definition is deemed adequate to provide a meaningful and objective standard. Any change would err in one of two directions: (1) the change would have to be so detailed and lengthy as to require an extensive chart to accommodate all possible combinations of crimes and multiple time periods; or (2) something so narrowly constructed as to make the definition essentially useless.

Mr. Dulock further suggested that proposed §80.4(c)(2) be amended to eliminate the option for the entity net worth requirement to be met by either the entity or the designated representative. While Mr. Dulock is correct that all individual

mortgage brokers must meet the net worth requirements, and therefore the proposal appears redundant, privacy reasons weigh in favor of not adopting the suggested changes. In those instances where the designated representative is other than a principal of the licensed entity, the individual mortgage broker may prefer not to grant the entity access to the individual mortgage broker's personal financial statement. In those instances, the entity may provide its own financial statement to establish the net worth requirement.

Proposed §80.5(b)(3) provides that a renewal of a license may be denied if the license holder has engaged in conduct evidencing the licensee's lack of good moral character, including the licensee's honesty, trustworthiness, or integrity. This is meant to define the Department's interpretation of revised *Finance Code* §156.208(j)(3), which provides that the renewal of a mortgage broker or loan officer license may be revoked if the Department becomes aware of the existence of a fact which would have been grounds for denial of the original license if known to the Department at the time the original license was granted. As explained in the preamble of the proposed rule, the Department interprets the statute to mean that if a licensee engages in conduct during the term of his or her license which would have been grounds to deny the original license if it had occurred and been known to the Department prior to the issuance of the original license, then such conduct can be used to deny the renewal. Mr. Dulock believes that this statutory interpretation is incorrect and that the amended statute only refers to events occurring prior to the original license but which are unknown to the Department until after the license is issued. Therefore Mr. Dulock believes that the proposed change in §80.5(b)(3) is inconsistent with the statute. The Finance Commission disagrees. This statutory amendment was modeled after a similar provision of the *Finance Code* relating to certain persons licensed by the Office of the Consumer Credit Commissioner. The OCCC has interpreted its statute to cover both events occurring prior to the original license and subsequent to the issuance of the original license. The position of the OCCC has been sustained in administrative disciplinary hearings. The Finance Commission believes therefore that the proposed rule language is consistent with the statutory provision and legislative intent, and therefore declines to adopt the suggestions of Mr. Dulock.

The Surety and Fidelity Association of America requested that the proposed language in §80.4(a)(5) and §80.5(a)(3)(B) be modified to allow the surety to cancel the surety bond on 30 days notice. This is permitted under the existing rule and the current approved bond form. The Department believes that most bond cancellations are due to failure to pay premiums and not because the surety has become aware of questionable market conduct of the mortgage broker. Although we disagree with the Association's rationale, the Finance Commission is deleting from the rule adoption any amendment to existing rules relating to surety bonds in §80.4(a)(5) or §80.5(a)(2). The adopted text reflects a change to carry forward the existing rule.

The Department will continue to review this issue for possible future amendments. Because no change will be adopted to the existing rule relating to surety bonds, the Finance Commission need not address the suggested clarification submitted by Mr. Dulock.

## SUBCHAPTER A. LICENSING

### 7 TAC §§80.1 - 80.7



The amendments are adopted under *Finance Code* §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code* §156.102(a) and (b), authorizing the Commissioner of the Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act. The Finance Commission believes that the amendment is also appropriate to implement the provisions of HB 716, HB 2783, and HB 1716 enacted by the 80th Texas Legislature.

The amendments affect the following sections of the *Finance Code*: §§156.002, 156.202, 156.204, 156.211, 156.214, 343.103, and 343.105.

§80.3. *Licensing - general.*

(a) Applications for a Mortgage Broker license or Loan Officer license must be submitted on the current application forms promulgated by the Commissioner from time to time. Current application forms will be made available on the Department's website in a format which can be downloaded and printed. An application, notice, or any other filing with the Department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the Department. If an applicant fails to provide to the Department any information or supplemental documentation within 30 days from the date of request, the application may be deemed withdrawn. Except as otherwise specifically provided in these rules, a Mortgage Broker license or Loan Officer license shall be valid for a period of two years from the date of issuance.

(b) Provisional Licenses

(1) If the Commissioner determines that the completion of an application for a license required by the Act will be delayed significantly due to the need for additional information to render the application complete and the Commissioner has determined that there is no reason to believe, based on the facts and circumstances known, that the application will be denied, the Commissioner may, in his or her sole discretion, issue a provisional license. A provisional license issued under this paragraph:

(A) may contain such limitations and restrictions as the Commissioner determines are reasonably necessary or appropriate to further the purposes of the Act;

(B) is subject to revocation for any of the grounds set forth in §156.303 of the Act; and

(C) is subject to revocation if the Commissioner determines that any facts or circumstances exist which would have constituted grounds for denial of the application.

(2) If an applicant for a loan officer license has been employed as a loan officer for at least 18 months of the 20 months immediately preceding the date of the application by a person exempt from the Act under §156.202, the applicant may be granted a 90 day provisional license as provided in this subdivision:

(A) The applicant must meet the qualifications for a loan officer license, other than the educational and examination requirements.

(B) The applicant must pay a non-refundable \$100 expedited processing fee in addition to the fee for regular license.

(C) No extension of the provisional license will be granted. Unless the applicant has met all of the requirements for a regular license, including the educational and testing requirements,

and the license has been issued, the provisional license will expire at the end of the 90 day period.

(D) The Commissioner shall use best efforts to issue the provisional loan officer license on or before the later of:

(i) the 10th business day after the date of receipt of a completed application; or

(ii) the second business day after the date of receipt of the criminal background information required under §156.206 of the Act, demonstrating that the applicant has no pending criminal charges and has not been convicted of a criminal offense. A person is considered convicted as provided by §156.204(d) of the Act.

(E) The Commissioner may revoke a provisional loan officer license if the Commissioner discovers that the applicant has made a misrepresentation relating to the applicant's qualifications for a loan officer license, has violated this chapter, or does not meet the qualifications for a provisional loan officer license. The revocation of a provisional loan officer license is not subject to appeal.

(3) The holder of a provisional license shall be required, while operating under such provisional license, to comply with all requirements of the Act as if he or she were the holder of a license, including, but not limited to, display of his or her provisional license.

(c) The fees for the application or for the renewal of a mortgage broker license or loan officer license shall be established by the Commissioner. The amount of the fees may be modified upon not less than 30 days advance notice posted on the Department's website. Fees are nonrefundable and nontransferable.

§80.4. *Qualifications for obtaining licenses.*

(a) Individual Mortgage Broker Licenses. In order to be issued a license as a Mortgage Broker, an individual applicant must establish to the satisfaction of the Commissioner that:

(1) the applicant is an individual of at least 18 years of age;

(2) the applicant is either a United States citizen or a lawfully admitted alien;

(3) the applicant maintains a Physical Office in the State of Texas and has designated that office in his or her application;

(4) the applicant either:

(A) has received a bachelor's degree in an area relating to finance, banking, or business administration from an accredited college or university AND has 18 months or more of actual experience in the mortgage lending field as evidenced by documentary proof of full-time employment for the required period as a licensed mortgage broker or licensed loan officer or with a person exempt under §156.202 of the Act;

(B) is currently licensed in the State of Texas as:

(i) an active real estate broker;

(ii) an active attorney; or

(iii) a local recording agent or insurance agent for a legal reserve life insurance company under Chapter 21 of the Insurance Code (or holds an equivalent license under the Insurance Code or its equivalent regulations as now or hereafter promulgated); or

(C) has three years or more experience in the mortgage lending field as evidenced by documentary proof of full-time employment for the required period as a loan officer or with a person exempt under §156.202 of the Act;

(5) the applicant either has net assets of \$25,000 or more (which must be maintained while the license is in effect) or has provided an acceptable surety bond in an amount of not less than \$50,000 (an acceptable bond being a bond issued by a surety licensed by the Texas Department of Insurance and issued on a form approved by the Texas Department of Insurance for that purpose);

(6) the applicant has not been convicted of any Criminal Offense as defined in paragraph (13) of §80.2 (relating to Definitions) of this Chapter or, if the applicant has been convicted of any such Criminal Offense, the applicant has been found by the Commissioner, in accordance with §53.023, Occupations Code, to be fit to be licensed as a Mortgage Broker;

(7) the applicant has passed an examination approved by the Finance Commission that demonstrates knowledge of the mortgage industry and the role and responsibilities of a mortgage broker;

(8) the applicant is of good moral character, including honesty, trustworthiness, and integrity;

(9) the applicant is not in violation of the Mortgage Broker License Act, a rule adopted under this Chapter or any order previously issued to the applicant by the Commissioner; and

(10) provide the Commissioner with satisfactory evidence that:

(A) if the person has not been previously licensed as a mortgage broker or a loan officer under this subchapter, the person has completed 90 classroom hours of education courses approved by the Commissioner under this section; or

(B) if the person has not been previously licensed as a mortgage broker under this subchapter but has been licensed as a loan officer under this subchapter, the person has successfully completed an additional 30 classroom hours of education courses approved by the Commissioner under this section.

(b) Loan Officer Licenses. In order to be issued a license as a Loan Officer, an applicant must establish to the satisfaction of the Commissioner that:

(1) the applicant is an individual of at least 18 years of age;

(2) the applicant is either a United States citizen or a lawfully admitted alien;

(3) the applicant is sponsored by a licensed Mortgage Broker, as evidenced by an appropriately completed Loan Officer Sponsor Certification form;

(4) the applicant has either:

(A) successfully completed at least 60 hours of education courses approved by the Commissioner; or

(B) successfully completed 30 hours of education courses approved by the Commissioner if the applicant:

(i) has 18 months or more of experience as a mortgage loan officer as evidenced by documentary proof of full-time employment as a mortgage loan officer with a person exempt under §156.202 of the Act; or

(ii) is a person who meets the qualifications of subsection (a)(4)(B) of this section.

(5) the applicant has not been convicted of any Criminal Offense as defined in paragraph (13) of §80.2 of this chapter (relating to Definitions) or, if the applicant has been convicted of any such Criminal Offense, the applicant has been found by the Commissioner,

in accordance with §53.023, Occupations Code, to be fit to be licensed as a Loan Officer;

(6) the applicant has passed an examination approved by the Finance Commission that demonstrates knowledge of the mortgage industry and the role and responsibilities of mortgage brokers;

(7) the applicant is of good moral character, including honesty, trustworthiness, and integrity; and

(8) the applicant is not in violation of the Mortgage Broker License Act, a rule adopted under this chapter or any order previously issued to the applicant by the Commissioner.

(c) Entity Mortgage Broker Licenses. A corporation, limited liability company, or limited partnership may not act as a mortgage broker unless the entity obtains a mortgage broker license. To be eligible to obtain a mortgage broker license the entity must:

(1) designate an individual licensed as a mortgage broker as its designated representative. The designated representative must be:

(A) an officer of the corporation if the entity is a corporation;

(B) a manager of the limited liability company if the entity is a limited liability company; or

(C) if the entity is a limited partnership:

(i) an individual who is a general partner;

(ii) an officer of a general partner that is a corporation; or

(iii) a manager of a general partner that is a limited liability company.

(2) demonstrate to the satisfaction of the Commissioner that the applicant meets the minimum net worth requirements for a mortgage broker or prove to the Commissioner a surety bond in an amount not less than \$50,000 as provided in subsection (a)(5) of this section. In the alternative, the Commissioner will accept evidence that the mortgage broker who is the designated representative meets the minimum net worth requirements for a mortgage broker.

(d) Designated representative. A mortgage broker may not act as a designated representative at any time while the broker's license is inactive, expired, suspended or revoked.

(e) Additional Information. The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance or renewal of any license pursuant to the Act as is deemed necessary or advisable to determine that the requirements of the Act have been met.

#### §80.5. Renewals.

(a) A license may be renewed upon:

(1) submission of a completed application for renewal on the prescribed form (together with any requested additional, clarifying, or supplemental information) together with the payment of the applicable renewal application fee;

(2) providing the Commissioner with satisfactory evidence of compliance with the applicable educational requirements or licensing requirements specified in Finance Code §156.208; and §156.204 of the Act and §80.4 of this chapter (relating to Qualifications for Obtaining Licenses).

(b) A renewal of a license may be denied if:

(1) the license holder has been convicted of a criminal offense the Commissioner determines is directly related to the occupation of a mortgage broker or loan officer as provided by Chapter 53 of the Occupations Code;

(2) the license holder is in violation of the Act, this Chapter, or an order of the Commissioner;

(3) the license holder has engaged in conduct evidencing the licensee's lack of good moral character, including the licensee's honesty, trustworthiness, or integrity; or

(4) on any other ground provided by statute or this Chapter.

(c) THIS SUBSECTION APPLIES ONLY TO ENTITY LICENSES ISSUED UNDER §80.4(c) THAT EXPIRE DURING THE PERIOD OF DECEMBER 1, 2009 THROUGH MARCH 31, 2010. Pursuant to §156.208(f) of the Act, these licenses will be assigned a different expiration date in order to spread more evenly license renewals throughout the year. The initial renewal for an entity mortgage broker license to which this subsection applies will be for a term which expires on the expiration date of the license of the mortgage broker who is the designated representative of the entity on the date of renewal. For instance, if the entity license expires on December 15, 2009, and the license of the designated representative expires on May 15, 2010, the initial renewal license shall be for a period beginning on the renewal date and expiring on May 15, 2010. If the license of the designated representative expires during the period covered in this subsection, the licenses may be renewed simultaneously and the renewal will be for a full two-year term. The renewal fee for a renewal term of less than two years shall be prorated by multiplying the renewal fee times a fraction, the numerator of which shall be the number of months during the renewal term (rounded to the next highest number of months with respect to a partial month), and the denominator shall be 24. If the prorated amount calculated in this subsection is other than a whole dollar amount, the renewal fee shall be rounded to the closest whole dollar.

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

Filed with the Office of the Secretary of State on October 22, 2007.

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John Fleming

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1352



## SUBCHAPTER C. ADMINISTRATION AND RECORDS

### 7 TAC §80.12, §80.13

The amendments are adopted under *Finance Code* §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code* §156.102(a) and (b), which authorize the Commissioner of the Texas Savings and Mortgage Lending Department, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the adopted amendments is *Finance Code* §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purposes of the Act or to enforce the Act. The adopted amendments relate to the following sections of the *Finance Code*: §§156.002, 156.2011, 156.202, 156.204, 156.208, 156.211, 156.214, 343.103, and 343.105.

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

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## SUBCHAPTER I. INSPECTIONS AND INVESTIGATIONS

### 7 TAC §80.20, §80.21

The amendments are adopted under *Finance Code* §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code* §156.102(a) and (b), which authorize the Commissioner of the Texas Savings and Mortgage Lending Department, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the adopted amendments is *Finance Code* §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purposes of the Act or to enforce the Act. The adopted amendments relate to the following sections of the *Finance Code*: §§156.002, 156.2011, 156.202, 156.204, 156.208, 156.211, 156.214, 343.103, and 343.105.

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

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## SUBCHAPTER K. ANNUAL REPORTS

## 7 TAC §80.23

The amendments are adopted under *Finance Code* §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code* §156.102(a) and (b), which authorize the Commissioner of the Texas Savings and Mortgage Lending Department, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the adopted amendments is *Finance Code* §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purposes of the Act or to enforce the Act. The adopted amendments relate to the following sections of the *Finance Code*: §§156.002, 156.2011, 156.202, 156.204, 156.208, 156.211, 156.214, 343.103, and 343.105.

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

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## SUBCHAPTER C. ADMINISTRATION AND RECORDS

### 7 TAC §80.14

The Finance Commission of Texas ("Finance Commission") adopts amendments to 7 TAC §80.14, Education Program, with nonsubstantive changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5562). The text of the rule as adopted with the nonsubstantive modifications is republished below.

The amendments are adopted to implement the provisions of House Bill 2783 as passed by the 80th Legislature. In addition, the amendments are being adopted to incorporate into a rule the Department of Savings and Mortgage Lending's existing standards for approving educational courses which may be used to satisfy the initial educational requirements for the licensing of mortgage brokers and loan officers and for satisfying the continuing education requirements of the Mortgage Broker License Act, *Finance Code* Chapter 156.

The adopted amendments to §80.14(a) expand the narrative as to the purpose and goals of the educational program which are to: promote and further the purposes of the Act; ensure that applicants and licensees receive the minimal knowledge needed to acquire their licenses and operate in compliance with federal and state laws in conducting mortgage-lending activities; and to provide review and oversight of courses available to mortgage broker and loan officer applicants and licensees.

Existing §80.14(b) is deleted and new §80.14(j) incorporates and expands upon the deleted language. Existing §80.14(c), (d), and (e) are moved to a later place in the rule and are re-lettered appropriately.

The new provisions adopted in new §80.14(b) incorporate standards for course delivery methods and course content. Appropriate distinctions are made for classroom instruction and online instruction. Particular attention has been devoted to the development and delivery of on-line courses. On-line courses present particular challenges as to how to verify that course content is sufficient for the credit hours sought and as to how to verify that the applicant or licensee actually completes the course material. The adopted standards address these issues by requiring an interactive component which requires the student to successfully answer questions at specified intervals throughout the course and by requiring on-line courses to have the ability to verify the identity of the student. In order to promote quality content, courses offered by correspondence are required to have a proctored final exam. This helps insure that the student has studied and completed the course material. Amended §80.14(b) also includes standards for approval of course instructors and standards for seminar courses.

Amended *Finance Code* §156.214 permits the Department to assess a fee for course approval, and this change is addressed in proposed §80.14(j). The Department may assess up to \$200 per course.

Proposed §80.14(c) and (d) establish a classification system for courses as core, ethics, and continuing education. Criteria for determining course content for each class are established. The requirement for core courses and ethics courses as adopted is consistent with the requirement of *Finance Code* §156.204, which sets forth minimum educational requirements for mortgage brokers and loan officers.

Section 80.14(e) - (q) formalizes by rule the existing procedures the Department uses for course and instructor approvals. One important element is found in subsection (h) which requires periodic review and evaluation of approved course offerings. The Department believes that meaningful student feedback is an important component of monitoring the effectiveness of the educational component.

In a record vote held on September 19, 2007, the Mortgage Broker Advisory Committee unanimously reaffirmed its support for the amended rule as published.

The Finance Commission received four comments on the proposed amendments. The Texas Association of Mortgage Brokers provided a comment letter urging adoption of the proposal as published. David Dulock of the law firm of Black, Mann, & Graham provided a comment suggesting that the final rule be modified to clarify a possible ambiguity created between proposed §80.14(d)(3) and §80.14(o). The Finance Commission has elected to modify the final rule to clear up this possible ambiguity. The resulting modifications are considered nonsubstantive. Keith Baker, on behalf of North Lake College, requested that the non-profit educational institution be exempt from the fees for course approval. The Finance Commission declines to make this modification because *Finance Code* §156.204 only provides for fee exemptions for certain trade associations. Therefore, granting the request would be inconsistent with the section as crafted by the Legislature.

Jerry Rutledge of Alliance Academy submitted a letter outlining proposed questions to be used to determine education provider

qualifications. Since the submission appears to be a suggested questionnaire to be used as an aid rather than suggestions for textual changes to the rule, the Department of Savings and Mortgage Lending will consider the suggestions at the operational level.

The amendments are adopted pursuant to *Finance Code* §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purposes of the Act or to enforce the Act.

The amendments relate to the following sections of the *Finance Code*: §§156.204, 156.208, and 156.214.

§80.14. *Education Program.*

(a) The Department's education program is established to promote and further the purposes of the Act; ensures that applicants and licensees receive the minimal knowledge needed to acquire their licenses and operate in compliance with federal and state laws in conducting mortgage-lending activities; and provides review and oversight of courses available to mortgage broker and loan officer applicants and licensees. In order to be approved by the Commissioner, a person or entity providing a course to meet the educational requirements of the Act must establish that the subject matter of such course will specifically promote or further the purposes of the Act. Courses of a general business nature will generally not be approved. Courses directed towards an understanding of mortgage lending processes, markets, and legal requirements are encouraged.

(b) Types of course delivery methods and standards:

(1) Classroom and classroom-equivalent.

(A) Classroom.

(i) A class must consist of at least five students, unless otherwise approved by the Department prior to the start of the class.

(ii) The training site must be easily accessible and secure for the safety of the student, and must comply with all applicable state and federal laws, including, but not limited to, the Americans with Disabilities Act of 1990.

(iii) The instructor must be approved by the Department and be a disinterested third party, i.e., an individual who is not related to a student by blood, adoption, or marriage as a parent, child, grandparent, sibling, niece, nephew, aunt, uncle, or first cousin; and is not an employee or employer of the student.

(iv) No more than a 10 minute break is allowed for every 50 minutes of instruction.

(v) One hour of classroom instruction (including break) equals one credit hour.

(B) Classroom-equivalent.

(i) A class must consist of at least five students, unless otherwise approved by the Department prior to the start of the class.

(ii) In circumstances involving remote presentations, the students and the instructor do not need to be in the same location. In the case of presenting recorded or text materials, the instructor making the live course presentation does not have to be the same instructor included on the recorded presentation or who prepared the text materials.

(iii) A disinterested third party attendant, an instructor, or a disinterested third party using visual observation technology must visually monitor attendance either inside or at all exits to the course presentation area at all times during the course presentation.

(iv) Question and answer and discussion periods must be provided by an instructor making a live presentation of the course to students in the same room or via real-time live audio or audio-visual connection which shall allow for immediate student inquiries and responses with the presenting instructor, or an instructor who is present for the entire remote, recorded, or computer-based course presentation to students in the same room which shall allow for immediate inquiries and responses of students to the instructor.

(v) The course pace is set by the instructor and does not allow for independent completion of the course by students.

(vi) The instructor must be approved by the Department and be a disinterested third party, i.e., an individual who is not related to a student by blood, adoption, or marriage as a parent, child, grandparent, sibling, niece, nephew, aunt, uncle, or first cousin; and is not an employee or employer of the student.

(vii) No more than a 10 minute break is allowed for every 50 minutes of instruction.

(viii) One hour of classroom instruction (including break) equals one credit hour.

(2) Correspondence.

(A) Courses may include textbook, audio, video, computer-based instruction, or any combination of these in an independent study setting designed in such a manner as to insure that the course cannot be completed by the typical enrollee in less time than the period for which the course is certified to the Department.

(B) Provides for a written final examination of at least six questions for each one hour of credit approved (up to a maximum of 100 questions per course) that reasonably evaluates the student's understanding of the course content. At least 70% of the questions must be answered correctly for the student to be awarded a course completion certificate. At least two versions of the final examination must be available with the second examination provided to a student who fails at the first attempt. Anyone not passing the examination after the second attempt must retake the course before being offered a re-examination opportunity.

(C) Multiple choice questions must have at least four appropriate potential responses and for which "all of the above" or "none of the above" is not an appropriate option. No "true/false" questions are acceptable.

(D) Common industry best-practices guidelines will be used in reviewing and approving questions.

(E) A proctored final examination must be administered under controlled conditions to positively identify students at a location and by an official approved by the Department prior to the course material being presented to the students. Proctors must be approved by the Department and be a disinterested third party, that is an individual who is not related to a student by blood, adoption, or marriage as a parent, child, grandparent, sibling, niece, nephew, aunt, uncle, or first cousin; and is not an employee or employer of the student.

(F) A minimum standard of 12,000 words (200 words-per-minute times 60 minutes) equals one credit hour.

(3) Online.

(A) Courses may be internet, CD-ROM, DVD, or other computer-based presentations.

(B) Sessions may not have more than one student at any one presentation of the course.

(C) The course must be designed in such a manner as to insure that the course cannot be completed by the typical enrollee in less time than the period for which the course is certified to the Department.

(D) Each course must have an interactive electronic component that:

(i) Provides for at least four interactive multiple choice (question with four possible answers) inquiry periods during each hour of the course, one of which shall be at the end of the course. Inquiry periods shall occur at regular and relatively evenly-spaced intervals between each period. Inquiry periods shall cover material presented in that section of the course.

(ii) Requires answering 70% of the test questions for each period correctly to demonstrate mastery of the current section, including the final section, before the student is allowed by the program to proceed to the next section or complete the course.

(iii) Identifies all incorrect responses and informs the student of the correct response with an explanation of the correct answer.

(iv) Generates a different set of test questions for the section, which may be repeated as necessary on a random or rotating basis if the student does not achieve the 70% correct response rate necessary to advance to the next section.

(v) Is capable of generating at least two separate sets of test questions for each inquiry period.

(vi) Includes a minimum of six questions for every one hour of instructor credit approved.

(vii) Provides for a method to directly transmit the final course completion results or a printed course completion receipt to the provider for issuance of a completion certificate.

(viii) Has a means to reasonably authenticate the student's identity on an hourly basis, including upon entering, during, and exiting the course.

(4) Seminar. A seminar is a one-time event which must meet the requirements of a classroom course, and is presented at particular events such as conventions and organizational meetings.

(c) The Department classifies all of its approved courses into the following three types:

(1) Core.

(A) Assists in the preparation of an applicant for taking and passing the Texas pre-licensing examination as required by the Act for new mortgage broker and loan officer applicants;

(B) If taken in a classroom or classroom-equivalent setting, meets the educational requirements for new mortgage broker and loan officer applicants; and

(C) Meets the educational requirements for renewing mortgage broker and loan officer licensees.

(2) Ethics.

(A) If taken in a classroom or classroom-equivalent setting, meets the educational requirements for new mortgage broker and loan officer applicants. The total number of hours necessary is determined by the Commissioner with a minimum of two hours required.

(B) Meets the educational requirements for renewing mortgage broker and loan officer licensees.

(3) Continuing education. These courses meet the general educational requirements for renewing mortgage broker and loan officer licensees.

(d) Approved subject matter. Course types are determined based on the material presented in the course.

(1) Core courses must focus on topics covered by the Texas pre-licensing examination, specifically:

(A) Equal Credit Opportunity Act (ECOA) and Regulation B;

(B) Real Estate Settlement Procedures Act (RESPA) and Regulation X;

(C) Truth in Lending Act (TILA) and Regulation Z;

(D) Mortgage Broker License Act (MBLA) and Regulation;

(E) General loan terms, knowledge or market practices;

(F) Application and pre-qualification process;

(G) Role of the mortgage broker and loan officer;

(H) Secondary market or federal loan program terminology;

(I) Texas home equity;

(J) Predatory lending;

(K) Deceptive trade practices; or

(L) General mortgage-related math.

(2) Ethics courses must deal with the usage and customs among members of the mortgage lending industry, involving their moral and professional duties toward clients, lenders, borrowers, and one another. All ethics courses must include a minimum of five discussion questions designed to engage attendees in conversation regarding ethical issues facing them as mortgage lending professionals.

(3) Continuing education courses may include overviews of one or more of the subjects listed under core subject matter, general industry-related information, and other topics relevant to mortgage brokers and loan officers. Courses that may be approved include, but are not limited to:

(A) Loan origination;

(B) Loan processing;

(C) Appraisal process;

(D) Underwriting;

(E) Credit analysis;

(F) Finance and financial consulting;

(G) Real estate contracts;

(H) Discrimination laws; and

(I) Real property conveyances.

(e) To receive approval to issue certificates for continuing education credit for special events and luncheons prior to the event, the sponsor of the activity must provide the Department an outline of the topics to be discussed and the date(s) of the activity. The Department may also grant continuing education credit on a case-by-case basis to individuals receiving college credit for courses taken in pursuit of degrees. Individuals requesting consideration must provide the Depart-

ment proof of successfully completing the course and a description and syllabus of the course.

(f) The Department has the discretion of granting credit to those hours that specifically relate to the subject matter. For example, a provider may conduct a 15-hour course, but the Department will grant only four hours of credit for the portion of the class that directly relates to the pertinent subject matter.

(g) To be approved as an instructor, the instructor must document that he or she has adequate instructional training and subject matter expertise to properly convey the approved course material as approved by the Department. Any change to the status of a course instructor must be provided immediately to the Department. No course may be offered without the prior approval of the instructor.

(h) Once a course is approved and offered to the public, the Department may monitor the course to insure it is being instructed as it was originally presented for approval, and that both the course and the instructor are meeting the needs of the attendees. In order to accomplish this, the Department will conduct random audits and review student evaluations.

(1) The provider shall keep the Department informed regarding scheduling information of a classroom course, i.e., where and when a course will be offered, and permanent access to courses that are presented online via the internet. Any resulting audit will be documented and any negative feedback, regardless of the source, will be discussed with the provider.

(2) The provider shall distribute a Department-developed student evaluation to each attendee or user of the course. The evaluation will ask the student to complete the evaluation and mail or fax it directly to the Department; the provider should not collect forms and submit them to the Department on the students' behalf. The evaluations will be reviewed, and the Department will provide feedback as necessary to the provider. The Department's course evaluation form cannot be submitted by the provider, and providers cannot substitute their own form in place of the Department's form.

(3) The provider must provide to the Department a completed course attendance roster within five business days following the end of a course. The roster must include the name of the course, the course number, the dates the course was offered, and the name, contact information, and pass/fail indication for each attendee.

(i) Periodically the Commissioner will issue information to applicants, licensees, and providers on subjects believed to be relevant and necessary. Providers should remain informed of these notices by periodically reviewing the Department's website ([www.sml.state.tx.us](http://www.sml.state.tx.us)).

(j) All requests for review and approval of a course, including instructor(s), must be submitted using the Department's prescribed approval form, with the required processing fee not to exceed \$200 per one-time review of the course. An applicable fee schedule shall be available and provided upon request. No fee will be required for courses provided and approved by a duly organized trade association the purpose of which is primarily to represent residential mortgage originators. The provider will be notified in writing of the decision of the Department to approve or deny the course. Resubmission of a reformatted course following a denial constitutes a new submission and must include the applicable fee.

(k) All requests must be mailed or hand-delivered to the Department and, in addition to the applicable fee, must include the following:

(1) Complete course material, textbooks, handouts, or other learning materials;

(2) Complete course instructor manual;

(3) Time course outline by chapter and/or subject matter;

(4) If applicable, tests and/or examinations given to the student during the course, and answers to the questions;

(5) If classroom-equivalent, correspondence or online course, how the course meets standards identified for the specific delivery type described above;

(6) Instructor(s) resume(s); and

(7) Sample of course completion certificate issued to attendee.

(l) A course is not approved until and unless the Commissioner issues written approval.

(m) It is the responsibility of each person or entity providing any such courses to obtain such other licenses, permits, and approvals as may be required by applicable law. It is the responsibility of the person or entity providing any such courses to take all steps necessary to assure that the instruction and materials reflect current legal and regulatory requirements and that the course materials and presentation conform to the presentation to the Commissioner for approval.

(n) Unless the approval of the Commissioner indicates otherwise, approval of a course is valid for two years. Approval of a course may be terminated by the Commissioner at any time without need of any prior notice if the Commissioner finds that a course is not being conducted in accordance with the purposes of the Act. The provider can submit a request for an extension of the course prior to its expiration using company letterhead if there are no changes to the course as last approved, along with the applicable fee. If there are substantial changes, the provider should resubmit a new request for course review, along with the applicable fee.

(o) The Mortgage Broker License Act requires that each licensee complete at least 15 hours of continuing education courses during the term of his or her current license. The Mortgage Broker License Act further requires that at least eight of the fifteen hours relate to residential mortgage lending, defined as core courses by the Department. The remaining seven hours may be satisfied by taking courses which cover any of the subjects included in subsection (d)(3) of this section.

(p) Following the completion of any course, the provider must issue a certificate of completion indicating on the certificate the following details:

(1) Provider name as submitted to the Department;

(2) Course name as submitted to and approved by the Department;

(3) Course number assigned by the Department;

(4) Student's full and legal name;

(5) Hours completed;

(6) Date completed;

(7) Type of course and delivery type; and

(8) Name and signature of course completion verifier in the employ of the provider.

(q) Providers may not advertise that their course has been approved by the Department until they have received written confirmation from the Department of the certification of their course. Providers

may advertise submitted courses by indicating the course is pending approval. No credit hours will be accepted for any class attended by an applicant or licensee that was not approved at the time of attendance. In addition, advertisements shall not be misleading as to the course content or requirements for successful completion, and must clearly state whether the provider is offering the course for classroom, classroom-equivalent, correspondence, and/or online delivery, or as a one-time seminar.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705080

John Fleming

General Counsel

Texas Department of Savings and Mortgage Lending

Effective date: November 11, 2007

Proposal publication date: August 31, 2007

For further information, please call: (512) 475-1352



## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 87. TAX REFUND ANTICIPATION LOANS

#### SUBCHAPTER A. REGISTRATION PROCEDURES

##### 7 TAC §§87.102 - 87.107

The Finance Commission of Texas (commission) adopts new 7 TAC Chapter 87, Subchapter A, §§87.102 - 87.107, concerning Tax Refund Anticipation Loans Registration Procedures. Section 87.105 is adopted with changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5566). Sections 87.102 - 87.104, 87.106, and 87.107 are adopted without changes to the proposed text and will not be republished.

In general, the purpose of new §§87.102 - 87.107 is to establish registration procedures as required under Texas Finance Code, Chapter 351, Tax Refund Anticipation Loans (Acts 2007, 80th Leg., ch. 135), as enacted by the Texas Legislature in House Bill 1344 (HB 1344). The rules provide procedures for filing an application for a tax refund anticipation loan registration, processing procedures, procedures for relocation of a registered location, the fees associated with the registration, the designation of applications and notices as public records, and annual renewal procedures.

Section 87.102 describes the procedure for filing a new application for a tax refund anticipation loan registration, including instructions regarding what forms to use, what information is necessary on the application, and what information must be filed with the application.

In conjunction with the filing requirements under §87.102, the agency considered the submission of an applicant's disclosure forms, but instead plans to confirm that disclosures meet legal

requirements through an attestation as part of the application process. The agency believes that an affirmative statement by the applicant will serve as an appropriate mechanism to ensure that applicant disclosures are in compliance with state law. Thus, a comprehensive attestation concerning an applicant's disclosure forms will be included as part of the application for registration.

Section 87.103 outlines how an application for a tax refund anticipation loan registration is processed, including a description of when an application is complete.

Section 87.104 describes the procedures for relocating the registered location, outlining the information to be included in a notice to the commissioner.

Section 87.105 sets out the fees for new registered locations, registration amendments, and annual assessments.

Since the proposal, a clarification has been added to §87.105 regarding allocation of the fee for new registrations. The same amount of \$50 as contained in the proposal will be charged for each new registration, as the addition merely clarifies how a portion of the fee is to be allocated. The notation "(includes Texas-Online Program fee)" has been inserted directly after "\$50 fee" in §87.105(a) to specifically designate part of the new registration fee to the TexasOnline program. At the present time, this allocated fee portion is estimated to be \$2.00 per registration.

Section 87.106 describes how registration applications and notices are public records, citing the relevant provisions within the Texas Government Code.

Section 87.107 describes the procedures for annual renewal, including the payment of fees by December 1.

Compliance with these rules is optional prior to January 1, 2008. Tax refund anticipation loan facilitators under this chapter should apply for registration no later than January 1, 2008.

The commission received one written comment on the proposal from Representative Michael Villarreal. The commenter requests two additions to the proposal. First, the commenter encourages the commission "to require Refund Anticipation Loan facilitators to include a copy of their disclosure materials with the registration application." Although the commission disagrees with requiring an actual copy of the disclosure forms, the agency intends on verifying the legality of the facilitators' disclosures through "an attestation as part of the application process," as stated in the preamble. Additionally, during the 2007 legislative session and the evolution of HB 1344, the agency anticipated a streamlined registration process, which would not accommodate a submission of disclosure forms as presented by the commenter. The agency believes that verification through this comprehensive affirmative statement better fits with the intended registration scheme and accomplishes the same goal. As the agency gains experience with the tax refund anticipation loan industry, however, the issue of proper disclosures will be monitored to determine if amendments to the registration procedure are needed in the future.

In his second issue, the commenter requests that the commission "clarify that the grounds for revocation of a facilitator's registration include providing false information in disclosure materials." As stated in the preamble of the proposal for this rule action, "[t]he agency plans to propose a rule regarding the grounds for revocation at a future meeting of the commission." The agency wishes to obtain some experience with the tax refund anticipation loan industry prior to proposing a revocation rule. With an



increased understanding of and familiarity with the issues that may arise during a tax refund anticipation loan, the agency will be better equipped to propose a revocation rule at a later date. Therefore, the commission declines to adopt the commenter's suggested additions at this time.

The new sections are adopted under Texas Finance Code, §351.003, Registration of Facilitators (Acts 2007, 80th Leg., ch. 135), which authorizes the Finance Commission to adopt rules to prescribe procedures for the registration of and collection of processing fees from facilitators of tax refund anticipation loans.

The statutory provisions affected by the adopted new sections are contained in Texas Finance Code, Chapter 351, Tax Refund Anticipation Loans (Acts 2007, 80th Leg., ch. 135, eff. Sept. 1, 2007).

§87.105. *Fees.*

(a) New registrations. A \$50 fee (includes TexasOnline Program fee) is assessed each time an application for a new registration under this chapter is filed and is non-refundable.

(b) Registration amendments. A fee of \$25 must be paid each time a registered facilitator seeks to amend a registration by changing the assumed name of the registrant or relocating an office.

(c) Annual assessments. An annual fixed fee of \$50 is required for each registered tax refund anticipation loan location. The agency may provide a discount or credit to an assessment as necessary to appropriately allocate and recover the requisite costs of administration.

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

Filed with the Office of the Secretary of State on October 19, 2007.

TRD-200705007

Leslie L. Pettijohn  
Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7611



## CHAPTER 89. PROPERTY TAX LENDERS SUBCHAPTER A. GENERAL PROVISIONS

### 7 TAC §89.101, §89.102

The Finance Commission of Texas (commission) adopts new 7 TAC Chapter 89, §89.101 and §89.102, concerning Property Tax Lenders. The new rules contained in 7 TAC §89.101 and §89.102 outline Subchapter A, concerning General Provisions. Section 89.102 is adopted with changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5568). Section 89.101 is adopted without changes and will not be republished.

In general, the purpose of the new rules is to establish application and licensing procedures as required under Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), as enacted by the Texas Legislature in House Bill 2138 (HB 2138).

The rules also address applicability issues. The individual purposes of each rule are provided below.

The commission received one written comment on the proposal from the Texas Property Tax Lenders Association. The commenter offered several suggested changes and concerns. Since the proposal, the commission has incorporated some changes to address the commenter's concerns and has declined to adopt other suggestions. The commission's responses to each specific comment are included after the individual rule purposes in the paragraphs that follow.

Section 89.101 outlines the purpose, scope, and applicability of the chapter. In particular, §89.101(d) clarifies that the exemption from other licensing as provided in Texas Finance Code, §351.051(d) is limited to authorized property tax lending. In other words, in order to conduct property tax lending under Chapter 351, a person is not required to have a license under Chapter 156, Chapter 342, or any other provision of the Finance Code, aside from the Chapter 351 property tax lender license. A person may, however, still need another license to conduct other regulated activity, as Chapter 156, Chapter 342, and any other chapter of the Finance Code, or other law, would apply independently of Chapter 351.

Section 89.102 provides general definitions to be used throughout the chapter.

The commenter suggests that definitions be added to §89.102 for "loan," "lender," and "borrower," including references to Texas Tax Code, §32.06. The Texas Legislature defined the terms "Property tax lender" and "Property tax loan" in HB 2138, as enacted in Texas Finance Code, §351.002. In the first sentence of §89.102, the rule specifically incorporates the words and terms as defined in Texas Finance Code, Chapter 351, to have the same meanings in 7 TAC Chapter 89. The commission has consistently deferred to statutory definitions when present and cannot conflict with those definitions. In contrast, the commission agrees that a definition of "borrower" is necessary in order to clarify that the borrower in a property tax loan is the property owner. Consequently, the commission has added a definition of "Borrower" as the new §89.102(1) and has renumbered the remaining definitions accordingly. Thus, while the commission declines to add the commenter's definitions of "loan" and "lender," it agrees to add a definition of "borrower" for clarification purposes.

Under §89.102, regarding the proposed definitions of "Making a loan" and "Transacting a loan," the commenter recommends that the word "borrower" be deleted and replaced with the following phrase "taxing unit(s) and other payees." The commenter maintains that this change is necessary because "[n]o funds or money is ever transferred to a property owner in a tax lien transfer; all funds go to third parties. . . ." The commission recognizes this concern and agrees that property tax loans are unique in that money is never transferred to the property owner. Although the commission believes that clarifying revisions are needed for these definitions, the commission has decided to modify the language to track the definition of "Loan" contained in Texas Finance Code, §301.002(10). Therefore, the commission accepts the reasoning and issue presented by the commenter, but has incorporated this recommendation through changes modeled after the established definition in §301.002(10).

Also concerning a definition, the commenter suggests that the term "Negotiating a loan" in §89.102 be clarified "so that it does not include initial advertising, such as postcards and letters." The

commission declines to adopt this change, as this definition is intended to include such initial advertising.

Compliance with these rules is optional prior to March 1, 2008. Property tax lenders under this chapter should apply for licensure no later than March 1, 2008.

The new sections are adopted under Texas Finance Code, §351.007 (Acts 2007, 80th Leg., ch. 1220), which authorizes the Finance Commission to adopt rules to ensure compliance with the "Property Tax Lender License Act."

The statutory provisions affected by the adopted new sections are contained in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

§89.102. *Definitions.*

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Borrower--The borrower in a property tax loan is the property owner.
- (2) Commissioner--The Consumer Credit Commissioner of the State of Texas.
- (3) Date of consummation--The date of closing or execution of a loan contract.
- (4) Licensee--Any person who has been issued a property tax lender license pursuant to Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220).
- (5) Making a loan--The act of making a loan is either the determination of the credit decision to provide the loan, the act of funding the loan, or the act of advancing money on behalf of a borrower to a third party. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.
- (6) Negotiating a loan--The process of submitting and considering offers between a borrower and a lender with the objective of reaching agreement on the terms of a loan. The act of passing information between the parties can, by itself, be considered "negotiation" if it was part of the process of reaching agreement on the terms of a loan. "Negotiation" involves acts which take place before an agreement to lend or funding of a loan actually occurs.
- (7) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.
- (8) Transacting a loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of loan documents, and an advancement of money on behalf of a borrower by the lender to a third party. This also includes the act of arranging a loan.

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

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TRD-200705009

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



## SUBCHAPTER B. AUTHORIZED ACTIVITIES

### 7 TAC §§89.201 - 89.206

The Finance Commission of Texas (commission) adopts new 7 TAC Chapter 89, §§89.201 - 89.206, concerning Property Tax Lenders. The new rules contained in 7 TAC §§89.201 - 89.206 outline Subchapter B, concerning Authorized Activities. Section 89.202 and §89.206 are adopted with changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5569) Section 89.201 and §§89.203 - 89.205 are adopted without changes and will not be republished.

In general, the purpose of the new rules is to establish application and licensing procedures as required under Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), as enacted by the Texas Legislature in House Bill 2138 (HB 2138). These rules address authorized activities related to licensing. The individual purposes of each rule are provided below.

The commission received one written comment on the proposal from the Texas Property Tax Lenders Association. The commenter offered several suggested changes and concerns. Since the proposal, the commission has incorporated some changes to address the commenter's concerns and has declined to adopt other suggestions. The commission's responses to each specific comment are included after the individual rule purposes in the paragraphs that follow.

Section 89.201 provides for the responsibility of licensees for the acts of their agents.

Section 89.202 requires that each officer, director, employee, and agent of a licensee have a working knowledge of the laws and regulations applicable to the licensee's business.

The commenter offers two changes regarding §89.202. First, the commenter recommends that following the word "employee," the phrase "who deals with potential borrowers" should be added. The commenter states that "[n]ot every employee needs to know about the Finance Code, e.g., janitors, runners." The commission agrees with the commenter that this is a reasonable clarification on the applicability of this section. Thus, the commission has added a clarifying sentence to the end of §89.202, expanding on the suggested phrase of the commenter. Even without this revised language, however, the agency reviews each enforcement decision on a case-by-case basis. Sections parallel to §89.202 in other chapters have been consistently applied on a fact-specific basis. Consequently, the agency would not seek to enforce §89.202 against a janitor who does not have any contact with borrowers or potential borrowers.

Second, also in reference to §89.202, the commenter suggests that a reference to Texas Tax Code, §32.06 and §32.065 be added after the phrase "its implementing regulations." The commission agrees with the addition of a reference to the Tax Code and has included that change in this adoption.

Section 89.203 outlines transactions that are considered to constitute a "device, subterfuge, or pretense" under Texas Finance Code, §351.051(b), and attempted evasion of the applicability of 7 TAC Chapter 89.

Section 89.204 defines particular terms applicable to licensees with multiple licenses, and also outlines situations in which multiple licenses are required.

Section 89.205 outlines situations where licenses are required to conduct loans by mail, refers the reader to §89.204 for definitions, and provides that loans conducted via the Internet are considered to be loans by mail.

Section 89.206 provides the procedures for an individual to apply for an exemption from licensing as a qualifying individual under Texas Finance Code, §351.051(c)(2). Upon receipt of an individual's signed, dated, and notarized affidavit containing the required information, the agency will issue a certificate of exemption to the individual.

The commenter believes that the procedure under §89.206 should be revised, stating: "This procedure might be a little too cumbersome and end up hindering the ability of someone to do a transfer without going to a licensed property tax lender." The commission disagrees with the commenter and maintains that the §89.206 procedure as proposed is a streamlined process, requests the basic information required to issue an exemption, and merely tries to implement the statute. Therefore, while the commission declines to revise this procedure, as exemption applications are received by the agency, special attention will be paid to the time-sensitive nature of property tax loan transactions.

Another suggestion with regard to §89.206 is presented by the commenter. The commenter recommends that the phrases "street address" and "legal description" be switched in §89.206(a)(4), "so that the application must include the legal description, but they need only supply the street address in supplement thereof." The commenter supports this change with the following: "All taxation and collection operates by legal description. Appraisal districts often do not have full or complete street addresses. . . . Therefore, street addresses are not relied upon and often, not even used in the assessment/collection process." As proposed, §89.206 tracks the statutory language as enacted by HB 2138. From a practical standpoint, however, the commenter presents a persuasive argument. Thus, for practical use by the industry, the commission has made the suggested change to §89.206(a)(4) to address this concern.

Compliance with these rules is optional prior to March 1, 2008. Property tax lenders under this chapter should apply for licensure no later than March 1, 2008.

The new sections are adopted under Texas Finance Code, §351.007 (Acts 2007, 80th Leg., ch. 1220), which authorizes the Finance Commission to adopt rules to ensure compliance with the "Property Tax Lender License Act."

The statutory provisions affected by the adopted new sections are contained in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

*§89.202. Knowledge of Laws and Regulations Required.*

Each officer, director, employee, and agent of a licensee shall have a working knowledge of Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), its implementing regulations, Texas Tax Code,

§32.06 and §32.065, and other pertinent state and federal statutes and regulations that apply to the licensee's business. This section applies to the listed parties to the extent that the individual has contact with borrowers or potential borrowers, or has responsibility for compliance with Texas Finance Code, Chapter 351, or other laws or regulations governing the licensee's business.

*§89.206. Application for Exemption.*

(a) For an individual to apply for exemption from licensing under this chapter as a qualifying individual under Texas Finance Code, §351.051(c)(2) (Acts 2007, 80th Leg., ch. 1220), the individual must provide a signed, dated, and notarized affidavit containing the following:

- (1) the individual's name and address;
- (2) the individual's social security number;
- (3) the anticipated date of the property tax loan;
- (4) a description of the property by legal description, and if applicable, street address; and
- (5) a sworn statement that the individual is someone who:

(A) is making a property tax loan from the individual's own funds to a spouse, former spouse, or persons in the lineal line of consanguinity of the individual lending the money; or

(B) makes five or fewer property tax loans in any consecutive 12-month period from the individual's own funds.

(b) Upon receipt of an affidavit fulfilling the requirements of subsection (a) of this section, the commissioner will issue a certificate of exemption to the individual.

(c) Individuals applying for exemption under Texas Finance Code, §351.051(c)(2) must submit an application according to this section for each property tax loan transaction.

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

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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Proposal publication date: August 31, 2007

For further information, please call: (512) 936-7621

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**SUBCHAPTER C. APPLICATION PROCEDURES**

**7 TAC §§89.301 - 89.311**

The Finance Commission of Texas (commission) adopts new 7 TAC Chapter 89, §§89.301 - 89.311, concerning Property Tax Lenders. The new rules contained in 7 TAC §§89.301 - 89.311 outline Subchapter C, concerning Application Procedures. The new rules are adopted without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5571).

In general, the purpose of the new rules is to establish application and licensing procedures as required under Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), as enacted by the Texas Legislature in House Bill 2138 (HB 2138). The individual purposes of each rule are provided below.

The commission received one written comment on the proposal from the Texas Property Tax Lenders Association. The commenter offered a suggested change concerning §89.302. The commission's response to the comment is included after the individual rule purpose for that section.

Section 89.301 defines particular terms, including "Principal party." The definition of "Principal party" contains a breakdown by entity type, outlining individuals considered to be principal parties for each type of legal business entity.

Section 89.302 describes the procedures for filing a new application for a property tax lender license, including instructions regarding what information is necessary on the application and what information must be filed with the application.

Regarding §89.302(2)(B), the commenter believes that the requirement of providing loan forms with the application should be eliminated, and that these forms should instead be required as part of the annual report. Furthermore, the commenter states: "Property tax lenders consider these proprietary, and as such, have a vested interest in keeping them confidential." As with all of its other licensees, the agency requires the submission of loan forms at the time of application. The commission believes that these loan forms are critical to the proper evaluation of the application in order to determine if the business will operate fairly and lawfully. Should the agency receive an open records request for a property tax lender's loan forms, there is an exception for proprietary information under the Texas Public Information Act. Under that exception, the property tax lender would have the opportunity to protect any proprietary interest it might have in the loan form documents. Therefore, the commission declines to adopt the suggested change.

Section 89.303 describes the procedures for filing an application for transfer of a property tax lender license, including the filing requirements and a definition of "transfer of ownership." "Transfer of ownership" is broken down by entity type and situation to outline the circumstances when a transfer will be required.

Section 89.304 outlines what action a licensee must take when it changes the proportion of ownership in or the form of the licensed entity, and lists the time frame within which the licensee must notify the commissioner.

Section 89.305 requires each applicant to supplement its application upon request by the agency.

Section 89.306 requires each applicant, upon discovery of new or changed information, to supplement its application within 10 calendar days of discovery of the new or changed information.

Section 89.307 outlines how an application for a property tax lender license is processed, including a description of when an application is complete, as well as an explanation of what may occur if an applicant fails to complete an application. In addition, this section describes the hearings process that occurs if the applicant contests the denial of its application.

Section 89.308 describes the procedures for relocating a licensed office, including deadlines for notification.

Section 89.309 describes how a licensee may change its license status, including changing a license from active to inactive status and activating an inactive license. This section also clarifies the procedures for a licensee to voluntarily surrender its license, resulting in cancellation, as well as when a license will expire.

Section 89.310 sets out the fees for new licenses, license transfers, fingerprint processing, license amendments, license duplication, costs of hearings, and annual assessments.

Section 89.311 states that, upon filing with the Office of Consumer Credit Commissioner, an application for a property tax lender license or a notice submitted by an applicant or licensee becomes a state record and public information subject to the Texas Public Information Act.

Compliance with these rules is optional prior to March 1, 2008. Property tax lenders under this chapter should apply for licensure no later than March 1, 2008.

These new sections are adopted under Texas Finance Code, §351.007 (Acts 2007, 80th Leg., ch. 1220), which authorizes the Finance Commission to adopt rules to ensure compliance with the "Property Tax Lender License Act."

The statutory provisions affected by the adopted new sections are contained in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

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

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Leslie L. Pettijohn  
Commissioner

Office of Consumer Credit Commissioner

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## SUBCHAPTER D. LICENSE

### 7 TAC §§89.401 - 89.409

The Finance Commission of Texas (commission) adopts new 7 TAC Chapter 89, §§89.401 - 89.409, concerning Property Tax Lenders. The new rules contained in 7 TAC §§89.401 - 89.409 outline Subchapter D, concerning License. The new rules are adopted without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5577).

In general, the purpose of the new rules is to establish application and licensing procedures as required under Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), as enacted by the Texas Legislature in House Bill 2138 (HB 2138). The individual purposes of each rule are provided below.

The commission received no written comments on the proposal.

Section 89.401 discusses the authorized activities of licensed lenders operating multiple branches.

Section 89.402 explains the requirement for displaying licenses.

Section 89.403 describes the agency's procedure for providing delinquent notices to licensees who have failed to pay an annual assessment fee.

Section 89.404 requires each licensee to file an annual report by March 31 for the prior calendar year.

Section 89.405 describes the effect of criminal history information on applicants and licensees, including what information must be provided on arrests, charges, indictments, and convictions. As per Texas Occupations Code, §53.022, subsection (c) of the rule outlines the factors the agency will consider in determining whether a conviction relates to the occupation of being a property tax lender.

Section 89.406 is a companion rule to §89.405. Section 89.406 describes the crimes directly related to the fitness for holding a license, as well as mitigating factors that will be considered, as per Texas Occupations Code, §53.023.

Section 89.407 details the effect of a license revocation, suspension, or surrender upon the authority to collect existing contracts.

Section 89.408 prescribes the process for a new application after a former licensee has surrendered its license or had a license revoked.

Section 89.409 provides the procedure for returning license certificates upon the reissuance of a license.

Compliance with these rules is optional prior to March 1, 2008. Property tax lenders under this chapter should apply for licensure no later than March 1, 2008.

These new sections are adopted under Texas Finance Code, §351.007 (Acts 2007, 80th Leg., ch. 1220), which authorizes the Finance Commission to adopt rules to ensure compliance with the "Property Tax Lender License Act."

The statutory provisions affected by the adopted new sections are contained in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

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

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## PART 6. CREDIT UNION DEPARTMENT

### CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

## SUBCHAPTER H. INVESTMENTS

### 7 TAC §91.801

The Credit Union Commission adopts amendments to §91.801, concerning investments in credit union service organizations (CUSOs), without changes to the proposed text as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3937).

The adopted 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 adopted as a result of the Department's general rule review.

Written comments were received from Kelli Larsen of Firstmark Credit Union and from Karen Wilkerson of United Heritage Credit Union. Both commenters expressed support for the amendments. One commenter stated that the amendments are prudent and useful. The other commenter pointed out that the amendments clarify the powers granted to the Commissioner regarding limits on CUSO activities and standardize the terminology used to measure CUSO investments and loans.

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 §124.351 and §124.352, which authorize the Commission to establish rules for investments.

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

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

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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



### 7 TAC §91.802

The Credit Union Commission adopts amendments to §91.802, concerning other investments, without changes to the proposed

text as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3938).

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 adopted as a result of the Department's general rule review.

Written comments in support of the amendments were received from Karen Wilkerson with United Heritage Credit Union and from Kelli Larsen of Firstmark Credit Union. One commenter remarked that the amendments impose on credit unions a higher standard for investment activities and standardize the investment terminology. Another commenter stated that the amendments were useful and prudent.

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 §124.351 and §124.352, which authorize the Commission to establish rules for investments.

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

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

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Harold E. Feeney  
Commissioner  
Credit Union Department  
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For further information, please call: (512) 837-9236



### 7 TAC §91.803

The Credit Union Commission adopts amendments to §91.803, concerning investment limits and prohibitions, without changes to the proposed text as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3940).

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 adopted as a result of the Department's general rule review.

Written comments were received from Kelli Larsen with Firstmark Credit Union and from Karen Wilkerson with United Heritage Credit Union. One commenter expressed support for the amendments. The commenter also asked the Commission to consider removing the 50% investment limitation with any obligor

as an unnecessary restriction that prevents adequate diversification. Since the comment addresses language that was not part of the amendments, it will be considered for future rule review. Another commenter supported the amendments as standardizing the terminology used for investment measurement.

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 §124.352, which authorizes the Commission to adopt rules limiting investments.

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

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

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Harold E. Feeney  
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Credit Union Department  
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For further information, please call: (512) 837-9236



### 7 TAC §91.804

The Credit Union Commission adopts a non-substantive amendment to §91.804, concerning custody and safekeeping, without changes to the proposed text as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3940). The amendment edits a sentence for better clarity.

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

Written comments were received from Karen Wilkerson with United Heritage Credit Union and from Kelli Larsen with Firstmark Credit Union. Both commenters supported the amendment.

The amendment 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 §124.351 and §124.352, which authorizes the Commission to adopt rules concerning investments.

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

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

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Harold E. Feeney  
Commissioner  
Credit Union Department  
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### 7 TAC §91.805

The Credit Union Commission adopts an amendment to §91.805, concerning loan participation investments, with changes to the proposed text as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3941). The section is adopted with changes to correct a typographical error in paragraph (4).

The amendment substitutes the term "net worth" for the term "reserves and undivided earnings" for consistency with other rules.

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

Written comments were received from Kelli Larsen with Firstmark Credit Union and from Karen Wilkerson with United Heritage Credit Union. Both commenters supported the change in terminology.

The amendment 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 §124.351, which authorizes the Commission to adopt rules concerning investments.

The specific section affected by the 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.

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

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Harold E. Feeney  
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For further information, please call: (512) 837-9236



### 7 TAC §91.808

The Credit Union Commission adopts an amendment to §91.808, concerning reporting investment activities to the board of directors, without changes to the proposed text as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3941). 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 amendment is adopted as a result of the Department's general rule review.

Written comments were received from Kelli Larsen with Firstmark Credit Union and from Karen Wilkerson with United Heritage Credit Union. Both commenters supported the change in terminology.

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 §124.351, which authorizes the Commission to adopt rules concerning investments.

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

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

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Harold E. Feeney  
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Credit Union Department  
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For further information, please call: (512) 837-9236



## SUBCHAPTER I. RESERVES AND DIVIDENDS

### 7 TAC §91.901

The Credit Union Commission adopts amendments to §91.901, concerning reserve requirements, without changes to the proposed text as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3942). The amendments make non-substantive changes and corrections for greater clarity and consistency.

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

Written comments supporting the amendments were received from Kelli Larsen with Firstmark Credit Union and from Karen Wilkerson with United Heritage Credit Union.

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 §122.104, which authorizes the Commission to adopt rules concerning reserve allocations.

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

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

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#### 7 TAC §91.902

The Credit Union Commission adopts amendments to §91.902, concerning dividends, without changes to the proposed text as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3943). 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 adopted as a result of the Department's general rule review.

Written comments were received from Karen Wilkerson with United Heritage Credit Union and from Kelli Larsen with Firstmark Credit Union. Both commenters expressed support for the amendments and urged the Commission to adopt the proposed changes.

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 §123.208(c), which authorizes the commissioner to restrict the payment of a dividend.

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

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

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## SUBCHAPTER J. CHANGES IN CORPORATE STATUS

### 7 TAC §91.1003

The Credit Union Commission adopts amendments to §91.1003, concerning mergers and consolidations, without changes to the proposed text as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3944). 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.

Written comments supporting the amendments were received from Kelli Larsen with Firstmark Credit Union, from Karen Wilkerson with United Heritage Credit Union, and from Suzanne Yashewski with the Texas Credit Union League. All commenters expressed opposition to unwelcome mergers.

An additional comment was received after the expiration of the comment period expressing concern that the amendments could prevent a voluntary merger where the two credit unions want to provide material benefits to their members by delivering better products and services. The amendments were not intended to inhibit voluntary mergers. The proposed prohibition prevents one credit union from soliciting another credit union's members. In most voluntary merger situations, each credit union promotes the merger to its own members. The surviving credit union may promising better products or services to the Board of Directors of the merging credit union, but would not be addressing the members of the merging credit union. The Commission believes that the amendment does not prevent the promotion of a voluntary merger to the affected members and declines to modify the amendment.

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 §122.151, which authorizes the Commission to adopt rules for mergers and consolidations.

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

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

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Credit Union Department  
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## TITLE 10. COMMUNITY DEVELOPMENT

### PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

#### CHAPTER 300. ADMINISTRATION

##### 10 TAC §300.11

The Texas Residential Construction Commission (commission) adopts new §300.11, regarding meetings of the commission with changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5254).

The new rule provides the public a greater understanding of how an open meeting is conducted and the role that a member of the public may play in the proceedings.

The commission received no comments on the proposed new rule.

The new rule is adopted pursuant to Property Code, Chapter 406 relating to the Commission, and §408.001 which provides general authority for the commission to adopt rules necessary for the implementation of and Title 5, Government Code Chapter 551 regarding open meetings.

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

##### *§300.11. Meetings of the Commission.*

(a) The commission shall meet at times and places to be determined either by the chair or the presiding member of the commission.

(b) Meetings of the commission are open to the public unless such meetings are conducted in executive session pursuant to state law.

(c) The chair of the commission shall preside over any proceeding or meeting of the commission, unless a member of the commission is designated by the chair to preside.

(d) Notice of all commission meetings shall be provided in accordance with the Open Meetings Act, Texas Government Code, Chapter 551 and the Administrative Procedure Act.

(e) A person who wants to testify before the commission about any subject under the commission's jurisdiction shall fill out a Public Comment form prior to the start of the meeting and submit the form to the chair.

(f) The chair will recognize requests to address the commission during the "public comment" portion of a meeting. Public comments will be limited to individuals present in the meeting. No comments will be taken by telephone, internet, video-conferencing or other means of transmission or recording.

(g) The chair may impose a time limit for those wishing to address or make a presentation to the commission. The allotted period for a person addressing the commission may only be extended by commission vote and may not be extended by another person delegating, ceding, passing or otherwise granting allotted comment time in lieu of addressing the commission.

(h) The chair of the meeting has sole discretion to determine the procedural conduct of a commission meeting.

(i) Subsections (e), (f) and (g) do not apply to subcommittee meetings.

(j) Filing deadlines for documents and other materials addressed to the commissioners.

(1) Except as provided in paragraph (2) of this subsection, all documents and other materials addressed to the commissioners relating to any proceeding that has been placed on the agenda of an open meeting shall be filed with the Executive Director or General Counsel no later than five days prior to the open meeting at which the proceeding will be considered, provided that no party is prejudiced by the timing of the filing of the documents. Documents that are not filed before the deadline and do not meet one of the exceptions in paragraph (2) of this subsection, will not be considered timely filed, and may not be reviewed by the commissioners in their open meeting.

(2) The deadline established in paragraph (1) of this subsection does not apply if:

(A) the documents or other materials have been specifically requested by one of the commissioners;

(B) the document or other material relates to a matter for which the commission has set a different specific deadline for filing a response; or

(C) good cause for the late filing exists. Good cause must clearly appear from specific facts shown by written pleading that compliance with the deadline was not reasonably possible and that failure to meet the deadline was not the result of the negligence of the party. The finding of good cause lies within the discretion of the commission.

(3) Documents or other materials filed under this subsection may be delivered by electronic mail, first class mail, hand-delivery, or by overnight courier delivery.

(4) The person submitting the information in hard copy must provide 16 copies of the materials for distribution to the commissioners and staff. Documents or materials filed under this subsection will be distributed to the commissioners for their consideration unless the requisite number of documents has not been provided.

(5) Written materials filed under this subsection will not be read aloud, and audio or video materials will not be played at the commission meeting, unless the chair otherwise directs at the meeting.

(6) No filing fee is required to file any document or other material with the commission under this subsection.

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

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Susan K. Durso  
General Counsel  
Texas Residential Construction Commission  
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For further information, please call: (512) 463-2886



CHAPTER 303. REGISTRATION  
SUBCHAPTER A. REGISTRATION OF  
BUILDERS

**10 TAC §303.10**

The Texas Residential Construction Commission adopts new §303.10, relating to evaluation of a builder's relationship with a homeowner without changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5258).

The new rule establishes a list of 15 factors that the commission will evaluate in determining whether a person who contracts with a homeowner to provide consulting, supervisory, or managerial services related to the construction of a new home or a material improvement to, or interior renovation of, an existing home, is a builder under Title 16 of the Property Code and Chapter 303 of the commission's rules.

The commission received one comment regarding the proposed new rule from Ned Munoz on behalf of the Texas Association of Builders ("TAB"). TAB cautioned the commission on possible unintended consequences of the proposed new rule. While acknowledging that the list of factors in the new rule is not exhaustive, TAB states that it may be possible for unscrupulous persons to take advantage of the detailed list of factors and craft their actions and businesses in such a manner as to escape rightful oversight by the commission. TAB suggests that, as an alternative to adopting the new rule, the commission could create a guidance document instead of formal rules.

The commission acknowledges that some persons might try to evade the registration requirements of Title 16 of the Property Code by crafting their actions and businesses to avoid commission oversight. The new rule will put such persons on notice of the factors that the commission considers relevant in determining whether a person who seeks to provide consulting, supervisory, or managerial services to a homeowner in connection with residential construction activities needs to be registered as a builder. As TAB acknowledges, however, the list of factors in the new rule is not exhaustive and the commission will remain free to consider any other factor that is relevant in making the determination as to whether a person is a builder within the meaning of Title 16 of the Property Code and Chapter 303 of the commission's rules.

The commission also believes that its adoption of the new rule, as opposed to its creation of a set of guidelines only, is necessary to put all persons on notice of the types of consulting, supervisory, and management activities that require registration as a builder with the commission. The new rule will clarify the builder registration requirement for persons who wish to comply with Title 16, and it will also enhance the commission's ability to enforce the registration requirement and take disciplinary action against persons who fail to register with the commission while engaging in activities listed in the rule. For these reasons, the commission respectfully declines to accept the TAB suggestion that it not adopt the new rule and that it only create a guidance document instead.

The new rule is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, and under Chapter 416 of the Property Code, which requires registration by the commission of persons who act as builders in Texas.

The new rule is adopted to implement Property Code §408.001 and Chapter 416.

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

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

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Susan K. Durso

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Texas Residential Construction Commission

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For further information, please call: (512) 463-2886



SUBCHAPTER B. REGISTRATION OF HOMES

**10 TAC §§303.100, 303.110, 303.120, 303.140, 303.150**

The Texas Residential Construction Commission adopts amendments to §§303.100, 303.110, 303.120, 303.140, and 303.150, relating to the registration of homes in the state of Texas as provided for in Title 16, Property Code. Sections 303.100 and 303.110 are adopted with changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5259). Sections 303.120, 303.140, and 303.150 are adopted without changes and will not be republished.

The amendments incorporate into the rules recent legislative amendments to the agency's statute and agency policy. In addition, the amendments are part of a commission review of the necessity of these rules under the requirements of Government Code §2001.039, which requires each state agency to periodically review its rules.

The commission received no comments on the amendments to 10 TAC §§303.100, 303.120, 303.140, and 303.150.

The commission received one comment and suggested change to the proposed amendment to 10 TAC §303.110 from Ned Munoz on behalf of the Texas Association of Builders ("TAB"). The commission adopts §303.110 with changes to the proposed text as indicated by the discussion of TAB's comment as follows. The changes do not affect any who were not affected by the published text.

With regard to 10 TAC §303.110, relating to registration of existing homes by a builder or remodeler, TAB requested that the commission retain the proposed deletion of "transaction governed by the Act" in order to clarify that only improvement projects under the Act must be registered. The commission accepts the suggestion in part, noting that "transaction governed by the Act" is defined in §301.1 and describes those contracts subject to the Act. However, the commission declines to accept the suggested insertion of the word "improvement" because §303.110 refers only to those transactions governed by the Act for projects on existing homes.

The amendments are adopted under Property Code §408.001, which provides generally authority for the commission to adopt rules necessary for the implementation of Title 16 and §426.003, Texas.

which requires the commission to establish rules and procedures for registration of homes in the state of Texas.

The statutory provisions affected by the adoption are set forth in the Title 16, Property Code §408.001 and §426.003.

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

§303.100. *New Home Registration.*

(a) On or after January 1, 2004, a builder or remodeler shall register with the commission all new home construction governed by the Act.

(b) For new home construction involving a title transfer from the builder to the initial homeowner, the builder shall submit a home registration form and the appropriate fee to the commission on or before the 15th day of the month that follows the month in which the title transfer takes place.

(c) For new home construction that does not involve a title transfer from the builder to the initial homeowner, a builder shall register a home by submitting a home registration form and the appropriate fee to the commission not later than the 15th day after the earlier date of substantial completion of the home, the date the home is occupied, or the date a certificate of occupancy or a certificate of completion is issued.

§303.110. *Registration of Existing Homes by a Builder or Remodeler.*

(a) On or after January 1, 2004, a builder or remodeler who enters into a transaction governed by the Act on an existing home shall register the home with the commission.

(b) A builder or remodeler shall register a home under this subsection by submitting a home registration form and the appropriate fee to the commission not later than the 15th day after the earlier of date of substantial completion of the residential construction project, the date a certificate of occupancy is issued, or in those cases in which the home is not occupied during the material improvement or interior renovation, the date a certificate of completion is issued or the date the home is occupied.

(c) A builder or remodeler shall not intentionally divide an agreement to improve the interior of an existing home into more than one agreement each with consideration of less than \$10,000 for the purpose of avoiding the requirements of this subchapter.

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

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

TRD-200704995  
Susan K. Durso  
General Counsel  
Texas Residential Construction Commission  
Effective date: November 7, 2007  
Proposal publication date: August 24, 2007  
For further information, please call: (512) 463-2886



## CHAPTER 305. PRACTICE AND PROCEDURES FOR HEARINGS AND DISCIPLINARY ACTIONS

## SUBCHAPTER A. GENERAL PROVISIONS

### 10 TAC §305.2

The Texas Residential Construction Commission ("commission") adopts amendments to §305.2, regarding definitions without changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5262).

The amendments define new terms added to the Act by House Bill 1038, as enacted by the 80th Texas Legislature: reasonable expenses and fees; repeated failure; and repeated prior violations. The amendment also defines injunctive relief, an existing term that has not been previously addressed.

The commission received no comments on the proposed amendments.

The amendments are adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, and under Property Code Chapter 419. 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.

The statutory provisions affected by the adoption are set forth in the Title 16, Property Code §401.007, §408.001 and Chapter 419 and Government Code §2001.39.

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

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

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General Counsel  
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## SUBCHAPTER B. DISCIPLINARY PROCEEDINGS

### 10 TAC §305.21

The Texas Residential Construction Commission adopts amendments to §305.21, regarding commission actions relating to disciplinary proceedings without changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5264).

The amendments eliminate the distinction between formal and informal reprimands; provide for revocation or suspension of a certificate of registration upon a finding that a registrant has had repeated violations that have resulted in disciplinary action or is no longer eligible for registration; provide for the issuance of a cease and desist order and penalties for violations of a cease and desist order; and state the standard criteria to be used in

determining administrative penalties related to commission actions. In addition, the amendments are part of a commission review of the necessity of this rule under the requirements of Government Code §2001.39, which requires each state agency to periodically review its rules.

The commission received no comments on the proposed amendments.

The amendments are adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act and the Administrative Procedures Act, Texas Government Code Chapter 2001; Property Code §416.005 and §416.006 regarding eligibility requirements for individuals and business entities, Chapters 418 and 419 of the Act, which authorize the commission to undertake disciplinary action for violations of the commission rules and the Act and Government Code §2001.39.

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

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

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Susan K. Durso  
General Counsel

Texas Residential Construction Commission

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### 10 TAC §305.22

The Texas Residential Construction Commission adopts amendments to §305.22, relating to administrative penalties without changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5265).

The amendments increase the maximum penalty amount from \$5,000 to \$10,000 for each violation of Title 16 of the Property Code or the commission's rules. This change is necessary to implement House Bill 1038, as enacted by the 80th Texas Legislature, which increases the maximum penalty amount in §419.002(a) of the Property Code from \$5,000 to \$10,000 for each violation of Title 16 of the Property Code or the commission's rules.

The amendments also establish a requirement and procedure for the commission's publication of guidelines regarding sanctions and administrative penalties for a person's first violation of Title 16 of the Property Code or the commission's rules that involves a failure to comply with a filing or payment requirement, or a failure to respond to a commission request for information. This change will help ensure that administrative penalties for such violations are assessed fairly and consistently according to a set of guidelines that the commission will publish. The guidelines will be reviewed annually by the commission in an open meeting and the commission will provide an opportunity for public comment

on the guidelines with at least 30 days' notice to the public prior to the meeting in which the guidelines are reviewed.

The amendments set a maximum penalty amount of \$1,000 for each day of violation of a cease and desist order issued by the commission. The amendments clarify that the maximum penalty amount of \$5,000 for each violation of Title 16 of the Property Code or the commission's rules does not apply to violations of a cease and desist order issued by the commission. This change is needed because the 80th Texas Legislature added §401.007 to the Property Code, which authorizes the commission to issue a cease and desist order, an order to take affirmative action, or both, to a person who is in violation of Title 16 of the Property Code, and to assess an administrative penalty in an amount not to exceed \$1,000 for each day that a violation of a cease and desist order occurs.

The amendments make three changes in the language of §305.22(a), so that the rule will be applicable to a "person" who commits a violation, and not just a "registrant", in keeping with legislative changes resulting from House Bill 1038.

No comments were received regarding the amendments.

The amendments are adopted under Property Code §401.007, which relates to injunctions, cease and desist orders, and orders to take affirmative actions; Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code; and Chapter 419 of the Property Code, which relates to administrative penalties that may be assessed by the commission. In addition, the amendments are implemented as a part of an agency rule review plan pursuant to Government Code §2001.39.

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

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

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Susan K. Durso  
General Counsel

Texas Residential Construction Commission

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### 10 TAC §305.28

The Texas Residential Construction Commission adopts amendments to §305.28, regarding the procedures for hearings and disciplinary actions without changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5266).

The amendments incorporate into the rule recent legislative amendments to the agency's statute and agency policy. The amendment clarifies the application of disciplinary actions. In addition, the amendments are part of the agency's rule review plan pursuant to Government Code §2001.39.

The commission received no comments on the proposed amendments.

The amendments are adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, and under Property Code Chapters 408 and 418.

The statutory provisions affected by the amendments are those set forth in the Title 16, Property Code Chapters 408, 418 and Government Code §2001.39.

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

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

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Susan K. Durso

General Counsel

Texas Residential Construction Commission

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## SUBCHAPTER C. PROCEEDINGS AT SOAH

### 10 TAC §305.31

The Texas Residential Construction Commission adopts amendments to §305.31, regarding the procedures for hearings and disciplinary actions with changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5267). Minor modifications were made to incorporate Government Code §2001.054 requirements.

The amendments incorporate into the rule recent legislative amendments to the agency's statute and agency policy. The amendment adds cease and desist orders to notice of hearing requirements. In addition, the amendments are part of the agency's rule review plan pursuant to Government Code §2001.39.

The commission received no comments on the proposed amendments.

The amendments are adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, and under Property Code Chapters 408 and 418.

The statutory provisions affected by the amendments are those set forth in the Title 16, Property Code Chapters 408, 418 and Government Code §2001.39.

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

§305.31. *Notice of SOAH Proceedings.*

(a) Notice.

(1) Before revoking or suspending any certificate of registration or certification, reprimanding any registrant, initiating action for a cease and desist order, or initiating a proceeding for penalties for fail-

ure to comply with a cease and desist order or other order prohibiting violations of the Act, the commission will afford all parties an opportunity for an adjudicative hearing after reasonable notice of not less than ten days, except as otherwise provided by commission rule or the Act.

(2) Upon receiving written notice of an appeal of a denial of registration, the commission will make a request for hearing with SOAH within a reasonable time but not later than fifteen business days after receipt of the notice of appeal.

(b) The content of the notice shall be made and served in accordance with the provisions of §2001.052 of the APA and §2001.054, as required.

(c) Service of notices of hearing shall be made to the parties' last known address submitted to the commission in accord with 10 TAC Chapter 303, Subchapters A, C or D, and 10 TAC Chapter 318, Subchapter B, as applicable, as reflected in the commission's records. Unless notice by personal service or certified mail is required by law, notice mailed to such address by first class mail shall be prima facie evidence of adequate service.

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

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Susan K. Durso

General Counsel

Texas Residential Construction Commission

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For further information, please call: (512) 463-2886



## CHAPTER 306. COMPLAINTS

### 10 TAC §306.1

The Texas Residential Construction Commission adopts an amendment to §306.1, relating to the commission's complaint process without changes to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5267).

The amendment makes it a violation of Property Code §306.1 for a respondent to fail to respond to a commission request for a written response or information regarding a complaint within forty-five (45) days after the date that the commission issues its request to the respondent. The amendment also requires the commission to make a final disposition of each complaint that is assigned to an investigator and to notify both the complainant and respondent of its final disposition of the complaint.

The amendment will encourage respondents to provide written responses and information to the commission regarding complaints filed against them and will improve the communication to complainants and respondents regarding the final disposition of complaints that have been assigned to an investigator. The use of the date of issuance, as opposed to the date of receipt, of the commission's request to respondents for written responses and information regarding complaints will help reduce uncertainty as to when the response period begins and ends.

The commission received no comments regarding the proposed amendment.

The amendment is adopted under Property Code §408.001 and §409.003 and Government Code §2005.052(a)(3), which was enacted by the 80th Texas Legislature as part of House Bill 1168, and provides for the denial, suspension, or revocation of a person's license, including a person's registration, for refusing to provide information requested by a licensing authority. In addition, the amendment is adopted as part of an agency rule review plan pursuant to Government Code §2001.39.

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

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

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Susan K. Durso

General Counsel

Texas Residential Construction Commission

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

##### 13 TAC §§1.71 - 1.74, 1.77, 1.79, 1.80

The Texas State Library and Archives Commission adopts amendments to 13 TAC §§1.71 - 1.74, 1.77, 1.79, and 1.80, regarding minimum standards for accreditation of libraries in the state library system. Section 1.72 is adopted with one change to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5269). Sections 1.71, 1.73, 1.74, 1.77, 1.79, and 1.80 are adopted without changes and will not be republished.

A question was received, asking about the meaning of the wording "personal printing" in proposed §1.72(b). As a result of this question we have changed the wording to "printing." This change brings the wording in line with the other services listed.

The amendments to §1.74 and §1.77 remove outdated sections of the rules. Amendments to §§1.71 - 1.74 and §1.77 standardize the language and clarify the intent. Amendments to §§1.72, 1.73, 1.79, and 1.80 add new provisions. Amendments to §1.72 will codify existing practices and specify the level of service to be provided by public school libraries that have a contract with a local nonprofit organization to serve as the community's public library. Amendments to §1.73 add reference to a new statute

regarding library districts. Amendments to §1.79 and §1.80 will specify how libraries can regain full membership in the Texas Library System after being on probational or provisional status.

No comments were received regarding the proposal.

The amendments are adopted under the authority of §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 §441.123 and §441.136.

##### §1.72. *Public Library Service.*

(a) Library services must be provided without charge or deposit to all persons residing in the local political subdivisions which provide monetary support to the library. These library services include the dissemination of materials or information by the library to the general public during the hours of operations of all library facilities. In this context, library services include the circulation of any type of materials, reference services (locating and interpreting information), use of computers to access information sources, databases, or other similar services, and admissions to the facility or any programs sponsored or conducted by the library.

(b) The following charges are permitted at the discretion of the library's governing authority: reserving library materials; use of meeting rooms; replacement of lost borrower cards; fines for overdue, lost, or damaged materials in accordance with local library policies; postage; in-depth reference services on a contractual basis; photocopying; printing; telefacsimile services; library parking; service to non-residents; sale of publications; rental and deposits on equipment; and charges for the use of materials and machine-readable data bases not owned by the library, major resource center, or regional library system for which the vendor or supplier has charged a borrowing fee.

(c) Fees may not be charged for library services on the library premises by individuals or organizations other than the library unless the charges are permitted by subsection (b) of this section.

(d) As permitted by §1.73 of this subchapter, relating to Public Library: Legal Establishment, non profit corporations may enter into a contract with a school district to provide library services to the general public residing in the district. This public library service must be in addition to that provided to school students, faculty, and staff. Public library services must be provided at least the required number of hours all weeks of the year, except those weeks with national or state holidays. The number of hours is specified in §1.81 of this subchapter, relating to Quantitative Standards for Accreditation of Library.

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

Filed with the Office of the Secretary of State on October 22, 2007.

TRD-200705075

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: November 11, 2007

Proposal publication date: August 24, 2007

For further information, please call: (512) 463-5459



## **TITLE 22. EXAMINING BOARDS**

### **PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD**

#### **CHAPTER 155. RULES RELATING TO STANDARDS OF PRACTICE**

##### **22 TAC §155.1**

The Texas Appraiser Licensing and Certification Board adopts an amendment to §155.1, relating to Standards of Practice, without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5626) and will not be republished.

The adopted amendment expands the jurisdictional exception so that it includes members of the peer review committee described in Texas Occupations Code §1103.453.

No written comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Appraiser Licensing and Certification Act, Texas Occupations Code §1103.154, Rules Relating to Professional Conduct.

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

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

TRD-200704988

Troy Beaulieu

Attorney

Texas Appraiser Licensing and Certification Board

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Proposal publication date: August 31, 2007

For further information, please call: (512) 465-3959



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 97. COMMUNICABLE DISEASES**

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts an amendment to §97.91, concerning the delegation of authority to give informed consent for immunizations of a minor, and repeal of §97.92, concerning recommendations for documentation of reason(s) parent, managing conservator, guardian, or other person could not be contacted; and amendments to §§97.151 - 97.153, 97.155, and 97.156 and new §97.154, concerning the process by which physicians in the state are authorized to administer yellow fever vaccine for persons who travel outside the United States. The amendment to §97.91 and repeal of §97.92, and amendments to §§97.151 - 97.153, 97.155, and 97.156 and new §97.154 are adopted without changes to the proposed text as published in the

August 3, 2007, issue of the *Texas Register* (32 TexReg 4730) and, therefore, the sections will not be republished.

##### **BACKGROUND AND PURPOSE**

Government Code, §2001.039, requires that each state agency review and consider for reoption every four years each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Section 97.91 and §97.92 have been reviewed and the department has determined that reasons for adopting §97.91 continue to exist because a rule on this subject is needed. However, §97.92 is repealed due to redundant language.

Section 97.91 provides that certain information must be obtained prior to immunizations of a minor when the parent/legal guardian is not present and another adult purports to have consent of that parent/legal guardian. In addition, the adopted amendment provides that immunizations may also be administered as provided in Family Code, §32.101. The adopted amendments clarify these requirements, and include a cross-reference to the Family Code.

Since Family Code, §32.101, provides requirements related to who shall be allowed to grant consent to immunize a child (i.e., parent/legal guardian) and who shall be allowed to grant consent in the event that parent/legal guardian is not available, the agency repealed §97.92 in its entirety in order to provide clarity to the public concerning who may provide consent to immunize a child under various circumstances. The Family Code provision speaks to the scenarios which §97.92 addresses; therefore, the department adopts the repeal of §97.92.

Government Code, §2001.039, requires that each state agency review and consider for reoption every four years each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Sections 97.151 - 97.153, 97.155, and 97.156 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. New §97.154 is adopted so that there is a section which consolidates the criteria for operating as a vaccination center and clarifies those criteria. Adopted amendments to §§97.151 - 97.153, 97.155, 97.156 and new §97.154, concern the process by which physicians in the state are authorized to administer yellow fever vaccine for persons who travel outside the United States. The department provides this authorization by issuing Uniform Stamps to designated physicians. Sections 97.151 - 97.156 cover the criteria by which the department issues the Uniform Stamps to physicians, and processes for denial, revocation, suspension, or non-renewal.

In the four-year review of these rules, the amendments to §§97.151 - 97.153, 97.155, and 97.156 update the agency, division, section, and branch names, plus clarify language, simplify processes, reorder text, and more closely follow federal guidelines. After conducting a cost analysis, the branch determined that the existing \$25 fees for Uniform Stamp application, renewal, and replacement were not sufficient for the department to recover its costs. The Uniform Stamp application, renewal, and replacement fees are increased for a reasonable recovery of the department's costs. However, all fees remain waived for public health departments, public health districts, and public health regions.

The department consulted with the Health Service Regions, Texas Association of Local Health Officials, the department's Infectious Disease Control Unit, Texas Academy of Family Physicians, Texas Medical Association, and the current direc-

tory of authorized yellow fever vaccine providers during the Vaccination Stamps rule development process.

#### SECTION-BY-SECTION SUMMARY

Section 97.91(a) was amended to include the phrase "parent/legal guardian is not present and another adult purports to have consent of that parent/legal guardian" as clarifying language. Language concerning contacting a "parent/guardian" was deleted because it causes confusion and was not necessary.

In §97.91, subsections (b) and (c)(1) were amended to include "parent/legal guardian" as clarifying language. The Sample Delegation Form in subsection (d) was amended for clarification.

Section 97.91(e) was added to include "immunizations may also be administered as provided in Family Code, §32.101" as a cross-reference to an existing statutory provision which speaks to the situations that §97.92 addresses. Section 97.92 is, therefore, repealed due to redundant language.

Amendments to §97.151 update the agency, division, section, and branch names, plus, provide consistency in terminologies. The amendments to §97.152 update agency names and terminologies. Amendments to §97.153 simplify the process by deleting current language which requires administration of 20 or more doses of yellow fever vaccine annually for Uniform Stamp eligibility, plus, clarify language for the Uniform Stamp's issuance and responsibilities. New language that physicians are encouraged, but not required, to report cases of febrile illness potentially caused by yellow fever vaccination to the CDC/FDA Vaccine Adverse Events Reporting System (VAERS) was added. These amendments more closely follow federal guidelines, which are referenced in the section. Also, the Uniform Stamp application, renewal, and replacement processes and fees are updated. New §97.154 reorders the criteria for operating a vaccination center into one section and clarifies those requirements. The amendments to §97.155 update language for consistent terminology. The amendments to §97.156 update division, branch and department names, clarifies that renewals are also encompassed in subsection (a), plus, subsection (b) was clarified to state that hearings, when available, occur if they are requested.

#### 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. The commenters were individuals, and were in favor of the rules.

Comment: Concerning the rules in general, all commenters listed support for the proposed rules.

Response: The commission agrees with the commenters. No changes were made to the rule text as a result of the comments.

Comment: Concerning §97.153, the increased fees, in addition to the cost of the vaccine, may reduce the number of private providers and increase the load on the public health sites. Since the overall number of immunizations given is low, the impact on the public health sites should be minimal.

Response: The commission agrees because public health departments, public health districts, and public health regions provide a safety net for public health and safety. The department provides funds and support to the public health departments, public health districts, and public health regions. The vaccination stamp fees are waived to support their business operations and promote public health, especially, in underserved popula-

tions. No changes were made to the rule text as a result of the comment.

#### LEGAL CERTIFICATION

The Department of State Health Services 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 C. CONSENT FOR IMMUNIZATION

##### 25 TAC §97.91

#### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; 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. 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.

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



##### 25 TAC §97.92

#### STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; 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. Review of the rule 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.

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Lisa Hernandez  
General Counsel  
Department of State Health Services  
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For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER G. VACCINATION STAMPS

### 25 TAC §§97.151 - 97.156

#### STATUTORY AUTHORITY

The amendments and new rule are authorized by Health and Safety Code, §81.021; 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. 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.

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 732. CONTRACTED SERVICES

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§732.105, 732.240, 732.241, and 732.243; and the repeal of §732.256, without changes to the proposed text published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4959). The justification for the amendments and repeal is to state that DFPS' residential child-care contracts are subject to the HHSC rules found in 1 TAC Chapter 355, Reimbursement Rates; and clarify that the DFPS rules relating to allowable and unallowable costs do not apply to DFPS residential child-care contracts.

A new subsection (c) is added to §732.105 to clarify that allowable and unallowable costs for residential child-care contracts are governed by the HHSC rules, the reference to §732.256 is deleted, and the term "executive director" is changed to "commissioner."

A new subsection (j) is added to §732.240 to clarify that allowable and unallowable costs for residential child-care contracts are governed by the HHSC rules.

In §732.241, subsection (b) is deleted because the information applies to "improper payments," which is already covered in §732.303(a) of this title (relating to Recoupment of Improper Payments).

In §732.243 the reference to §732.256 is deleted and the agency name is updated.

Section 732.256 is repealed because the rules relating to allowable and unallowable costs for residential child-care contracts are governed by the HHSC rules, and this rule is no longer applicable.

The amendments and repeal will function by clarifying the information regarding allowable and unallowable costs relating to residential child-care contracts.

No comments were received regarding adoption of the sections.

## SUBCHAPTER A. GENERAL PROCEDURES

### 40 TAC §732.105

The amendment is adopted 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 amendment implements Government Code §2155.144.

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

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

TRD-200704985  
Gerry Williams  
General Counsel  
Department of Family and Protective Services  
Effective date: December 1, 2007  
Proposal publication date: August 10, 2007  
For further information, please call: (512) 438-3437



## SUBCHAPTER L. CONTRACT ADMINISTRATION

### 40 TAC §§732.240, 732.241, 732.243

The amendments are adopted 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 amendments implement Government Code §2155.144.

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

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

TRD-200704984

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: December 1, 2007

Proposal publication date: August 10, 2007

For further information, please call: (512) 438-3437



**40 TAC §732.256**

The repeal is adopted 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 repeal implements Government Code §2155.144.

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

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

TRD-200704983

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: December 1, 2007

Proposal publication date: August 10, 2007

For further information, please call: (512) 438-3437



# 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 Agriculture

### Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review Texas Administrative Code, Title 4, Part 1, Chapter 18, concerning Organic Standards and Certification, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes amendments to Chapter 18, Subchapter C, concerning Organic Production and Handling Requirements, §18.236; Subchapter F, Division 1, concerning the List of Allowed and Prohibited Substances, §18.600; and Division 5, concerning Miscellaneous Provisions, §18.702; and the repeal of Subchapter F, Division 1, concerning the List of Allowed and Prohibited Substances, §§18.601 - 18.606, and Division 5, concerning Miscellaneous Provisions, §18.701. These may be found in the proposed rule section of this publication of the *Texas Register*. The assessment of Chapter 18, Subchapters A - F, by the department at this time, indicates that with the exception of the proposed amendments to §§18.236, 18.600 and 18.702 and the proposed repeal of §§18.601 - 18.606 and §18.701, the reason for readopting without changes all remaining sections in Chapter 18, Subchapters A - F continues to exist.

The department is accepting comment on the review of Chapter 18. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register* to Leslie McKinnon, Coordinator for Organic Certification, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200705067

Dolores Alvarado Hibbs  
General Counsel  
Texas Department of Agriculture  
Filed: October 22, 2007



Texas Department of Transportation

### Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review 43 TAC, Part 1, Chapter 17, Vehicle Titles and Registration (see also proposed changes to Chapter 17 published in the October 12, 2007,

issue of the *Texas Register* (32 TexReg 7246)); Chapter 18, Motor Carriers; and Chapter 28, Oversize and Overweight Vehicles and Loads.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments regarding this rule review may be submitted in writing to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-200705072

Bob Jackson  
General Counsel  
Texas Department of Transportation  
Filed: October 22, 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 15, concerning corporate activities, specifically Subchapter A (Fees and Other Provisions of General Applicability) comprised of §§15.1 - 15.9; Subchapter B (Bank Charters) comprised of §15.23 and §15.24; Subchapter C (Bank Offices) comprised of §15.41 and §15.42; Subchapter E (Change of Control Applications) comprised of §15.81; Subchapter F (Applications for Merger, Conversion, and Purchase or Sale of Assets) comprised of §§15.101 - 15.117; and Subchapter G (Charter Amendments and Certain Changes in Outstanding Stock) comprised of §15.121 and §15.122.

Notice of the review of Chapter 15 was published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 3005). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting §§15.1 - 15.9, 15.23, 15.24, 15.41, 15.42, 15.81, 15.101 - 15.117, 15.121, and 15.122, continue to exist and readopts these sections without changes in accordance with the requirements of Government Code, §2001.039.

TRD-200705015

A. Kaylene Ray  
General Counsel  
Texas Department of Banking  
Filed: October 19, 2007

◆ ◆ ◆  
The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 21, concerning trust company corporate activities, specifically Subchapter A (Fees and Other Provisions of General Applicability) comprised of §§21.1 - 21.9; Subchapter B (Trust Company Chartering and Powers) comprised of §21.23 and §21.24; Subchapter C (Trust Deposits) comprised of §21.31 and §21.32; Subchapter D (Trust Company Offices) comprised of §21.41 and §21.42; Subchapter E (Change of Control) comprised of §21.51; Subchapter F (Application for Merger, Conversion, or Sale of Assets) comprised of §§21.61 - 21.64, 21.67 - 21.70 and 21.72 - 21.76; and Subchapter G (Charter Amendments and Certain Changes in Outstanding Stock) comprised of §21.91 and §21.92.

Notice of the review of Chapter 21 was published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 3005). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting §§21.1 - 21.9, 21.23, 21.24, 21.31, 21.32, 21.41, 21.42, 21.51, 21.61 - 21.64, 21.67 - 21.70, 21.72 - 21.76, 21.91, and 21.92, continue to exist and readopts these sections without changes in accordance with the requirements of Government Code, §2001.039.

TRD-200705016

A. Kaylene Ray  
General Counsel  
Texas Department of Banking  
Filed: October 19, 2007

◆ ◆ ◆  
**Credit Union Department**

**Title 7, Part 6**

The Credit Union Commission has completed the review of Texas Administrative Code Title 7, §91.6001, relating to Fiduciary Duties, §91.6002, relating to Fiduciary Capacities, §91.6003, relating to Notice Requirements, §91.6004, relating to Exercise of Fiduciary Powers, §91.6005, relating to Exemption from Notice, §91.6006, relating to Policies and Procedures, §91.6007, relating to Review of Fiduciary Accounts, §91.6008, relating to Recordkeeping, §91.6009, relating to Audit, §91.6010, relating to Custody of Fiduciary Assets, §91.6011, relating to Trust Funds, §91.6012, relating to Compensation, Gifts, and Bequests, §91.6013, relating to Bond Coverage, §91.6014, relating to Errors and Omissions Insurance, and §91.6015, relating to Litigation File. Notice of the proposed review was published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4243).

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§91.6001 - 91.6015 continue to exist and proposes to readopt these sections without changes pursuant to the requirements of Government Code, §2001.039.

TRD-200705055

Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: October 22, 2007

◆ ◆ ◆  
Texas Department of Insurance, Division of Workers' Compensation

**Title 28, Part 2**

Pursuant to the notice of proposed rule review published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3377), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on June 8, 2007, of the following chapters of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 112, Scope of Liability for Compensation and Chapter 133, General Medical Provisions.

The Department considered, among other things, whether the reasons for adoption of these rules continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapters 112 and 133. The completion of the review of these chapters concludes the rule review process.

TRD-200705106

Norma Garcia  
General Counsel  
Texas Department of Insurance, Division of Workers' Compensation  
Filed: October 23, 2007

◆ ◆ ◆  
Pursuant to the notice of proposed rule review published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3378), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on June 8, 2007, of the following chapters of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 134, Benefits--Guidelines for Medical Services, Charges, and Payments and Chapter 141, Dispute Resolution--Benefit Review Conference.

The Department considered, among other things, whether the reasons for adoption of these rules continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapters 134 and 141. The completion of the review of these chapters concludes the rule review process.

TRD-200705105

Norma Garcia  
General Counsel  
Texas Department of Insurance, Division of Workers' Compensation  
Filed: October 23, 2007

◆ ◆ ◆  
Texas Board of Professional Geoscientists

**Title 22, Part 39**

In accordance with Texas Government Code §2001.039, the Texas Board of Professional Geoscientists files this notice of readoption for 22 TAC Chapters 850 and 851. The proposed review was published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2484).

The public comment period for the proposed rule review closed on June 3, 2007. No public comments were received.

The Texas Board of Professional Geoscientists has determined that the reasons for adopting the rules contained in these chapters continue to exist and the rules are readopted without changes. Rules considered during this review may be subsequently revised in accordance with the Texas Administrative Procedure Act.

This concludes the review of Chapters 850 and 851.

TRD-200705086

Vincent Houston

Acting Executive Director

Texas Board of Professional Geoscientists

Filed: October 22, 2007



# TABLES &

# GRAPHICS

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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.

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Figure: 7 TAC §3.37

**First determine the bank's assessable asset group, then:**

Assessment Calculation:		Assessable Asset Group									
Steps	Assessment Calculation:	\$0	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000	\$400,000	\$700,000	\$1,000,000
1	For assessable assets of at least (in thousands)										
	But not greater than (in thousands)	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000	\$400,000	\$700,000	\$1,000,000	\$250,000
2	Take the total assessable assets over (in thousands):	\$0	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000	\$400,000	\$700,000	\$250,000
3	And multiply by this factor:	0.705	0.4	0.19	0.186	0.18	0.11	0.074	0.11	0.11	0.074
4	Add this result to the base assessment amount of:	\$2,490	\$9,540	\$15,540	\$18,390	\$23,970	\$29,370	\$45,870	\$29,370	\$29,370	\$45,870
5	And multiply the total by the percentage corresponding to the bank's examination frequency factor to get the assessment:	(As Per Policy Memorandum 1003)									
	6-month frequency	200%	200%	200%	200%	200%	200%	200%	200%	200%	200%
	12-month frequency	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
	18-month frequency	87.50%	87.50%	87.50%	87.50%	87.50%	87.50%	87.50%	87.50%	87.50%	87.50%
Assessment Calculation:		Assessable Asset Group									
1	For assessable assets of at least (in thousands)	\$1,000,000	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000	\$100,000,000	\$200,000,000	\$400,000,000
	But not greater than (in thousands)	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000	\$100,000,000	\$200,000,000	\$400,000,000	-----
2	Take the total assessable assets over (in thousands):	\$1,000,000	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000	\$100,000,000	\$200,000,000	\$400,000,000
3	And multiply by this factor:	0.066	0.06	0.047	0.028	0.018	0.012	0.008	0.012	0.012	0.008
4	Add this result to the base assessment amount of:	\$101,370	\$365,370	\$665,370	\$1,135,370	\$1,695,370	\$2,055,370	\$2,295,370	\$2,055,370	\$2,055,370	\$2,295,370
5	And multiply the total by the percentage corresponding to the bank's examination frequency factor to get the assessment:	(As Per Policy Memorandum 1003)									
	6-month frequency	200%	200%	200%	200%	200%	200%	200%	200%	200%	200%
	12-month frequency	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
	18-month frequency	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

**Figure: 7 TAC §89.506(a)**

**DISCLOSURE TO PROPERTY OWNER ABOUT PROPERTY TAX LOANS**

Property Tax Lender's Name: \_\_\_\_\_

Property Tax Lender's License #: \_\_\_\_\_

Property Tax Lender's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**What is a property tax loan?**

You currently have a lien against your property for unpaid property taxes. The tax lien for unpaid taxes automatically attached to your property on January 1. You may pay the taxing unit(s) directly, or authorize the property tax lender to pay the taxes. In order for the property tax lender to pay the tax lien, you have to authorize the transfer of the lien from the taxing unit(s) and enter into a loan with the property tax lender. This transaction does not remove the tax lien against your property. If you do not pay the property tax lender under the loan agreement, you may lose your property to foreclosure.

**The property tax loan is the superior lien.**

If you default on any lien against your property, this property tax loan will be superior, i.e., "first in line" to be paid, over any other preexisting lien on your property (e.g., first or secondary mortgage).

**You may have alternatives to this property tax loan.**

If this property is your homestead and you are disabled or age 65 or older, you may be eligible for tax deferral under Texas Tax Code, §33.06. You may arrange with the taxing unit(s) to enter into an installment agreement for the repayment of these taxes. You may have financing options available to you through other private lenders, such as establishing an escrow account or refinancing your existing mortgage to include the taxes. You may be able to borrow from savings or family members. You may shop around with other property tax lenders and compare the different loan terms offered by other lenders.

**Foreclosure is possible.**

If you don't pay, you may lose your property. The tax lien may be considered a default by any mortgage holder with a lien on the same property. The only way to correct the default is to pay off the taxes and have the lien released. Any secured loan may be foreclosed if the loan is in default. The cost of any foreclosure, either tax lien or mortgage, may be added to the amount you owe.

**Contact the Office of Consumer Credit Commissioner if you have questions or problems.**

For more information about property tax lenders, contact the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, [www.occc.state.tx.us](http://www.occc.state.tx.us).

**Before you sign a property tax loan, be sure that you understand this document.**

You may seek advice from an attorney or any third party before you enter into a property tax loan.



**Figure: 7 TAC §89.506(b)**

**DISCLOSURE TO TRANSFEREE  
NOTICE OF 90-DAY DELINQUENCY OF PROPERTY OWNER**

The Property Owner listed below has been delinquent for at least 90 consecutive days in payment of the preexisting lien on the Property described below. The obligation has been referred to a collection specialist. This notice is provided under Texas Tax Code, §32.06(f-1).

Date of Notice: \_\_\_\_\_

Property Owner's Name: \_\_\_\_\_

Property Owner's Tax Account # or Property Tax Loan # (*indicate which #'s listed*):  
\_\_\_\_\_

Property Owner's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address of Property: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Legal Description of Property:

*(Insert Legal Description of Property)*

Name of Preexisting Lien Holder sending this notice (Sender):  
\_\_\_\_\_

Sender's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Relationship of Sender to preexisting lien (e.g., mortgage servicer, holder of first lien, etc.):  
\_\_\_\_\_

If Sender is NOT the holder of the first lien, please identify the first lien holder below:

Name of First Lien Holder:  
\_\_\_\_\_

First Lien Holder's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Figure: 7 TAC §90.603(b)(15)**

"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 §90.603(d)(23)**

"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 §90.603(f)(35)**

"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: 7 TAC §90.604(a)(12)**

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

**TEXAS HOME IMPROVEMENT  
MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT  
AND POWER OF SALE  
(Second Lien)**

DATE \_\_\_\_\_  
ACCOUNT/CONTRACT NO. \_\_\_\_\_

**DEFINITIONS**

- (A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.
- (B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.
- (C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.
- (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.**

**STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).**

**YOU MAY CONTACT THE COMMISSION AT (877) 651-8722 TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.**

**THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO LEARN HOW TO PROCEED UNDER THE STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS.**

**If Contractor is required to register as a builder with the Texas Residential Construction Commission, Owner may file a complaint with the Commission about the conduct of the Contractor at:**

**311 E. 14th Street  
P.O. Box 13144  
Austin, Texas 78711  
877-651-TRCC (8722)**

**Contractor's Certificate of Registration Number is: (insert certificate of registration number)**

\_\_\_\_\_  
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)(14)**

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

**TEXAS HOME IMPROVEMENT  
MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT,  
POWER OF SALE, AND DEED OF TRUST  
(Second Lien)**

DATE \_\_\_\_\_  
ACCOUNT/CONTRACT NO. \_\_\_\_\_

**DEFINITIONS**

- (A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.
- (B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.
- (C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.
- (D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).
- (E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).
- (F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.
- (G) "Completion Date" means (date on which the Work will be completed).
- (H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.
- (I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated \_\_\_\_\_ and includes all amounts secured by this Contract. The Note states that the amount I owe you is \_\_\_\_\_ dollars (U.S. \$ \_\_\_\_\_) plus interest.
- (J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.
- (K) "Applicable Law" means all controlling applicable federal, state, and local law.
- (L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.
- (M) "Forcible Detainer" means a lawsuit to remove a person from the Property.
- (N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.
- (O) "Successor in Interest" means any party that has taken title to the Property.
- (P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

**CONSTRUCTION OF IMPROVEMENTS**

You agree to furnish and pay for all labor and material needed to complete the Work within \_\_\_\_ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner.

**CONTRACT PRICE**

I agree to pay, or cause to be paid, to you, or to your order, the sum of \_\_\_\_\_ dollars (U.S. \$ \_\_\_\_\_) when the Work is completed.



**NOTE PAYABLE TO LENDER**

In exchange for money from the Lender to you, I have signed a Note to the Lender in the amount of \_\_\_\_\_ dollars (U.S. \$ \_\_\_\_\_).

**LIEN TO SECURE NOTE**

To secure the amounts Lender provides to you, and the interest payable to Lender, I give you, and you transfer to Lender, the Lien. The Note is secured by a deed of trust, which I will sign. The deed of trust will renew and extend the Lien created by this Contract.

**TRANSFER OF LIEN**

You transfer to Lender all of your rights and interests in this Contract.

**EXCEPTIONS TO CONVEYANCE AND WARRANTY**

The exceptions to conveyance and warranty are:

*(List any exceptions to conveyance and warranty.)*

**COMPLETION BY CONTRACTOR, BUT NOT LENDER**

You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work.

**PARTIAL LIEN**

If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price.

**CHANGES AND EXTRAS**

All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money.

**RECEIPTS AND RELEASES**

If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier.

**NO WORK COMMENCED**

This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work.

**OWNER'S PROMISES AND RIGHTS**

I promise that:

1. I own the Property in "fee simple," subject to the section in this Contract named "Exceptions to Conveyance and Warranty"; and
2. I will provide notice to Lender if I learn of a lien or claim for labor or material on the Property that relates to the Contract.

You agree that I have the following rights:

1. Despite anything to the contrary in this Contract, Lender may keep all amounts under sections 53.101 and 53.081 of the Texas Property Code until thirty days after the Work is completed;
2. I may deduct enough money from payments on the Note to the Lender to pay a lien or claim for labor or material provided to you that you are obligated to pay. I will still owe the amount in the Note; and
3. Without affecting the lien created by this Contract, I may use insurance proceeds to restore destroyed or damaged property for a loss occurring before the Work is completed.

**OWNER'S DUTIES**

I agree to:

1. pay timely all taxes and assessments on the Property;
2. preserve the lien's priority as it is established in this Contract;
3. pay all prior lien notes that I am responsible to pay and abide by all prior lien instruments;
4. because this Contract is for improvements to the Property, keep the Property other than those improvements in good repair and condition during the Work;
5. except to the extent that you are required to insure the Work during its progress, keep at my cost and expense, and in a form acceptable to you or your transferees, insurance policies having the following coverages issued by an insurance company or companies authorized to engage in the insurance business in Texas with a financial rating acceptable to you or your transferees:
  - a. property insurance covering all improvements located on the Property in an amount not more than the actual amount of unpaid debt or the amount of their full replacement cost, whichever is less, containing a standard mortgage clause, provided that the amounts of coverage meet all coinsurance requirements of the policy;
  - b. flood insurance, if the property is located in a flood hazard area; and
  - c. any other insurance coverage that you or your transferees may reasonably require;
6. deliver the insurance policy to you within ten days of the date of the Contract and deliver renewals to you at least fifteen days before expiration;
7. I MAY PROVIDE THE INSURANCE REQUIRED OF ME BY THIS CONTRACT EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH LIKE COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS;
8. comply with all laws, ordinances, and restrictive covenants applicable to the Property; and
9. keep any buildings occupied as required by the insurance policy.

#### **CONTRACTOR'S DUTIES**

You agree that:

1. Until the Work is completed, you will insure the Work against loss or damage. You will insure the Work in the amount of any unpaid debt or the full replacement cost, whichever is less. The parties to this Contract will be beneficiaries of this insurance according to their respective interests. If you do not provide this insurance, you will bear any loss to the Work.
2. If any other lien or claim is filed against the Property, you will pay for its removal or provide a statutory bond.

#### **CONTRACTOR'S RIGHTS**

You have the following rights:

1. You may appoint in writing a substitute Trustee.
2. After completing the Work, you may apply any insurance proceeds to either (a) reduce the Note or (b) repair or replace damaged or destroyed improvements.
3. If I fail to carry out any of my duties other than providing insurance, you may carry out the duty. On demand, I will repay you for any amount paid. This amount will include attorneys' fees to an attorney who is not your employee. I will also pay you interest at the contract rate in the Note. If I repay you after the full Note amount is due, I will repay you the after maturity interest rate in the Note. Any amount to be repaid will be secured by this Contract.
4. If I default on the Note or this Lien is foreclosed, I will repay you for reasonable fees to an attorney who is not your employee. I will also repay you for court, collection, and foreclosure costs. The amount to be repaid will be secured by this Contract.
5. After notice of default plus twenty-one days, you may:
  - a. declare the unpaid principal balance and earned interest on the Note immediately due;
  - b. ask Trustee to foreclose this Lien and to give notice of the foreclosure sale under the Texas Property Code; and
  - c. buy the Property at any foreclosure sale and then credit the amount of the bid on the Note.

Notice of default is given when deposited with the United States Postal Service (certified mail, return receipt requested), addressed to me at my current mailing address or, if my current mailing address is unknown, to my last known address as shown in the records of the holder of the debt.

#### **TRUSTEE'S DUTIES**

If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;
2. sell and grant all or part of the Property "AS IS":
  - a. to the highest bidder for cash;
  - b. subject to prior liens and exceptions to conveyance and warranty; and
  - c. without representation or warranty;
3. pay the proceeds of the sale, in this order:
  - a. expenses of foreclosure, including Trustee's reasonable fee;
  - b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
  - c. any amount required by law to be paid; and
  - d. any balance to me; and
4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract.

#### **GENERAL PROVISIONS**

1. If you are dismissed from the Work, or you do not complete the Work, the Note amount will be reduced by the amount reasonably necessary to complete the Work. If you are not the Note holder, the holder may complete the Work.
2. This Contract is executed, acknowledged, and delivered before any labor has been performed or any material has been furnished for the Work. This Contract is entered into by all Owners with the consent of each Owner's spouse.
3. If any of the Property is sold under this Contract, I will immediately move from the Property. If I fail to do so, I will become a Tenant at Sufferance of the purchaser, subject to Forcible Detainer.
4. Statements in any Trustee's deed conveying the Property are assumed to be true.
5. The Lien is prior to liens created later, even if the Note is extended or part of the Property is released.
6. Payments will be applied first to satisfy any portion of the Note that is not secured by this Contract.
7. I transfer to you all condemnation proceeds. I also transfer to you all proceeds from a private sale in lieu of condemnation. I further transfer to you all damages caused by public works on or near the Property. After deducting any expenses, including attorneys' fees and court and other lawful costs, you will either release any remaining amounts to me or apply them to reduce the Note. I will immediately give you notice of any actual or threatened proceeding for a taking of all or part of the Property.
8. You do not elect remedies by continuing under this Contract, beginning foreclosure, or pursuing any other remedy.
9. As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received.
10. I do not have to pay interest or other amounts that are more than Applicable Law allows.
11. Where appropriate, singular nouns and pronouns include the plural.
12. The word "may" gives sole discretion without imposing any duty to take action.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

*Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.*

**IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.**

**STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).**

**YOU MAY CONTACT THE COMMISSION AT (877) 651-8722 TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.**

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**If Contractor is required to register as a builder with the Texas Residential Construction Commission, Owner may file a complaint with the Commission about the conduct of the Contractor at:**

**311 E. 14th Street  
P.O. Box 13144  
Austin, Texas 78711  
877-651-TRCC (8722)**

**Contractor's Certificate of Registration Number is: (insert certificate of registration number)**

\_\_\_\_\_  
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)**

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

**TEXAS HOME IMPROVEMENT  
DEED OF TRUST  
ASSIGNMENT OF CONTRACTOR'S LIEN  
(Second Lien)**

**DEFINITIONS**

- (A) "Borrower" is \_\_\_\_\_ Borrower's address is \_\_\_\_\_.
- (B) "Contractor" is \_\_\_\_\_ Contractor's address is \_\_\_\_\_.
- (C) "Lender" is \_\_\_\_\_ Lender's address is \_\_\_\_\_.
- (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.

**STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).**

**YOU MAY CONTACT THE COMMISSION AT (877) 651-8722 TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.**

**THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO LEARN HOW TO PROCEED UNDER THE STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS.**

**If Contractor is required to register as a builder with the Texas Residential Construction Commission, Owner may file a complaint with the Commission about the conduct of the Contractor at:**

**311 E. 14th Street  
P.O. Box 13144  
Austin, Texas 78711  
877-651-TRCC (8722)**

**Contractor's Certificate of Registration Number is: (insert certificate of registration number)**

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)

\_\_\_\_\_  
-Borrower (Seal)

\_\_\_\_\_  
-Borrower (Seal)

\_\_\_\_\_  
-Borrower (Seal)

\_\_\_\_\_  
-Borrower (Seal)

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by \_\_ (name of owner) \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by \_\_ (name of contractor) \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public

Figure: 16 TAC §9.10(b)

**§9.10. Employee Level Examination Requirements for Licenses by Category (Revised February 2008)**

License Categories	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
<b>Employee Level Exams Offered:</b>																
1. Bobtail Exam - See §9.10(b)(1)					*											
2. Transport Driver Exam - See §9.10(b)(2)			*		*											
3. <u>On-Road Motor [Engine] Fuel Exam</u> - See §9.10(b)(3)					*							*				
4. <u>Non-Road Motor Fuel Exam</u> - See §9.10(b)(4)					*							*				
5. <u>Mobile Fuel Exam</u> - See §9.10(b)(5)					*							*				
6. DOT Cylinder Filling Exam - See §9.10(b)(4)					*		*		*	*						
7. Recreational Vehicle Exam - See §9.10(b)(7)(f)					*								*			
8. Service and Installation Exam - See §9.10(b)(8)(f)				*	*						*			*		
9. Appliance Service and Installation Exam - See §9.10(b)(9)(f)				*	*									*		
10. Motor/Mobile Fuel Dispensing Exam - See §9.10(b)(10)(f)					*		*		*	*						



Figure: 16 TAC §9.52(h)

**LP-GAS MANAGEMENT-LEVEL TRAINING AND CONTINUING EDUCATION COURSES (Revised February 2007)**  
**Table One**

Course Number	Course Hours	AFT	Course Title	Category D Mgmt.	Category E Mgmt.	Category F Mgmt.	Category G Mgmt.	Category I Mgmt.	Category J Mgmt.	Category K Mgmt.	Category M Mgmt.
1.1	8		Introduction to Propane	x	x	x	x	x	x	x	x
2.1	8	x	Dispenser Operations		x	x	x	x			
2.3	8	x	Bobtail Operations		x						
3.1	8		Residential System Layout and Design	x	x					x	
3.2	8	x	Residential System Installation	x	x						
3.3	8	x	Appliance Conversion, Installation and Venting	x	x						
3.5	8		Residential Appliance Controls	x	x						
3.7	8		Electrical Troubleshooting and Repair of Residential Gas Appliances	x	x						
3.8	8	x	Recreational Vehicle Gas Appliances								x
3.11	8		Residential System Inspection	x	x						
6.1	8		Regulatory Compliance for Managers	x	x	x	x	x	x	x	x
80	80		Category E Management Course	x	x	x	x	x	x	x	x
16	16		Category F, G, I, and J Management Course		x	x	x	x	x		

**LP-GAS EMPLOYEE-LEVEL TRAINING AND CONTINUING EDUCATION COURSES (Revised February 2008)**

**Table Two**

Course Number	Course Hours	AFT	Course Title	DOT [Portable] Cylinder Filling	Motor & Mobile Fuel Dispensing	Bobtail	Bobtail-Service & Installation <sup>1</sup>	Service & Installation	Appliance Service & Installation	Recreational Vehicle [RV] Technician
1.1	8		Introduction to Propane	x	x	x	x	x	x	x
2.1	8	x	Dispenser Operations	x	x	x	x			
2.3	8	x	Bobtail Operations			x	x			
3.1	8		Residential System Layout and Design				x	x		
3.2	8	x	Residential System Installation				x	x		
3.3	8	x	Appliance Conversion, Installation and Venting				x	x	x	
3.5	8		Residential Appliance Controls				x	x	x	x
3.7	8		Electrical Troubleshooting and Repair of Residential Gas Appliances				x	x	x	
3.8	8	x	Recreational Vehicle Gas Appliances							x
3.11	8		Residential System Inspection			x	x	x	x	
80	80		Category E Management Course	x	x	x	x	x	x	x
16	16		Category F, G, I, and J Management Course	x	x	x	x			

<sup>1</sup> A "Bobtail/Service & Installation" notation on an LP-gas certification card indicates the individual is authorized to perform bobtail and service and installation activities.

**COURSES WHICH COUNT TOWARDS CONTINUING EDUCATION CREDIT  
FOR MANAGEMENT-LEVEL CERTIFICATE HOLDERS (Revised February 2008 September-2005)**  
Table Three

Course Number	Credit Hours <sup>1</sup>	Course Title	Category D Mgmt.	Category E Mgmt.	Category F Mgmt.	Category G Mgmt.	Category I Mgmt.	Category J Mgmt.	Category K Mgmt.	Category M Mgmt.
CETP 1.0	8	Basic Principles and Practices	x	x	x	x	x	x	x	x
CETP 2.1	8	[Propane] Delivery Basics		x						
CETP 2.2	8	Operating a Bobtail to Deliver Propane		x						
CETP 2.3	8	Operating a Transport to Deliver Propane		x						
CETP 2.4	8	Operating a Cylinder Delivery Vehicle to Deliver Propane		x				x		
CETP 2.5	8	Operating a Truck, Tank Trailer or Tractor/ Trailer to Deliver or Relocate ASME Tanks		x						
CETP 3.1	8	Maintaining ASME Tanks		x						
CETP 3.2	8	Maintaining DOT Cylinders		x	x		x		x	
CETP 3.3	8	Operating Dispensing Equipment to Fill Containers		x	x	x				
CETP 3.4	8	Maintaining Bulk Plant Equipment		x						
CETP 3.5	8	Performing Cargo Tank Product Transfers		x						
CETP 3.6	8	Performing Railcar Product Transfers		x						
CETP 3.7	8	Maintaining DOT Intermodal (IM) Tanks		x						
CETP 4.1	8	Layout, Design, and Selection of a Vapor Distribution System	x							
CETP 4.2	8	Preparing and Installing Vapor Distribution Systems	x							
CETP 5.0	8	[Liquid] Transfer System Operations		x						
CETP 6.0	8	Appliance Installation	x	x						
CETP 7.0	8	Basic Electricity for Propane Appliances [Appliance Service]	x	x						
CETP 8.0	8	Large Industrial/Commercial Gas-Fired Equipment Connection & Service	x	x						
PERC GAS Check	8	GAS Check	x	x						

<sup>1</sup> Credit hours may not equal the total number of course hours.

**COURSES WHICH COUNT TOWARDS CONTINUING EDUCATION CREDIT  
FOR EMPLOYEE-LEVEL APPLICANTS OR CERTIFICATE HOLDERS (Revised February 2008 February 2007)**

Table Four

Course Number	Credit Hours <sup>1</sup>	Course Title	Portable Cylinder Filling	Motor & Mobile Fuel	Bobtail Installation <sup>2</sup>	Service & Installation	Appliance Service & Installation	RV Technician
CETP 1.0	8	Basic Principles and Practices	x	x	x	x	x	x
CETP 2.1	8	[Propane] Delivery Basics			x			
CETP 2.2	8	Operating a Bobtail to Deliver Propane			x			
CETP 2.3	8	Operating a Transport to Deliver Propane			x			
CETP 2.4	8	Operating a Cylinder <b>Delivery</b> Vehicle to Deliver Propane						
CETP 2.5	8	Operating a Truck, Tank Trailer or Tractor/Trailer to Deliver or Relocate ASME Tanks				x		
CETP 3.1	8	Maintaining ASME Tanks				x		
CETP 3.2	8	Maintaining DOT Cylinders	x					
CETP 3.3	8	Operating Dispensing Equipment to Fill Containers	x	x				
CETP 3.4	8	Maintaining Bulk Plant Equipment				x		
CETP 3.5	8	Performing Cargo Tank Product Transfers			x			
CETP 3.6	8	Performing Railcar Product Transfers						
CETP 3.7	8	Maintaining DOT <b>Intermodal</b> (IM) Tanks						
CETP 4.1	8	Layout, Design, and Selection of a Vapor Distribution System			x	x		
CETP 4.2	8	Preparing and Installing Vapor Distribution Systems			x	x		
CETP 5.0	8	[Liquid] Transfer System Operations			x	x		
CETP 6.0	8	Appliance Installation			x	x	x	
CETP 7.0	8	<b>Basic Electricity for Propane Appliances [Appliance Service]</b>			x	x	x	
CETP 8.0	8	Large Industrial/Commercial Gas-Fired Equipment [Connection & Service]			x	x		
PERC GAS Check	8	GAS Check			x	x	x	

Note: The CETP 2.4, 3.6, and 3.7 courses are not accepted by the Commission for continuing education credit.

<sup>1</sup> Credit hours may not equal the total number of course hours.

<sup>2</sup> A "Bobtail/Service & Installation" notation on an LP-gas certification card indicates the individual is authorized to perform bobtail and service and installation activities.

Figure: 40 TAC §745.37(2)

Child Day-Care Operations	Description of Operation	Type of Permit
(A) Listed Family Home	A caregiver at least 18 years old that provides care in her own home for compensation, for three or fewer children unrelated to the caregiver, birth through 13 years, for at least four hours a day, three or more days a week, and more than nine consecutive weeks. The total number of children in care, including children related to the caregiver, may not exceed 12.	Listing (A caregiver who is subject to regulation as a listed family home may instead become a registered family home.)
(B) Registered Child-Care Home	The primary caregiver provides regular care in the caregiver's own residence for not more than six children from birth through 13 years, and may provide care after school hours for not more than six additional elementary school children. The total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.	Registration
(C) Licensed Child-Care Home	The primary caregiver provides care in the caregiver's own residence for children from birth through 13 years. The total number of children in care varies with the ages of the children, but the total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.	License
(D) Child-Care Center	An operation providing care for seven or more children under 14 years of age for less than 24 hours per day at a location other than the permit holder's home.	License
(E) Employer-Based Child Care	A small employer providing care for up to 12 of the employees' children that are under 14 years of age, for	Compliance Certificate

	less than 24 hours per day. The care is located on the employer's premises and in the same building where the parents work.	
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Figure: 40 TAC §745.115

Governmental Entity	Description of Exempt Programs
(1) Federal	A facility operated on a federal installation, including military bases and Indian reservations.
(2) State	<p>(A) A facility operated by the Texas Youth Commission (TYC);</p> <p>(B) A facility providing services solely for TYC;</p> <p>(C) Any other correctional facility for children operated or regulated by another state agency or political subdivision;</p> <p>(D) A treatment facility or structured program for treating chemically dependent persons that is licensed by the Texas Commission on Alcohol and Drug Abuse;</p> <p>(E) A youth camp licensed by the Department of State Health Services; and</p> <p>(F) A youth camp exempt from licensure by the Department of State Health Services under the Health and Safety Code, §141.0021, because it is:</p> <p style="padding-left: 20px;">(1) Operated by or on “a campus of an institution of higher education” or “a private or independent institution of higher education,” as those terms are defined in the Education Code, §61.003; and</p> <p style="padding-left: 20px;">(2) Regularly inspected by a local governmental entity for compliance with health and safety standards.</p>
(3) Municipal	<p>A recreation program for elementary age (5-13 years) children with the following criteria:</p> <p>(A) A municipality operates the program;</p> <p>(B) The governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs;</p> <p>(C) The program provides these standards to the parents of each program participant;</p> <p>(D) The ordinances include child/caregiver ratios, minimum employee qualifications, minimum building, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards;</p> <p>(E) The program informs the parents that the state does not license the program; and</p> <p>(F) The program does not advertise itself as a child-care operation.</p>

Figure: 40 TAC §745.129

Exempt Miscellaneous Programs	Criteria for Exemption
(1) Neighborhood Recreation Program	<p>(A) The program provides activities designed for recreational purposes for children ages 5-13;</p> <p>(B) The services and activities are not structured to provide after-school child day care;</p> <p>(C) The governing body of the program must adopt standards for care. At a minimum, these standards must include staffing ratios, staff training, and health and safety standards and mechanisms for assessing and enforcing the program's compliance with the standards;</p> <p>(D) The program does not collect compensation for its services;</p> <p>(E) Children participating in the activities are free to join or leave the program at will. If the program provides transportation from school, children may choose whether to use the transportation from school and when to leave the program and walk home without adult supervision;</p> <p>(F) The program must require all parents to sign a statement allowing their children to come and go at will from the program;</p> <p>(G) The program must inform each parent that Licensing does not regulate the operation;</p> <p>(H) The program must provide a process to receive and resolve parental complaints; and</p> <p>(I) The program must conduct criminal background checks for all employees and volunteers who work with children. The background checks must include information from the Department of Public Safety.</p>
(2) Caregiver Has Written Agreement with a Parent to Provide Residential Care	<p>(A) A child may live with someone other than a relative if the non-relative caregiver does not care for more than one child or sibling group;</p> <p>(B) The caregiver had a prior relationship with the child(ren) or family of the child(ren);</p> <p>(C) The caregiver does not receive compensation or solicit donations for the care of the child or sibling group; and</p> <p>(D) The caregiver has a written agreement with the parent to care for the child or sibling.</p>



<p>(3) Emergency Shelter for Minor Mothers</p>	<p>(A) The emergency shelter is providing shelter to minor mothers;  (B) The mothers are the sole support of their children;  (C) The shelter provides care for the mother and her child(ren) only when there is an immediate danger to the physical health or safety of the mother or her child(ren); and  (D) The shelter does not provide care for more than 15 days unless the parent of the minor mother consents, or the minor mother has qualified for Temporary Assistance for Needy Families and is on the waiting list for housing assistance.</p>
<p>(4) Child Placed By DFPS</p>	<p>(A) The caregiver has a longstanding and significant relationship with the child;  (B) DFPS is the managing conservator of the child; and  (C) DFPS placed the child in the caregiver's home.</p>
<p>(5) Food Distribution Program</p>	<p>(A) The program serves an evening meal to children two-years-old or older; and  (B) The program is operated by a non-profit food bank in a non-profit, religious, or educational facility for not more than two hours a day on regular business days.</p>

Figure: 40 TAC §745.243

Type of Application	Required Application Materials
(1) Application for Listing a Family Home	(A) A completed Listing Request Form; (B) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter (relating to Background Checks); and (C) The listing fee.
(2) Application for Registering a Child-Care Home	(A) A completed Registration Request Form; (B) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter; (C) A notarized Affidavit for Applicants for Employment with a Child-Care Facility or Registered Child-Care Home Form for any employee of the registered child-care home or any applicant you intend to hire; (D) Proof of current certification in infant/child/adult CPR; (E) Proof of current certification in first aid, which must include rescue breathing and choking; (F) The registration fee; (G) Verification that the applicant completed the required orientation within one year prior to the date of application; and (H) Proof of a high school diploma or high school equivalent.
(3) Application for Licensing a Child Day-Care Operation	(A) A completed Child Day-Care Licensing Application Form; (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space; (C) A completed Governing Body/Director Designation Form. This form is not required if the governing body is a sole proprietorship and the proprietor is also the director; (D) Completed background checks on all applicable persons. See Subchapter F of this chapter; (E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, and all persons designated as director or co-director; (F) If the applicant is a for-profit corporation or limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title (relating to How do I demonstrate that the governing body is not delinquent in paying the franchise tax?); (G) Except for licensed child-care homes, proof of liability insurance or documentation that the applicant is unable to obtain liability insurance and a copy of the written notice informing the parents that there is no insurance coverage. For further information on liability insurance, see §745.249 and §745.251 of

	<p>this title (relating to What insurance coverage must I have for my licensed operation? and What are acceptable reasons for not obtaining liability insurance?);</p> <p>(H) A completed Plan of Operation for Licensed Facilities Form. The plan of operation must show how you plan to comply with the minimum standards;</p> <p>(I) The application fee; and</p> <p>(J) The initial license fee.</p>
<p>(4) Application for a Compliance Certificate for an Employer-Based Child Care Operation</p>	<p>(A) A completed Employer-Based Child Care Application Form;</p> <p>(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space;</p> <p>(C) Completed background checks on all applicable persons as required for licensed child-care centers. See Subchapter F of this chapter;</p> <p>(D) If the applicant is a for-profit corporation or limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title (relating to How do I demonstrate that the governing body is not delinquent in paying the franchise tax?); and</p> <p>(E) The application fee.</p>
<p>(5) Application for Licensing a Residential Child-Care Operation including a Child-Placing Agency and Maternity Home</p>	<p>(A) A completed Application for a License to Operate a Residential Child-Care Facility, Child-Placing Agency, or Maternity Home;</p> <p>(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor space;</p> <p>(C) Completed background checks on all applicable persons. See Subchapter F of this chapter;</p> <p>(D) A completed Controlling Person Form as set forth in Subchapter G of this chapter (relating to Residential Controlling Person and Certain Employment Prohibited);</p> <p>(E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, unless you are a licensed [child-care] administrator;</p> <p>(F) If the applicant is a for-profit corporation or a limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title;</p> <p>(G) Proof of liability insurance or documentation that the applicant is unable to obtain liability insurance and a copy of the written notice informing the parents that there is no insurance coverage. For further information on liability insurance, see §745.249 and §745.251 of this title;</p> <p>(H) Policies, procedures, and documentation required by minimum standard rules;</p> <p>(I) The application fee; and</p>

	(J) The initial license fee, if applicable.
(6) Application for Certifying a Child Day-Care Operation	(A) A completed Child Day-Care Licensing Application Form; (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space; (C) A completed Governing Body/Director Designation Form; (D) Completed background checks on all applicable persons. See Subchapter F of this chapter; (E) A completed Personal History Statement Form for all persons designated as director or co-director; and (F) A completed Plan of Operation for Licensed Facilities Form. The plan of operation must show how you plan to comply with the minimum standards.
(7) Application for Certifying a Residential Child-Care Operation including a Child-Placing Agency and Maternity Home	(A) A completed Application for a License to Operate a Residential Child-Care Facility, Maternity Home, or Child-Placing Agency; (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor space; (C) Completed background checks on all applicable persons. See Subchapter F of this chapter; (D) A completed Controlling Person Form as set forth in Subchapter G of this chapter; (E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, unless you are a licensed [child-care] administrator; and (F) Policies, procedures, and documentation required by minimum standard rules.

Figure: 40 TAC §745.465(a)

Serious Incident	(i) To Licensing?  (ii) If so, when?	(i) To Parents?  (ii) If so, when?	(i) To Law enforcement?  (ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES  (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES  (B)(ii) Immediately.	(C)(i) YES  (C)(ii) Immediately.
(2) A critical injury or illness that warrants treatment by a medical professional or hospitalization, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damage to internal organs.	(A)(i) YES  (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES  (B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(C)(i) NO  (C)(ii) Not Applicable.
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES  (A)(ii) As soon as you become aware of it.	(B)(i) YES  (B)(ii) As soon as you become aware of it.	(C)(i) NO  (C)(ii) Not applicable.
(4) A child in your care contracts a communicable disease that the law requires you to report to the Department of State Health Services (DSHS)	(A)(i) YES, unless the information is confidential.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed	(C)(i) NO

Serious Incident	(i) To Licensing?  (ii) If so, when?	(i) To Parents?  (ii) If so, when?	(i) To Law enforcement?  (ii) If so, when?
as specified in 25 TAC Chapter 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	to it.  (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(C)(ii) Not applicable.
(5) A lost or missing child.	(A)(i) YES  (A)(ii) As soon as you become aware that the child is lost or missing.	(B)(i) YES  (B)(ii) As soon as you become aware that the child is lost or missing.	(C)(i) NO  (C)(ii) Not applicable.

Figure: 40 TAC §745.465(b)

Serious Incident	(i) To Licensing?  (ii) If so, when?	(i) To Parents?  (ii) If so, when?
(1) Any incident that renders all or part of your operation unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES  (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES  (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires your operation to close.	(A)(i) YES  (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES  (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential.  (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it.  (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.
(4) An investigation of abuse or neglect or exploitation by an entity (other than Licensing) of an employee or other adult at the operation.	(A)(i) YES  (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the investigation.	(B)(i) NO  (B)(ii) Not applicable.
(5) An arrest, indictment, or a county or district attorney accepts an	(A)(i) YES	(B)(i) NO

<p>“Information” regarding an official complaint against an employee alleging commission of any crime as provided in §745.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?).</p>	<p>(A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.</p>	<p>(B)(ii) Not applicable.</p>
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Figure: 40 TAC §745.521

Type and Amount of Fee	When Fee is Due	Consequences for Failure to Pay Fee on Time
(1) Application/ Compliance Certificate fee: \$35	Before we accept your application	We will return your application as incomplete.
(2) Annual Compliance Certificate fee: \$35	On the anniversary date of your permit	If you do not pay your fee when it is due, your permit is automatically suspended until you pay your fee. However, if you do not pay your fee within three months after your anniversary, we may revoke your permit.
(3) Background check fee: \$2 per person	At the time you request a background check or on a monthly or quarterly basis	We may suspend and/or revoke your permit.
(4) Corrective Action fee: \$100	At the time corrective action is implemented.	We may suspend and/or revoke your permit.



Figure: 40 TAC §745.8407

Type of Operation	Inspection	Investigation
(1) Listed Operation	<ul style="list-style-type: none"> <li>• We do not conduct routine inspections.</li> <li>• We may inspect your operation as part of an investigation.</li> </ul>	<p>We investigate when we have received a report:</p> <ul style="list-style-type: none"> <li>• Of abuse or neglect; or</li> <li>• That the home is caring for four or more unrelated children.</li> </ul>
(2) Registered Operation	<p>We inspect:</p> <ul style="list-style-type: none"> <li>• Prior to the issuance of the registration;</li> <li>• At least once every three years after the issuance of the registration; and</li> <li>• As part of an investigation.</li> </ul>	<p>We investigate when we have received a report of:</p> <ul style="list-style-type: none"> <li>• Alleged abuse or neglect; or</li> <li>• A deficiency in a licensing statute, rule, or minimum standard.</li> </ul>
(3) Licensed or Certified Operation	<p>We inspect:</p> <ul style="list-style-type: none"> <li>• Prior to the issuance of the license or certification;</li> <li>• At least once every year; and</li> <li>• As part of an investigation.</li> </ul>	<p>We investigate when we have received a report of:</p> <ul style="list-style-type: none"> <li>• Alleged abuse or neglect; or</li> <li>• A deficiency in a licensing statute, rule, or minimum standard.</li> </ul>
(4) Agency foster and foster group home	<ul style="list-style-type: none"> <li>• We will periodically inspect a random sample of agency foster homes and agency group homes.</li> </ul>	<p>We investigate when we have received a report of:</p> <ul style="list-style-type: none"> <li>• Alleged abuse or neglect; or</li> <li>• Pertaining to a child under six years:               <ul style="list-style-type: none"> <li>- A reportable serious incident;</li> <li>- A deficiency in a minimum standard that is weighted high; or</li> <li>- A deficiency in a licensing statute, rule, or minimum standard that is</li> </ul> </li> </ul>

		<p>prioritized by DFPS with a high degree of risk.</p> <p>Other deficiencies in a licensing statute, rule, or minimum standard are investigated by the child-placing agency.</p>
(5) Employer-Based Child Care	<p>We inspect:</p> <ul style="list-style-type: none"> <li>• Prior to the issuance of the compliance certificate; and</li> <li>• As part of the investigation.</li> </ul>	<p>We investigate when we have received a report of:</p> <ul style="list-style-type: none"> <li>• Alleged abuse or neglect; or</li> <li>• A deficiency in a licensing statute or rule.</li> </ul>

Figure: 40 TAC §745.9069

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(1) The age of the adoptive applicants.	All adoptive applicants must be at least 21 years or older. You must include documentation verifying their age.
(2) The marital status of the adoptive applicants including any previous marriages.	If the adoptive applicants are married, you must review and document the marriage license or declaration of marriage record. You must document information about any previous marriages, divorces, or deaths of former spouses.
(3) A history of the adoptive applicants' residence and their citizenship status.	You must document the: (A) Length of time spent at each residence for the past 10 years (street address, city, state); and (B) Citizenship of the adoptive applicants and whether they are legal or illegal immigrants.
(4) The financial status of the adoptive applicants.	Adoptive applicants must be able to meet the child's basic material needs. You must include the family's ability to support a child, employment history, income, expenses, and ability to manage money. You must verify income and insurance coverage.
(5) The results of the criminal history and central registry background checks conducted on the adoptive applicants and any non-client person 14 years of age or older who regularly or frequently stays or works in the home.	Persons applying to adopt children through a child-placing agency, and any non-client person 14 years of age or older who will regularly or frequently be staying or be present at the home while children are being provided care, must obtain a criminal history and central registry background check (See Chapter 745, Subchapter F, of this title (relating to Background Checks)). The results of those checks must be documented in the adoptive home record and the social study.

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(6) Health status of the adoptive applicants.	Document information about the physical, mental, and emotional status (including substance abuse history) of all persons living in the home in relation to the family's ability to adopt a child and to assume parenting responsibilities. You must observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations or through a physician's statement. Consideration must be given to the health and age of the adoptive applicants. There must be a plan in place to ensure the child will be raised in a stable and consistent environment to adulthood.
(7) Any disabilities of the adoptive applicants.	A person must not be prohibited from adopting a child solely based on a disability. You must evaluate individuals who are disabled in relation to their adjustment to the disability and any limits the disability imposes on the adoptive applicants' ability to care for a child. This evaluation must be documented in the social study.
(8) The adoptive applicants' motivation for adoption.	Discuss and assess the adoptive applicants' motivation for adoption. You must assess the applicants' motivation and its effect on their ability to accept and parent an adopted child.
(9) The fertility of the adoptive applicants.	Discuss and assess information about the couple's fertility. The applicants' fertility is important only in relation to unresolved feelings about their infertility and their ability to accept and parent a child not born to them.
(10) The quality of the adoptive applicants' marital and family relationships.	Describe the quality of marital and family relationships in relation to the family's ability to adopt and parent a child. You must assess the stability of a couple's relationship, the strengths and problems of the relationship, and how those issues will relate to an adopted child. You must assess the quality of the relationships between the parents and their biological children, living in or out of the home, strengths and problems of those relationships, and how those issues will relate to an adopted child.
(11) The adoptive applicants' feelings about their childhood and parents.	Discuss and assess adoptive applicants' feelings about their childhoods and parents, including any history of abuse or neglect and their resolution of the experiences.

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(12) The adoptive applicants' attitude about an adopted child's religion.	Evaluate adoptive applicants on: (A) Their willingness to respect and encourage a child's religious affiliation, if any; (B) Their willingness to provide a child opportunity for religious and spiritual development, if desired; and (C) The health protection they plan to give a child if their religious beliefs prohibit certain medical treatment.
(13) The adoptive applicants' values, feelings, and practices in regard to child care and discipline.	Discuss and assess the applicants' knowledge of child development and their child-care experience. Discuss and assess the ways the applicants were disciplined as children and their reactions to the discipline they received. Discuss and assess the prospective adoptive parents' discipline styles, techniques, and their ability to recognize and respect differences in children and use discipline methods that suit the individual child. If their current discipline methods are different than those that you approve, discuss and assess how they would change their child care practices to conform with your approved methods.
(14) The adoptive applicants' sensitivity to and feelings about children who may have been subjected to abuse and neglect if the agency may place such children with the adoptive parents.	Discuss and assess the adoptive applicants' understanding of the dynamics of child abuse and neglect. Discuss and assess their understanding of how these issues and experiences affect them, their families, and the children they may adopt. Assess the adoptive family applicants' ability to help children who have been abused or neglected. If the adoptive applicants experienced abuse or neglect as a child, assess the handling of those experiences and assess the impact of those experiences on the applicant's ability to help children deal with their own experiences. Evaluate the availability of family and community resources to meet the needs of the children adopted by the family.

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(15) The adoptive applicants' sensitivity to, and feelings for children's experiences of separation from, and the loss of, their biological families.	Discuss and assess the adoptive applicants' understanding of the dynamics of separation and loss and the effects of these experiences on children. Discuss and assess their personal experiences with separation and loss and their processing of those experiences. Assess the applicants' acceptance of the process of grief and loss for children and assess their ability to help children through the grieving process.
(16) The adoptive applicants' sensitivity to, and feelings about, a child's biological family.	Discuss the adoptive applicants' feelings about the child's parents, including those parents who abused or neglected the child. Assess their sensitivity and reactions to the birth parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about his parents and assess their ability to help the child deal with those feelings. Discuss and assess the applicants' sensitivity to and acceptance of the child's relationships with his siblings. Discuss and assess their reactions to the possibility of contacts between the child and his biological family in the future.
(17) The attitude of other family and household members regarding adoption.	Discuss and assess the attitudes of other family and household members toward the plan of adoption. Discuss and assess their involvement in the care of children, their attitudes toward the children, and their acceptance of the adoption plan.
(18) The attitude of the adoptive applicants' extended family regarding adoption.	Discuss the extended family's attitude toward adoption and the involvement the family will have with the adopted children. Discuss and assess their involvement in the care of the children, their attitudes toward adoption, and adopted children.
(19) Support systems available to adoptive applicants and adopted children.	Discuss and assess the support systems available to the adoptive family and the support they may receive from these resources.
(20) The adoptive applicants' expectations of and plans for adoptive children.	Discuss and assess the prospective adoptive parent's expectations of the child and the flexibility of their expectations in relation to the child's actual needs and abilities. Assess their capacities to recognize and emphasize the strengths and achievements of the child and their capacities to adjust their expectations according to the abilities of the child.

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(21) Adoptive applicants' ability to work with specific kinds of behaviors and backgrounds.	Discuss and assess the adoptive applicants' ability to work with and/or willingness to accept specific behaviors, backgrounds, special needs and/or disabilities and other characteristics of children.

Figure: 40 TAC §749.2447

Required Information	Description of Discussion, Assessment and Documentation Requirements
(1) The age of the prospective foster parents. Ages of all other members of the household.	All prospective foster parents must be at least 21 years old. You must document the ages of all household members and include documentation verifying the ages of the foster parents.
(2) The educational level of the prospective foster parents.	<p>You must ensure and document that each foster parent is able to comprehend and benefit from training and provide appropriate care and supervision to meet the needs of children in care, in areas such as health, education, and discipline/behavior management, by doing either or both of the following:</p> <p>(A) Require that foster parents have a high school diploma or a G.E.D. high school equivalency. TEA or other public education entity outside of Texas must recognize the high school program or high school equivalent program; or</p> <p>(B) Have a screening program that:</p> <ul style="list-style-type: none"> <li>(i) Ensures that each foster parent is able to be an appropriate role model for children in placement;</li> <li>(ii) Ensures that each foster parent is able to communicate with the child in the child's own language, or has other means to communicate with the child in the child's own language; and</li> <li>(iii) Addresses adequately basic competencies that would otherwise be met by a high school diploma or G.E.D. including basic reading, writing, and math.</li> </ul>
(3) Personal characteristics.	<p>You must document information from foster parents that demonstrate:</p> <p>(A) Emotional stability, good character, good health, and adult responsibility; and</p> <p>(B) The ability to provide nurturing care, appropriate supervision, reasonable discipline, and a home-like atmosphere for children.</p>
(4) History of marital relationships including any previous marriages.	You must document information about any previous marriages, divorces, or deaths of former spouses. Foster parents and caregivers must demonstrate the ability to form and sustain adult relationships.



Required Information	Description of Discussion, Assessment and Documentation Requirements
(5) A history of the prospective foster parents' residence and their citizenship status.	You must document the: (A) Length of time spent at each residence for the past 10 years (street address, city, state); and (B) Citizenship of the prospective foster parents.
(6) The financial status of the prospective foster family.	Information on the family's income must be verified and documented.
(7) The results of [the] criminal history and central registry background checks conducted on the prospective foster parents and any non-client person 14 years of age or older who regularly or frequently stays or is present in the home.	Persons applying to foster children and any person, excluding clients, 14 years of age or older who will regularly or frequently be staying or present at the home, must obtain a criminal history and central registry background check. See Chapter 745, Subchapter F of this title (relating to Background Checks). The results of those checks must be documented in the foster home record and the home study.  You must ask the prospective foster parents for information pertaining to each domestic violence call any law enforcement agency responded to at their residence during the previous 12 months. You must request background information from each local law enforcement agency that responded to a call disclosed by the prospective foster parents.
(8) The prospective foster parents' motivation to provide foster care.	Assess and document the prospective foster parents' motivation to provide foster care.
(9) Health status of all persons living in the home.	Document information about the physical and mental health status (including substance abuse history) of all persons living in the home in relation to the family's ability to provide foster care. You must observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations.

Required Information	Description of Discussion, Assessment and Documentation Requirements
(10) The quality of marital and family relationships.	Describe, address, and document the quality of marital and family relationships in relation to the family's ability to provide foster care. You must discuss and assess the stability of a couple's relationship, the strengths and problems of the relationship, and how those issues will relate to foster children placed in the home. You must discuss and assess the quality of the relationships between prospective foster parents and their biological children, living in or out of the home, strengths and problems of those relationships, and how those issues will relate to foster children placed in the home.
(11) The prospective foster parents' feelings about their childhoods and parents.	Discuss, assess, and document the prospective foster parents' feelings about their childhoods and parents, including any history of abuse or neglect and their resolution of those experiences.
(12) The prospective foster parents' attitudes about a foster child's or his biological family's religion.	Evaluate and document prospective foster parents on: (A) Their willingness to respect and encourage a child's religious affiliation, if any; (B) Their willingness to provide a child opportunity for religious and spiritual development, if desired; and (C) The health protection they plan to give a child if the foster parents religious beliefs prohibit certain medical treatment.
(13) The prospective foster parents' values, feelings, and practices in regard to child care and discipline.	Discuss, assess, and document the applicants' knowledge of child development and their child-care experience. Discuss and assess the ways the applicants were disciplined as children and their reactions to the discipline they received. Discuss and assess the prospective foster parents' discipline styles, techniques, and their ability to recognize and respect differences in children and use discipline methods that suit the individual child. If their current discipline methods are different than those that you approve, discuss and assess how they would change their child-care practices to conform to your approved methods.

Required Information	Description of Discussion, Assessment and Documentation Requirements
(14) The prospective foster parents' sensitivity to and feelings about children who may have been subjected to abuse or neglect.	Discuss, assess, and document the prospective foster parents' understanding of the dynamics of child abuse and neglect. Discuss and assess their understanding of how these issues and experiences will affect them, their families, and foster children in their care. Discuss and assess the prospective foster parent's ability to help children who have been abused or neglected. If the prospective foster parent experienced abuse or neglect as a child, assess his handling of those experiences and the impact of those experiences on the applicant's ability to help children deal with their own experiences. Assess the availability of family and community resources to meet the needs of the children in the family's care.
(15) The prospective foster parents' sensitivity to and feelings about children's experiences of separation from or loss of their biological families.	Discuss, assess, and document the prospective foster parents' understanding of the dynamics of separation and loss and the effects of these experiences on children. Discuss and assess their personal experiences with separation and loss and their processing of those experiences. Assess the potential foster parents' acceptance of the process of grief and loss for children and assess their ability to help a child through the grieving process.
(16) The prospective foster parents' sensitivity to, and feelings about, a child's biological family.	Discuss, assess, and document the prospective foster parents' feelings about the child's parents, including those parents who abused or neglected the child. Discuss and assess their sensitivity and reactions to the biological parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about his parents and assess their ability to help the child deal with those feelings. Discuss and assess the potential foster parents' sensitivity to and acceptance of the child's relationships with his siblings. Discuss and assess their willingness to support the child's relationships with parents, siblings, and extended family including their support for contacts between the child and his family.

Required Information	Description of Discussion, Assessment and Documentation Requirements
(17) The attitude of other household members about the prospective foster parents' plan to provide foster care.	Discuss, assess, and document the attitudes of other household members toward the plan to provide foster care. Discuss and assess their involvement in the care of children, their attitudes toward foster children, and their acceptance of the verification as a foster family.
(18) The attitude of the prospective foster parents' extended family regarding foster care.	Discuss, assess, and document the extended family's attitude toward foster care and foster children and the involvement the extended family will have with foster children. Discuss and assess the impact the extended family's attitudes will have on the family's ability to provide foster care and whether the extended family will serve as a support system for the foster family and for foster children.
(19) Support systems available to prospective foster parents.	Discuss, assess, and document the support systems available to the foster family and the support they may receive from these resources.
(20) The prospective foster parents' expectations of and plans for foster children.	Discuss, assess, and document the prospective foster parents' expectations of the child and the flexibility of their expectations in relation to the child's actual needs and abilities. Discuss and assess their capacities to recognize and emphasize the strengths and achievements of the child and their capacities to adjust their expectations according to the abilities of the child.
(21) The language(s) spoken by the prospective foster parents.	Document the language(s) spoken by each prospective foster parent.
(22) Prospective foster parent's ability to work with specific kinds of behaviors and backgrounds.	Discuss, assess, and document the prospective foster family's ability to work with specific behaviors, backgrounds, special needs and/or disabilities, and other characteristics of foster children.

Required Information	Description of Discussion, Assessment and Documentation Requirements
(23) Background information from other child-placing agencies.	Request and assess the following background information (if provided) from any child-placing agency that previously conducted a foster screening, pre-adoptive home screening, post placement adoptive report, or home study: (A) The screening, report, home study, and related documentation; (B) Documentation of supervisory visits and evaluations; (C) Any record of deficiencies and their resolutions; and (D) The most current fire and health inspections.

# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department of Agriculture

Request for Proposals - Feral Hog Damage Abatement Program

### Statement of Purpose.

The Texas Department of Agriculture (TDA) requests proposals for the Feral Hog Damage Abatement Program. The purpose of this two-year grant program is to implement a long-term statewide feral hog abatement strategy. A total amount up to \$1,000,000 may be awarded over the two-year period.

### Eligibility.

Grant proposals will be accepted from public non-profit institutions and organizations, institutions of higher education, and governmental agencies. For profit research institutions are not eligible. Joint efforts between eligible entities are encouraged.

### Eligible Projects.

The project should focus on all regions in the state experiencing negative impacts to agricultural enterprises, public safety and the economy due to feral hog populations. Region specific strategies are encouraged and should include strategies that will yield the maximum economic net return to agricultural production, public safety, and the overall state economy for the effort and expense invested.

### Proposal Limitations.

Projects may not exceed 2 years.

Proposals may not include more than 10% in indirect costs.

### Proposal/Funding Revisions.

TDA reserves the right to fund projects partially or fully. Where more than one proposal is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

### Eligible Expenses.

Expenses that are necessary and reasonable for proper and efficient performance and administration of a project are eligible; however, these expenses must be properly documented with sufficient backup detail, including copies of paid invoices. Examples of eligible expenditures are:

1. Personnel costs - both salary and benefits;
- Travel - domestic only;
2. Equipment - nonexpendable, tangible personal property that has a useful life of more than one year and costs \$5,000 or more;
3. Supplies and direct operating expenses - equipment that costs less than \$1,000, such as research and office supplies, postage, telecommunications, printing, etc.;
4. Contracts - agreements made with other universities or private parties to perform a portion of the award; and
5. Indirect costs - no more than 10%.

### Ineligible Expenses.

Expenses that are prohibited by state or federal law are ineligible. Refer to the Uniform Grant Management Standards for more detailed information: <http://www.governor.state.tx.us/divisions/state-grants/guidelines/files/UGMS062004.doc>.

Following are some examples of these ineligible expenses:

1. Alcoholic beverages;
2. Entertainment;
3. Contributions - charitable or political;
4. Expenses falling outside of the contract period;
5. Expenditures not specifically listed in the project budget; and
6. Expenses that are not adequately documented.

### Submission Requirements.

Each proposal may not exceed fifteen (15) pages and must include the following criteria:

1. Cover sheet with names, titles, addresses, telephone and fax numbers, and e-mail addresses of the principal researchers. Indicate who is designated as the lead researcher and point of contact;
2. Project summary, not to exceed one page.
3. Identification of the key personnel to be involved in the project, including information on their experience;
4. Work plan;
5. Detailed description of the anticipated beneficial impact on agriculture and deliverables; and
6. Detailed project budget outlining anticipated expenses including but not limited to: personnel, travel, supplies, contracts, and equipment costs along with justification for proposed line item expenditures.

### Reporting Requirements.

Approved projects are required to submit the following reports:

1. Project reports on a quarterly basis detailing accomplishment of project objectives for the time periods specified in the award document including the number of feral hogs abated and the cost per abatement using certain technologies;
2. Final compliance project report due either upon completion of the project or thirty (30) days after the termination of the contract. The final report shall be submitted in a hard copy format and an electronic format on a diskette or e-mailed utilizing Word. The final report shall contain:
  - A. A project summary -history of the project, its objectives, importance, effort, results, number of feral hogs abated, the cost per abatement using certain technologies and commercial applications of the project;
  - B. A description of the successes, challenges, and any limitations of the program;
  - C. Technical and economic content - overall background of the project and the part (if any) that research plays in providing results, discus-

sion of the technical, social and other benefits to the local community and to Texas, discussion of the economics of the project, including direct impact on local communities (jobs) and/or indirect impact (related businesses), and commercialization of the project; and

**D.** A description of future plans, including how the project will continue after the grant is expended and how additional funding might address expansion efforts.

**3.** Budget reports on a quarterly basis for the time periods specified in the award document that details the grant award spent to date.

**4.** Final Budget report is due thirty (30) days after the completion of the project or the termination of the contract.

#### **General Compliance Information.**

**1.** All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

**2.** Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for the performance thereof.

**3.** Grant recipients must submit information on their project to the Texas Agricultural Research Database.

**4.** Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.

**5.** While TDA attempts to observe the strictest confidence in handling the research proposals, it cannot guarantee complete confidentiality on any matters that lie beyond its control. The confidentiality of recipient's "proprietary data" so designated shall be strictly observed to the extent permitted by appropriate Texas laws, including the Texas Public Information Act. There shall be no restriction on the publication of research results except when taking into consideration effects of prior publication on possible subsequent patent and license to use copyrighted material.

**6.** Control of the ownership and disposition of all patentable products and inventories shall be agreed to by Grantee and TDA. A copy of the intellectual property policy should be made available to the TDA upon request.

**7.** Awarded grant projects must remain in full compliance with state and federal laws and regulations or be subject to termination at the discretion of TDA.

**8.** Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the research project. Records shall be maintained for three years after the completion of the research project or as otherwise agreed upon with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the research project at any time throughout the duration of the agreement and for three years immediately thereafter. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect the research locations and to obtain from the research team full information regarding all project activities.

**9.** If the Grantee has a financial audit performed in any year during which Grantee receives funds from Grantor, and if the Grantor requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be pub-

licly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

**10.** Grant awards to Texas institutions shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following : [www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc](http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc)

#### **Deadline and Submission Information.**

Proposals should be submitted to Karen Reichek, Grants Coordinator, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78701.

Proposals must be received no later than 5:00 p.m. November 30, 2007. One original and seven copies must be submitted. Additionally, an electronic copy should be e-mailed to [Karen.Reichek@tda.state.tx.us](mailto:Karen.Reichek@tda.state.tx.us). Fax copies will not be accepted.

Please contact Karen Reichek at (512) 936-2450 or by e-mail at [Karen.Reichek@tda.state.tx.us](mailto:Karen.Reichek@tda.state.tx.us) with any questions you may have.

#### **Evaluation and Award Information.**

All proposals will be subject to evaluation based on the criteria set forth in this RFP. TDA shall not pay for any costs incurred by any entity in responding to this RFP. TDA reserves the right to accept or reject any or all proposals submitted. TDA reserves the right to fund proposals from alternative funding sources if the proposal meets the stipulated requirements of that RFP. TDA is under no legal or other obligation to award a grant on the basis of this RFP or any other RFP. The Commissioner will make final funding decisions.

#### **Texas Public Information Act.**

All proposals shall be deemed, once submitted, to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-200705131

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: October 24, 2007

## **Brazos Valley Council of Governments**

Notice of Release of Request for Proposal for Regional Planner Assistant

On October 23, 2007 the Brazos Valley Council of Governments (BVCOG) and Workforce Solutions, Brazos Valley Board (WSBVB) will release a Request for Proposal (RFP) for Regional Planner Assistant Services. The proposal requirements are contained in the Request for Proposal which may be obtained at [www.bvjobs.org](http://www.bvjobs.org). The Board is seeking one contractor to provide services to include Workforce Investment Act youth program design and implementation in conjunction with the current workforce center operator and applicable partners. This contractor will also assist in the development of a Regional Strategic Plan for BVCOG. The RFP may be viewed and printed from the Internet on [www.bvjobs.org](http://www.bvjobs.org).

#### **Due Date**

An original and six copies of a written proposal are due to the Board's offices no later than 4:00 p.m. November 14, 2007. No proposals will be accepted after this deadline. Proposals may be sent or hand carried to:

**Trish Buck, Program Manager**  
**Workforce Solutions Brazos Valley Board**  
**3991 East 29th Street**  
**Bryan, Texas 77802**

**Attention: Regional Planner Assistant**

Potential respondents may pose written questions concerning this RFP by e-mail. Contact Trish Buck, Program Managers at pbuck@bvcog.org until 12:00 Noon, October 31, 2007. The contact person for this RFP is Trish Buck (979) 595-2800.

TRD-200705043  
Patricia Buck  
Manager, Workforce Solutions Brazos Valley Board  
Brazos Valley Council of Governments  
Filed: October 22, 2007

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**Central Texas Regional Mobility Authority**

Request for Qualifications - US 290 East Toll Project

The Central Texas Regional Mobility Authority ("CTRMA"), a political subdivision, is soliciting statements of interest and qualifications from entities interested in pursuing the development of the US 290 East Toll Project ("the Project") through a comprehensive development agreement ("CDA"). The Project is generally described as a full controlled access facility with tolled mainlanes (three in each direction) on US 290 East from east of US 183 to east of FM 734 (Parmer Lane). The Project will also include non-tolled frontage road lanes and the four direct connector ramps located east of US 183 at the US 290 East/US 183 interchange. The entity selected for the Project, if any, will be responsible for the planning, design, and construction of the Project through a CDA and may have the opportunity to provide financing for the Project.

The request for qualifications will be available October 9, 2007. Copies may be obtained from the CTRMA website at [www.ctrma.org](http://www.ctrma.org), or by contacting the CTRMA Project Office at (512) 996-9778. Periodic updates, addenda, and clarifications will be posted on the CTRMA website, and interested parties are responsible for monitoring the web-site accordingly. Final responses must be received in the offices of the CTRMA by or before 4:00 p.m. C.S.T. November 16, 2007, to be eligible for consideration.

Note: For purposes of assessing the qualifications of teams responding to this RFQ and their ability to perform under a design/build CDA, it is not necessary for respondents to propose or offer financing for the project. An opportunity to offer developer financing may be available during the RFDP phase. The CTRMA has issued a RFI related to financing concepts for one or more of the CTRMA's proposed projects. That RFI and this RFQ are unrelated, and no entity or team is precluded from participating in both processes.

It is the policy of the CTRMA to encourage the participation of Disadvantaged Business Enterprises ("DBEs"), minorities, and women in all facets of its activities. The commitment of the proposing entity to utilization of DBEs will be considered in the RFQ evaluation process.

Each proposing entity will be evaluated based on the criteria and process set forth in the RFQ.

Questions concerning this RFQ may be submitted via e-mail to Wesley M. Burford, P.E. at [wburford@ctrma.org](mailto:wburford@ctrma.org) or in writing to: CTRMA, c/o Wesley M. Burford, 301 Congress Avenue, Suite 650, Austin, TX 78701. All questions must be received by 5:00 p.m. C.S.T. November 7, 2007.

TRD-200705119  
Wes Burford  
Director of Engineering  
Central Texas Regional Mobility Authority  
Filed: October 23, 2007

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**Office of Consumer Credit Commissioner**

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/29/07 - 11/04/07 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/29/07 - 11/04/07 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200705088  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: October 22, 2007

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**Texas Commission on Environmental Quality**

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 3, 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 December 3, 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: City of Collinsville; DOCKET NUMBER: 2006-0332-MWD-E; IDENTIFIER: RN101919959; LOCATION: Collinsville, Grayson County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §317.4(a)(8), by failing to conduct the required annual testing of the backflow prevention device; 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10151001, Monitoring and Reporting Requirements Number 7(c), by failing to report noncompliances which deviate from the permitted effluent limitations by more than 40%; 30 TAC §305.125(1) and §305.125(5), TPDES Permit Number 10151001, Operational Requirements Number 1, Effluent Limitations and Monitoring Requirements Number 4, Permit Conditions Number 2(d), and the Code, §26.121(a), by failing to prevent the unauthorized discharge and accumulation of excess solids in the receiving stream; and 30 TAC §305.125(5) and §317.4(d) and TPDES Permit Number 10151001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: \$24,955; Supplemental Environmental Project (SEP) offset amount of \$19,964 applied to extending first-time sewer service to one moderate income household and a church that are currently utilizing older on-site septic systems in a rural area; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2007-1190-AIR-E; IDENTIFIER: RN102615465; LOCATION: Sutton County, Texas; TYPE OF FACILITY: natural gas compression station; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to prevent an unauthorized emissions event; and 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to notify the commission of a reportable emissions event; PENALTY: \$5,916; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(3) COMPANY: Oasis Pipe Line Company Texas L.P.; DOCKET NUMBER: 2007-1206-AIR-E; IDENTIFIER: RN100220177; LOCATION: Prairie Lea, Caldwell County, Texas; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §122.143(4), General Operating Permit Number 514, 40 Code of Federal Regulations §63.6620(b), and THSC, §382.085(b), by failing to conduct performance testing at a load condition within plus or minus 10% of the 100% load; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Southwest-Tex Leasing Co., Inc. dba Advantage Rent-A-Car; DOCKET NUMBER: 2007-1256-AIR-E; IDENTIFIER: RN100967777; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by allegedly allowing the transfer of gasoline at a motor dispensing site which had a Reid vapor pressure greater than seven maximum pounds per square inch absolute; PENALTY: \$920; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(5) COMPANY: The Premcor Refining Group, Inc.; DOCKET NUMBER: 2007-0956-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a) and (c)(7), New Source Review Flexible Permit 6825A/PSD-TX-49,

Special Condition 5A, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to prevent unauthorized emissions; PENALTY: \$25,250; Supplemental Environmental Project (SEP) offset amount of \$10,060 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200705097

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 23, 2007



### Enforcement Orders

A default order was entered regarding Speedys Mart Incorporated dba Speedy Mart C-Stores, formerly known as National Mart Convenience Store, Docket No. 2003-0692-PST-E on October 15, 2007 assessing \$20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Al-Azim Corporation dba Honey Stop 7, Docket No. 2004-1035-PST-E on October 15, 2007 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sonal Enterprises Inc. dba Stop N Joy, Docket No. 2005-0031-PST-E on October 15, 2007 assessing \$2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding N.D.N.Y. Enterprises, Inc. dba Chances Night Club, Docket No. 2005-1016-PWS-E on October 15, 2007 assessing \$3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Pinglia and Associates Investment, L.L.C. dba Happy Food Mart, Docket No. 2005-1295-PST-E on October 15, 2007 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Birdsong Fuels & Services, L.L.C., Docket No. 2005-1524-PST-E on October 15, 2007 assessing \$2,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duval County, Docket No. 2005-1785-MSW-E on October 15, 2007 assessing \$9,095 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding G. Q. Enterprises Corporation dba Glenview Quick Mart, Docket No. 2005-1959-PST-E on October 15, 2007 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lynn Turney, Docket No. 2006-0121-MLM-E on October 15, 2007 assessing \$3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Bengal, Inc. dba Dry Clean Super Center, Docket No. 2006-0870-DCL-E on October 15, 2007 assessing \$889 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney at (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Dark Angel Investments, Inc. dba Bet Cleaners and dba Deluxe Cleaners, Docket No. 2006-1247-DCL-E on October 15, 2007 assessing \$1,980 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Delek Refining, Ltd., Docket No. 2006-1433-AIR-E on October 15, 2007 assessing \$288,395 in administrative penalties with \$57,679 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aesthetic Developers, Inc. dba Fabric Care Cleaners, Docket No. 2006-1469-DCL-E on October 15, 2007 assessing \$3,555 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding L&L AG Products, Inc. dba De Kalb City Cleaners, Docket No. 2006-1490-DCL-E on October 15, 2007 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 3 Park's Enterprises, L.L.C. dba Lah Cleaners, Docket No. 2006-1669-DCL-E on October 15, 2007 assessing \$1,067 in administrative penalties with \$214 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cardinal Towing Company, Inc. dba Cardinal Towing & Auto Repair, Docket No. 2006-1843-PST-E on October 15, 2007 assessing \$2,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Best Texan, Inc. dba 105 Food Mart, Docket No. 2006-1881-PST-E on October 15, 2007 assessing \$5,850 in administrative penalties with \$1,170 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Montgomery County Municipal Utility District No. 56, Docket No. 2006-2236-MWD-E on October 15, 2007 assessing \$12,116 in administrative penalties with \$2,423 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maxim Production Co., LP, Docket No. 2007-0009-AIR-E on October 15, 2007 assessing \$3,660 in administrative penalties with \$732 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hussain Lakhani dba Hulén Stop, Docket No. 2007-0088-PST-E on October 15, 2007 assessing \$2,050 in administrative penalties with \$410 deferred.

Information concerning any aspect of this order may be obtained by contacting Phillip DeFrancesco, Enforcement Coordinator at (817) 588-5833, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Charlotte, Docket No. 2007-0122-MWD-E on October 15, 2007 assessing \$8,122 in administrative penalties with \$1,624 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hawkins Homes, Inc., Docket No. 2007-0126-WQ-E on October 15, 2007 assessing \$3,210 in administrative penalties with \$642 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amarillo Road Company, L.P., Docket No. 2007-0136-AIR-E on October 15, 2007 assessing \$15,750 in administrative penalties with \$3,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bastrop County, Docket No. 2007-0143-MLM-E on October 15, 2007 assessing \$10,250 in administrative penalties with \$2,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Marine Services, Inc., Docket No. 2007-0145-AIR-E on October 15, 2007 assessing \$17,812 in administrative penalties with \$3,562 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southeast Kaufman Water Supply Corporation, Docket No. 2007-0146-PWS-E on October 15, 2007 assessing \$1,045 in administrative penalties with \$209 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Michael Jansky dba Jansky's Sand & Gravel, Docket No. 2007-0156-WQ-E on October 15, 2007 assessing \$2,100 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Teague, Docket No. 2007-0178-MWD-E on October 15, 2007 assessing \$8,280 in administrative penalties with \$1,656 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richard B. Barkley, Docket No. 2007-0185-WOC-E on October 15, 2007 assessing \$188 in administrative penalties with \$37 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Albemarle Catalysts Company LP, Docket No. 2007-0197-AIR-E on October 15, 2007 assessing \$5,252 in administrative penalties with \$1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Katy Independent School District, Docket No. 2007-0199-MWD-E on October 15, 2007 assessing \$3,140 in administrative penalties with \$628 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2007-0203-AIR-E on October 15, 2007 assessing \$14,085 in administrative penalties with \$2,817 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ron Stuard dba Pecos River Crossing, Docket No. 2007-0205-PST-E on October 15, 2007 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2007-0210-AIR-E on October 15, 2007 assessing \$24,139 in administrative penalties with \$4,827 deferred.

Information concerning any aspect of this order may be obtained by contacting Lindsey Jones, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rice Water Supply and Sewer Service Corporation, Docket No. 2007-0229-MWD-E on October 15, 2007 assessing \$13,100 in administrative penalties with \$2,620 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BFI Waste Services of Texas, LP dba Allied Waste Services of Houston, Docket No. 2007-0231-IHW-E on October 15, 2007 assessing \$1,100 in administrative penalties with \$220 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0068, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Parker-Hannifin Corporation, Docket No. 2007-0232-AIR-E on October 15, 2007 assessing \$3,672 in administrative penalties with \$734 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding I. 35 Sandpit, Inc., Docket No. 2007-0237-MLM-E on October 15, 2007 assessing \$8,560 in administrative penalties with \$1,712 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 761-3038, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Darling International Inc., Docket No. 2007-0239-AIR-E on October 15, 2007 assessing \$1,100 in administrative penalties with \$220 deferred.

Information concerning any aspect of this order may be obtained by contacting Lindsey Jones, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF Corporation, Docket No. 2007-0247-AIR-E on October 15, 2007 assessing \$18,100 in administrative penalties with \$3,620 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso Press/Box, Inc., Docket No. 2007-0249-MSW-E on October 15, 2007 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Wayne Green, Docket No. 2007-0251-LII-E on October 15, 2007 assessing \$625 in administrative penalties with \$125 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Los Betos Caliche Pit, L.L.C., Docket No. 2007-0273-MSW-E on October 15, 2007 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 761-3038, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Georgetown Independent School District, Docket No. 2007-0282-EAQ-E on October 15, 2007 assessing \$24,000 in administrative penalties with \$4,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources, LP, Docket No. 2007-0297-AIR-E on October 15, 2007 assessing \$12,150 in administrative penalties with \$2,430 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Memorial Point Utility District, Docket No. 2007-0300-MWD-E on October 15, 2007 assessing \$3,340 in administrative penalties with \$668 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hamilton, Docket No. 2007-0307-PWS-E on October 15, 2007 assessing \$3,124 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Milam Water Supply Corporation, Docket No. 2007-0309-MLM-E on October 15, 2007 assessing \$4,266 in administrative penalties with \$853 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Albemarle Corporation, Docket No. 2007-0316-AIR-E on October 15, 2007 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lighthouse Land Ventures, Ltd., Docket No. 2007-0330-EAQ-E on October 15, 2007 assessing \$58,000 in administrative penalties with \$11,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Grandview, Docket No. 2007-0344-MWD-E on October 15, 2007 assessing \$5,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Seven Heights Corporation dba Mobil 1 Lube Express, Docket No. 2007-0348-PST-E on October 15, 2007 assessing \$5,500 in administrative penalties with \$1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Phillip DeFrancesco, Enforcement Coordinator at (817) 588-5833, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northeast Washington County Water Supply Corporation, Docket No. 2007-0349-PWS-E on October 15, 2007 assessing \$3,727 in administrative penalties with \$745 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jerry Long, Docket No. 2007-0350-SLG-E on October 15, 2007 assessing \$1,590 in administrative penalties with \$318 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shaded Lane Water Company, Inc., Docket No. 2007-0351-PWS-E on October 15, 2007 assessing \$472 in administrative penalties with \$94 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical Corporation, Docket No. 2007-0360-AIR-E on October 15, 2007 assessing \$7,925 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G & W Water Supply Corporation, Docket No. 2007-0378-PWS-E on October 15, 2007 assessing \$840 in administrative penalties with \$168 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Annona, Docket No. 2007-0411-MWD-E on October 15, 2007 assessing \$4,830 in administrative penalties with \$966 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ballater, Ltd., Docket No. 2007-0451-WQ-E on October 15, 2007 assessing \$2,700 in administrative penalties with \$540 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Explorer Pipeline Company, Docket No. 2007-0503-AIR-E on October 15, 2007 assessing \$3,240 in administrative penalties with \$648 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning, Docket No. 2007-0537-AIR-E on October 15, 2007 assessing \$2,925 in administrative penalties with \$585 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Lynch, Docket No. 2007-0643-MSW-E on October 15, 2007 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magnum Blue Ribbon Feeds, Inc., Docket No. 2007-0680-AIR-E on October 15, 2007 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-2670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ashler Oaks, LLC, Docket No. 2007-0687-WQ-E on October 15, 2007 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Airborn, Inc., Docket No. 2007-0835-IHW-E on October 15, 2007 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0068, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Swift Beef Company, Docket No. 2007-0906-AIR-E on October 15, 2007 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Grant Road Enterprises, LLC dba Chevron Mini Mart 5, Docket No. 2007-0894-PST-E on October 15, 2007 assessing \$875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Marcela Garza, Field Investigator at (512) 239-0363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Gavin Steel Fabricating, Inc., Docket No. 2007-0842-WQ-E on October 15, 2007 assessing \$875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Marcela Garza, Field Investigator at (512) 239-0363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding South-Tex Concrete, Inc., Docket No. 2007-0895-WQ-E on October 15, 2007 assessing \$875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Marcela Garza, Field Investigator at (512) 239-0363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200705127  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: October 24, 2007



#### Notice of Costs to Administer the Voluntary Cleanup Program

In accordance with Solid Waste Disposal Act, §361.613, Subchapter S, the executive director of the Texas Commission on Environmental Quality (TCEQ or commission) shall calculate and publish annually the commission's costs to administer the Voluntary Cleanup Program. The Innocent Owner/Operator Program, based on authority from Solid Waste Disposal Act, §361.752(b), shall also calculate and publish annually a rate established for the purposes of identifying the costs recoverable by the commission. The TCEQ is publishing the hourly billing rate of \$107 for both the Voluntary Cleanup Program and the Innocent Owner/Operator Program for Fiscal Year 2008.

The Voluntary Cleanup and the Innocent Owner/Operator Program are implemented by the same TCEQ staff. Therefore, a single hourly billing rate for both programs was derived from current projections for salaries plus the fringe benefit rate and the indirect cost rate, less federal funding and application fees, divided by the estimated hours to complete program tasks. The hourly rate for the two programs was calculated and then rounded to a whole dollar amount. Billable salary hours were derived by subtracting the release time hours from the total available hours and a further reduction of 34.25% to account for non-site specific hours. The release time includes sick leave, jury duty, holidays, etc., and is set at 18.72% (actual rate for Fiscal Year 2007). The current fringe benefit rate is 26.25%. Fringe benefits include retirement, social security, and insurance expenses and are calculated at a rate that applies to the agency as a whole. The indirect cost rate is 31.57%. Indirect costs include allowable overhead expenses and are also calculated at a rate that applies to the whole agency. The billing process for Fiscal Year 2008 will use the hourly billing rate of \$107 for both the Voluntary Cleanup Program and the Innocent Owner/Operator Program and will not be adjusted. All travel-related expenses will be billed as a separate expense. After an applicant's initial \$1,000 application fee has been expended by the Innocent Owner/Operator Program or the Voluntary Cleanup Program review and oversight, invoices will be sent to the applicant on a monthly basis for payment of additional program expenses.

Federal funding of the Voluntary Cleanup Program and the Innocent Owner/Operator Program for Fiscal Year 2008 was received and approved on September 19, 2007. The funding is for the continued development and enhancement of the Voluntary Cleanup Program and the Innocent Owner/Operator Program.

For more information, please contact Mr. Jay Carsten, P.G., Environmental Cleanup II, Remediation Division, Texas Commission on Environmental Quality, MC 221, 12100 Park 35 Circle, Austin, Texas 78753 or call (512) 239-5873 or email: [jcarsten@tceq.state.tx.us](mailto:jcarsten@tceq.state.tx.us).

TRD-200705096  
Mary R. Risner  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: October 23, 2007



#### Notice of District Petition

Notices issued October 23, 2007

TCEQ Internal Control No. 06222007-D02; Wynne/Jackson Duncan Tract, LP, Texas Capital Bank, N.A., and Richard K. Duncan, Sr., Trustee (Petitioners) filed a petition for creation of Galveston County Municipal Utility District No. 72 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the holders of title to a majority in value of the land to be included in the proposed District; (2) there is one lien holder on the property to be included in the proposed District, and the lien holder is one of the petitioners to the creation of the proposed District; (3) the proposed District will contain approximately an area of 537.92 acres located within Galveston County, Texas; and (4) the proposed District is within the corporate boundaries of the City of League City, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2006-28, effective July 11, 2006, the City of League City, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$45,100,000.

TCEQ Internal Control No. 06192007-D02; White Rock Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert White Rock Water Supply Corporation to White Rock Special Utility District (District), to transfer Certificate of Convenience and Necessity (CCN) No. 12547 from White Rock Water Supply Corporation to White Rock Special Utility District. White Rock Special Utility District's business address will be: 841 LCR 463, Mexia, Texas 76667. The petition was filed pursuant to Chapters 49 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of White Rock Water Supply Corporation and the organization, creation and establishment of White Rock Special Utility District under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, and CCN No. 12547 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. The nature of the services presently performed by White Rock Water Supply Corporation is to purchase, own, hold, lease and otherwise acquire sources of water supply; to build, operate and maintain facilities for the transportation of water; and to sell water to individual members, towns, cities, private businesses, and other political subdivisions of the State. The nature of the services proposed to be provided by White Rock Special Utility District is to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the storage, treatment, and transportation of water; and to sell water to individuals, towns, cities, private business entities and other political subdivisions of the State. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The proposed District is located in Limestone County and will contain approximately 37,172 acres (20.18 square miles). The territory to be included within the proposed District includes all of the singularly certified service area covered by CCN No. 12547. CCN No. 12547 will be transferred after a positive confirmation election.

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](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200705126

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 24, 2007



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 3, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's or-

ders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 3, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: B & F and Sons, LLC dba B & F Exxon; DOCKET NUMBER: 2005-1945-PST-E; TCEQ ID NUMBER: RN101532984; LOCATION: 4942 North Interstate 45, Ennis, Ellis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: \$3,210; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Bipin Patel dba M & B Food Store; DOCKET NUMBER: 2004-0740-PST-E; TCEQ ID NUMBER: RN101838902; LOCATION: 708 North Raguet, Lufkin, Angelina County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1), by failing to maintain legible copies of all required records regarding the UST system in a secure location on the premises so as to be readily accessible by the system operator and TCEQ personnel; 30 TAC §334.72, by failing to report a suspected release from a UST to the TCEQ within 24 hours; and 30 TAC §334.74, by failing to report a suspected release from a UST to the TCEQ within 30 days; PENALTY: \$15,000; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Circle K Stores, Inc.; DOCKET NUMBER: 2006-1312-AIR-E; TCEQ ID NUMBER: RN102777497; LOCATION: 1500 George Dieter Drive, El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULES VIOLATED: 30 TAC §115.252(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum 7.0 pounds per square inch absolute Reid Vapor Pressure requirements during the control period of June 1 - September 16, 2006; PENALTY: \$1,000; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(4) COMPANY: Dusty L. Turner; DOCKET NUMBER: 2007-0408-LII-E; TCEQ ID NUMBER: RN103660445; LOCATION: 220 Davis St., Gainesville, Cooke County, Texas; TYPE OF FACILITY: landscape irrigation installation operation; RULES VIOLATED: 30 TAC §30.5(a) and (b) and §334.4(a), Texas Water Code (TWC), §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and represent-

ing to the public that he could perform a service for which a license is required; PENALTY: \$750; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: FKD Enterprises Inc. dba Lucky Seven Food Mart; DOCKET NUMBER: 2007-0728-PST-E; TCEQ ID NUMBER: RN101765089; LOCATION: 5925 South Flores Street, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring), in a manner which would detect a release; 30 TAC §334.10(b), by failing to maintain records pertaining to the UST system and to provide those records to commission personnel upon request; 30 TAC §334.48(c) and TCEQ Agreed Order Docket No. 2002-1035-PST-E, Section IV, Paragraph 2.a.i., and 2.b., by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; and 30 TAC §334.49(c)(4), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$14,300; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Flash Mart Stores, Inc.; DOCKET NUMBER: 2004-0250-PST-E; TCEQ ID NUMBER: RN102318631; LOCATION: 8817 Clark Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(3)(J) and (L) and THSC, §382.003(12), by failing to have a gasket for the dust cap on the supreme unleaded dry break vapor valve and by failing to have a nozzle for the regular unleaded dispenser Number 4 that is certified by California Air Resource Board (CARB); PENALTY: \$1,160; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: IZ, Inc. dba IZ Food Mart; DOCKET NUMBER: 2006-1825-PST-E; TCEQ ID NUMBER: RN102239035; LOCATION: 699 West Renner Road, Richardson, Collin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.244(l) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system; 30 TAC §115.246(1) and (3) and THSC, §382.085(b), by failing to maintain records on-site of all required Stage I and Stage II records pertaining to a UST system and make immediately available for inspection by commission personnel; 30 TAC §115.242(3)(A) and (9) and THSC, §382.085(b), by failing to provide and maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including, but not limited to absence or disconnection of any component that is a part of the approved system and by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances including tanks, piping, and other ancillary equipment; and 30 TAC §334.48(c), by failing to

conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel each operating day; PENALTY: \$25,000; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Jack D. Daniel dba Jack Daniel's Automotive; DOCKET NUMBER: 2002-0099-PST-E; TCEQ ID NUMBER: RN101750057; LOCATION: 801 North Highway 288 B, Clute, Brazoria County, Texas; TYPE OF FACILITY: USTs used in conjunction with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.21, by failing to pay outstanding petroleum storage tank fees for the Fiscal Years 1988 - 2001; PENALTY: \$1,100; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(9) COMPANY: Kevin G. Love; DOCKET NUMBER: 2006-1859-LII-E; TCEQ ID NUMBER: RN103246807; LOCATION: 113 Jeff Acres Road, Mabank, Henderson County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §344.4 and §30.5(a) and (b), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$250; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: Larry Smith; DOCKET NUMBER: 2006-1867-LII-E; TCEQ ID NUMBER: RN105087522; LOCATION: 5576 Stone Creek Drive, Sanger, Denton County, Texas; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a), TWC, §37.003, and Texas Occupations Code §1903.251, by failing to hold an irrigation license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, and by representing to the public that he could perform a service for which a license is required; PENALTY: \$250; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Louie Keen dba FM 1993 Mobil; DOCKET NUMBER: 2004-0861-PST-E; TCEQ ID NUMBER: RN104074299; LOCATION: Interstate Highway 30 and Exit 170, Cookville, Titus County, Texas; TYPE OF FACILITY: non operational retail gasoline service station; RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(d)(2) and (b)(2), by failing to remove from service any existing UST system that was not brought into timely compliance with upgrade requirements no later than 60 days after the prescribed implementation date of December 22, 1998; 30 TAC §334.49(a)(1) and §334.54(c)(1), by failing to provide corrosion protection for the UST system; 30 TAC §334.50(a)(1)(A) and §334.54(c)(2) and TWC, §26.3475(c)(1), by failing to provide release detection for the UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the UST system; 30 TAC §334.7(d)(3), by failing to amend his UST registration within 30 days from the date of becoming aware of changes or additional information regarding the USTs; and 30 TAC §334.49(a)(1) and §334.54(c)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: \$35,700; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE:



Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(12) COMPANY: Rocky Hunt; DOCKET NUMBER: 2007-0587-LII-E; TCEQ ID NUMBER: RN105179105; LOCATION: 376 Fossil Hills Loop, Spring Branch, Comal County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$250; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Yetta Husted dba High Five; DOCKET NUMBER: 2006-1944-PWS-E; TCEQ ID NUMBER: RN101221240; LOCATION: 7805 Farm to Market Road 2918, Brazoria, Brazoria County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to conduct routine bacteriological monitoring of the public water supply during the months of September and November of 2004 and June of 2005, and by failing to provide public notification of the failure to conduct monthly bacteriological sampling for the months of September and November of 2004, and June of 2005; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect four repeat samples following each total coliform-positive sample found on a routine sample during the month of August 2005, and by failing to provide public notification of the failure to collect and submit the appropriate number of repeat samples for the month of August 2005; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five distribution samples the month following a total coliform-positive result during the month of September 2005, and by failing to provide public notification of the failure to collect and submit the appropriate number of distribution samples for the month of September 2005; and Docket Number 2000-0385-PWS-E, by failing to pay an outstanding administrative penalty as required by a Commission Order; PENALTY: \$1,755; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200705098

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 23, 2007



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 3, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 3, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: COMPANY: Honey Stop Food Marts, Inc. formerly known as Honey Stop Properties, Inc.; DOCKET NUMBER: 2003-0971-PST-E; TCEQ ID NUMBERS: RN102828274 and RN102456613; LOCATIONS: 401 South Eastman Road, (Honey Stop Food Mart No. 3, PST Facility No. 54757) and 1708 Moberly, (Honey Stop Food Mart No. 17, PST Facility No. 8098), Longview, Gregg County, Texas; TYPE OF FACILITIES: two convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72(3), at Facility Numbers 3 and 17, by failing to report to the commission a suspected release from a UST within 24 hours of discovery of the suspected release; 30 TAC §334.74, at Facility Nos. 3 and 17, by failing to conduct release investigation and confirmation steps within 30 days of discovery of a suspected release; 30 TAC §334.51(b)(2)(C) and Texas Water Code (TWC), §26.3475(c)(2), at Facility No. 3, by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reached no higher than 95% capacity; 30 TAC §334.76(2), at Facility No. 3, by failing to take immediate action to prevent any further release of a regulated substance into the environment, including shutting down the leaking tank system; and 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), at Facility No. 3, by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; PENALTY: \$86,400; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: Thomas Marcantel; DOCKET NUMBER: 2006-0554-SLG-E; TCEQ ID NUMBER: RN103000170; LOCATION: seven miles north of Normangee on Farm-to-Market Road 39, Leon County, Texas; TYPE OF FACILITY: registered sewage sludge transporter business and property; RULES VIOLATED: 30 TAC §312.143 and §330.5(c), currently located at 30 TAC §330.15(c), by failing to transport and deposit all sludge at a designated facility that has authorization to receive waste; PENALTY: \$2,500; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200705100

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 23, 2007

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## Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 3, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 3, 2007**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Plain-O-Gas, Inc. dba Fina; DOCKET NUMBER: 2006-0321-PST-E; TCEQ ID NUMBER: RN101542512; LOCATION: 1421 North Central Expressway, Plano, Collin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain the underground storage tank (UST) records as required; 30 TAC §115.244(2) and (3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to provide Stage II in-house training to all current employees to make each of them aware of the purposes and correct operating procedures of the Stage II equipment; 30 TAC §115.246(1) and (3) and THSC, §382.085(b), by failing to have a current copy of the California Air Resources Board (CARB) Executive Order for the

Stage II vapor recovery system, and by failing to have the Stage II vapor recovery system maintenance records available for review by TCEQ personnel; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §115.242(3)(A), (3)(L), and (9) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including but not limited to absence or disconnection of any component that is a part of the approved system; 30 TAC §334.49(c)(4) and Texas Water Code (TWC), §26.3475(d), by failing to have the corrosion protection system inspected and tested at least once every three years; 30 TAC §334.50(a)(1)(A), (b)(2), and (b)(2)(A)(i)(III) and TWC, §26.3475(a) and (c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances, including tanks, piping, and other ancillary equipment, and by failing to conduct proper release detection for the piping associated with the UST system; and by failing to conduct the annual line leak detector test for all line leak detectors every 12 months; and 30 TAC §334.8(c)(4)(B), by failing to submit a true and accurate UST registration and self-certification form to the TCEQ; PENALTY: \$23,650; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200705099

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 23, 2007

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## Notice of Water Quality Applications

The following notices were issued during the period of October 12, 2007 through October 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.

### INFORMATION SECTION

THE CITY OF CENTER has applied for a major amendment to TPDES Permit No. 10063-003 to remove effluent limitations and monitoring requirements for Lead and Mercury. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1.77 million gallons per day. The facility is located approximately 3,000 feet southwest of the intersection of Farm-to-Market Road 2788 (Stardis Road) and State Highway 7 in Shelby County, Texas.

FAULKLEY GULLY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011832001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,420,000 gallons per day. The facility is located at 15503 Hermitage Oak, north of Louetta Road and west of State Highway 249, east of North Eldridge Parkway in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 230 has applied for a renewal of TPDES Permit No. WQ0012877001, which authorizes the discharge of treated domestic wastewater at a daily

average flow not to exceed 760,000 gallons per day. The facility is located approximately 3,000 feet west of Farm-to-Market Road 149 (State Highway 249) and approximately 4,000 feet south of Cypress Creek, at 13707 Napoli Drive in Harris County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 74 has applied for a renewal of TPDES Permit No. WQ0010679001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 840,000 gallons per day. The facility is located approximately 3,500 feet west-southwest of the intersection of U.S. Highway 59 and Aldine Mail Route in Harris County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 99 has applied for a renewal of TPDES Permit No. 11444-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located on the north side of Cypress Creek near the confluence with Lemm Gully, approximately 4,600 feet east of Interstate Highway 45 in Harris County, Texas.

CITY OF JERSEY VILLAGE has applied for a renewal of TPDES Permit No. 12681-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 12103 Castlebridge Drive, approximately 0.75 miles northwest of the intersection of U.S. Highway 290 and Jones Road and 2.0 miles southeast of the intersection of U.S. Highway 290 and Farm-to-Market Road 1960 in Harris County, Texas.

JESSE CARL WOOD has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014823001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at the intersection of County Road 306 and Dolphin Drive in Calhoun County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

LA JOYA INDEPENDENT SCHOOL DISTRICT has applied for a new permit, Proposed Permit No. WQ0013523011, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day via non-public access low pressure dosing drainfields with a minimum area of 44,600 square feet. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day via non-public access low pressure dosing drainfields with a minimum area of 120,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located at the intersection of 4 Mile Line Road and Liberty Boulevard in Hidalgo County, Texas.

PETROLEUM COKE GRINDING, INC which receives, stores, grinds, and ships petroleum coke, has applied for a renewal of TPDES Permit No. WQ0001021000, which authorizes the discharge of process area storm water and cooling tower blowdown on an intermittent and flow variable basis via Outfalls 001 and 003; and storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 6203 Industrial Way, 0.5 miles north of Navigation Boulevard at the termination of Industrial Way, on Buffalo Bayou in the City of Houston, Harris County, Texas.

RANCH UTILITIES, L.P. has applied for a renewal of TPDES Permit No. 12670-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 175,000 gallons per day. The facility is located approximately 2,100 feet north of Farm-to-

Market Road 1097 and 1.9 miles east-northeast of the City of Willis in Montgomery County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español puede llamar al 1-800-687-4040.

TRD-200705124

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 24, 2007



## Notice of Water Rights Applications

Notices issued October 17, 2007 through October 24, 2007.

APPLICATION NO. 12207; Rockin J Ranch Ltd., P.O. Box 2202, Canyon Lake, TX 78133-0009, Applicant, has applied for a Water Use Permit to maintain two existing dams and reservoirs on unnamed tributaries of Kentucky Branch, Guadalupe River Basin for in-place recreational use in Blanco County. The reservoirs have a combined capacity of approximately 21.6 acre-feet and a combined surface area of 3.7 acres. The application and partial fees were received on May 15, 2007. Additional information and fees were received on July 16, 2007. The application was declared administratively complete and accepted for filing on August 6, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12213; CB&I Constructors, Inc., 3752 South Gulfway Drive, P.O. Box 440, Sabine Pass, TX 77655, Applicant, has applied for a temporary water use permit to divert and use not to exceed 420 acre-feet of water from the Port Arthur Ship Canal, Neches-Trinity Coastal Basin, within a period of two years and nine months for industrial purposes (hydrostatic testing) in Jefferson County. The application and fees were received on May 30, 2007, and additional information and fees were received on August 6, and August 17, 2007. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 30, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by November 13, 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](http://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 applica-

tion 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](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200705125

LaDonna Castañuela  
Chief Clerk

Texas Commission on Environmental Quality  
Filed: October 24, 2007



#### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 19, 2007, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Louis Moncus dba Moncus Sand & Gravel; SOAH Docket No. 582-07-3619; TCEQ Docket No. 2004-1071-WQ-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Louis Moncus dba Moncus Sand & Gravel on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200705128

LaDonna Castañuela  
Chief Clerk

Texas Commission on Environmental Quality  
Filed: October 24, 2007



## Texas Facilities Commission

### Request for Proposal

The Texas Facilities Commission (TFC), on behalf of the Texas Parks and Wildlife Department (TPWD), announces the issuance of Request for Proposals (RFP) 303-8-10477. TFC seeks a 5 or 10 year lease of approximately 1,791 square feet of office space in Bryan or College Station, Brazos, Texas.

The deadline for questions is November 8, 2007 and the deadline for proposals is November 20, 2007 at 3:00 p.m. The award date is January 1, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=73490](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=73490).

TRD-200704990

Kay Molina  
General Counsel  
Texas Facilities Commission

Filed: October 18, 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 November 20, 2007, at 1:30 p.m., to receive public comment on the proposed Medicaid payment rates for seven specific laboratory services procedure codes. The public hearing will be held in the Lone Star Conference Room of the Texas 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 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. 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 payment rates will be effective January 1, 2008. The proposed rates are as follows:

Type of Service (TOS)*	Procedure Code	Current Medicaid Rate	Proposed Medicaid Rate
5	S3820	\$1,785.00	\$3,440.71
5	S3828	\$420.00	\$885.02
5	S3829	\$420.00	\$683.08
5	S3830	Not a Benefit	\$1,477.55
5	S3831	Not a Benefit	\$385.00
5	S3833	\$540.00	\$1,768.61
5	S3834	\$171.00	\$385.00

\*Type of Service Code Key: 5 = Laboratory Services

**Methodology and Justification.** The proposed payment rates are calculated in accordance with 1 TAC §355.8081 and 1 TAC §355.8085, which address the reimbursement methodologies for laboratory services and physicians and certain other practitioners.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after November 2, 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 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Texas 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-200705137

Steve Aragón  
Chief Counsel

Texas Health and Human Services Commission

Filed: October 24, 2007



#### Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit to the Centers for Medicare and Medicaid Services an amendment to the Community Living Assistance and Support Services (CLASS), 1915(c) waiver program. The current waiver is scheduled to expire August 31, 2009.

The CLASS program provides services and supports for individuals with related conditions, severe chronic disabilities closely related to mental retardation, as an alternative to residing in an intermediate care facility for individuals with mental retardation or related conditions. Individuals must reside in a county in which the CLASS program is available and may live in their own or family home.

Services include case management, adaptive aids and medical supplies, habilitation, minor home modifications, nursing services, occupational and physical therapy, psychological services, respite, specialized therapies, speech pathology, and transition assistance.

The purposes of this waiver amendment are:

- \* To make the CLASS program available to an estimated additional 586 individuals;

- \* To change the reimbursement methodology for Consumer Directed Services Agencies (CDSAs). The CDSAs provide assistance to consumers or family members who directly employ their habilitation or respite services providers;

- \* To add board-certified behavior analysts to the list of providers qualified to deliver psychological services; and

- \* To remove language from the waiver that allows the cost of adaptive aids and minor home modifications for a program participant to exceed the service limit by 33 percent. The legislative mandate that allowed the exception is no longer in place.

The proposed waiver amendment will be effective September 1, 2007. HHSC is requesting that the waiver amendment be approved for a two-year period beginning September 1, 2007, through August 31, 2009. This amendment maintains cost neutrality of service costs for federal fiscal years 2007 through 2009.

To obtain copies of the proposed waiver amendment, interested parties may contact Betsy Johnson by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200, phone (512) 491-1199, fax (512) 491-1953, or by e-mail at betsy.johnson@hhsc.state.tx.us.

TRD-200704989

Steve Aragón  
Chief Counsel

Texas Health and Human Services Commission

Filed: October 18, 2007



### Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Dialog Wireline Services LLC	L06104	Longview	00	10/04/07

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Amarillo Diagnostic Clinic	L04085	Amarillo	23	10/12/07
Angleton	Dr Salim F Babaghi DBA Angleton Cardiology Clinic	L05353	Angleton	06	10/03/07
Arlington	Arlington Memorial Hospital	L02217	Arlington	88	10/10/07
Arlington	The University of Texas at Arlington	L00248	Arlington	47	10/04/07
Austin	ARA Imaging	L05862	Austin	22	10/02/07
Austin	Austin Heart PA	L04623	Austin	47	10/3/07
Austin	Austin Heart PA	L05580	Austin	19	10/03/07
Austin	Austin Radiological Association	L00545	Austin	130	10/02/07
Austin	Austin Radiological Association	L00545	Austin	131	10/08/07
Austin	Capital Cardiovascular Consultants	L05590	Austin	13	10/02/07
Austin	Daughters of Charity Health Svcs of Austin DBA Dell Children's Medical Center of Central Texas	L06065	Austin	03	10/05/07
Austin	Eye Physicians of Austin PA	L00570	Austin	21	10/02/07
Austin	Kleinfelder	L01351	Austin	54	10/10/07
Austin	St Davids Healthcare Partnership LP LLP DBA North Austin Medical Center	L04910	Austin	75	10/08/07
Baytown	Lanxess Corporation	L05810	Baytown	04	10/09/07
Beaumont	Metalforms Inc	L02261	Beaumont	37	10/09/07
Bedford	Carter Bloodcare	L00630	Bedford	44	10/08/07
Bellaire	Texas Nuclear Imaging Inc DBA Excel Diagnostics Imaging Clinic Medical Center	L05009	Bellaire	31	10/03/07
Carrollton	Medical Edge Healthcare Group PA DBA Heart First	L05555	Carrollton	15	10/04/07
Conroe	Adnan Afzal MD FACC DBA Healing Hearts	L06071	Conroe	01	10/10/07
Conroe	CHCA Conroe LP DBA Conroe Regional Medical Center	L01769	Conroe	74	10/05/07
Corpus Christi	A Lee Guinn MD PA DBA Longevity & Wellness Center of So Tx	L05799	Corpus Christi	04	10/10/07
Corpus Christi	Clinical Nuclear Services Inc	L05368	Corpus Christi	11	10/10/07
Corpus Christi	Flint Hills Resources LP	L00322	Corpus Christi	41	10/11/07
Dallas	Cor Specialty Associates of North Texas PA DBA The Dallas Heart Group	L04694	Dallas	28	09/27/07
Dallas	Mallinckrodt Inc	L03580	Dallas	58	10/03/07
Dallas	Medi Physics Inc DBA GE Healthcare	L05529	Dallas	19	10/09/07
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	174	10/04/07
Dallas	Metrocrest Hosptial Authority DBA RHD Memorial Medical Center	L02314	Dallas	56	09/27/07
Deer Park	Oxy Vinyls LP	L03200	Deer Park	13	10/04/07
Deer Park	Shell Oil Products US DBA Deer Park Refining Limited Partnership	L04554	Deer Park	23	10/09/07

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amendment #	Date of Action
Deer Park	Total Petrochemicals USA Inc	L00302	Deer Park	51	10/02/07
Del Rio	Val Verde Regional Hospital Center	L01967	Del Rio	30	10/02/07
Denton	George S Rebecca MD FACC DBA Texas Cardiovascular Medicine	L05099	Denton	09	10/05/07
Denton	Trace Life Sciences Inc	L05435	Denton	15	10/10/07
Duncanville	Surgery Center of Duncanville LP DBA Surgery Center of Duncanville	L05885	Duncanville	02	10/08/07
El Paso	El Paso Heart and Vascular Clinic PA	L05927	El Paso	01	10/03/07
Fort Worth	Darren Lackan MD PA DBA Diabetes & Thyroid Center of Fort Worth	L06074	Fort Worth	01	09/27/07
Fort Worth	Fort Worth Medical Plaza Inc DBA Columbia Plaza Medical Center of Fort Worth	L02171	Fort Worth	51	10/03/07
Fort Worth	Oncology Hematology Consultants PA DBA The Center for Cancer & Blood Disorders	L05919	Fort Worth	08	10/04/07
Fort Worth	Precision Energy Services Inc	L00747	Fort Worth	78	10/01/07
Fort Worth	Precision Energy Services Inc	L00747	Fort Worth	79	10/12/07
Fort Worth	Radiology Associates	L03953	Fort Worth	45	10/04/07
Fort Worth	Texas Christian University	L01096	Fort Worth	40	09/28/07
Fort Worth	Weatherford US LP	L05291	Fort Worth	16	10/11/07
Georgetown	St Davids Georgetown Hospital	L03152	Georgetown	38	10/05/07
Grapevine	Grapevine Imaging & Pain Management	L05922	Grapevine	08	09/26/07
Hallsville	Southwestern Electric Power Company	L03297	Hallsville	19	10/11/07
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	66	10/03/07
Henrietta	Clay County Memorial Hospital	L03228	Henrietta	22	10/09/07
Houston	American Diagnostic Tech LLC	L05514	Houston	42	10/01/07
Houston	Ben Taub General Hospital	L01303	Houston	64	10/08/07
Houston	Cambridge Heart Center PA	L05623	Houston	08	09/28/07
Houston	Cambridge Heart Center PA	L05623	Houston	09	10/02/07
Houston	CHCA East Houston LP DBA East Houston Regional Medical Center	L03306	Houston	26	10/12/07
Houston	CHOPRA Imaging Center Inc DBA Advanced Diagnostics	L05566	Houston	05	09/27/07
Houston	CMP Group LLC	L02397	Houston	18	10/11/07
Houston	Exxonmobil Upstream Research Company	L00205	Houston	57	10/01/07
Houston	Gulf Coast MRI & Diagnostic	L05333	Houston	12	10/02/07
Houston	Mallinckrodt Medical Inc	L03008	Houston	76	10/03/07
Houston	Memorial Hermann Healthcare System DBA Hermann Hospital	L04655	Houston	30	10/09/07
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	128	10/10/07
Houston	Nuclear Imaging Services	L05775	Houston	35	10/03/07
Houston	Nuclear Imaging Services	L05775	Houston	36	10/11/07
Houston	SJ Medical Center LLC DBA St Joseph Medical Center	L02279	Houston	63	10/12/07
Houston	The Methodist Hospital	L00457	Houston	154	10/05/07
Houston	University of Houston Clear Lake	L02108	Houston	19	10/05/07
Irving	Dallas-Ft Worth Veterinary Imaging Center DBA Animal Imaging	L04602	Irving	08	10/05/07
Katy	Memorial Hermann Hospital System DBA Memorial Hermann Katy Hospital	L03052	Katy	51	10/08/07
La Grange	Austin Heart La Grange	L05516	La Grange	22	10/03/07
Llano	Llano County Hospital Authority DBA Llano Memorial Healthcare System	L04438	Llano	24	09/27/07

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amendment #	Date of Action
Longview	Eastman Chemicals Company	L00301	Longview	107	10/04/07
Longview	Texas Oncology Pa DBA Longview Cancer Center	L05017	Longview	10	10/03/07
Lubbock	Bayer Crop Science	L05811	Lubbock	02	10/02/07
Lubbock	Cardiologist of Lubbock PA	L05038	Lubbock	20	10/01/07
Lubbock	Covenant Health System DBA Covenant Medical Center – Lakeside	L01547	Lubbock	87	10/10/07
Lubbock	Texas Tech University Health Science Cntr	L01869	Lubbock	83	10/3/07
Kingwood	KPH Consolidation Inc DBA Kingwood Medical Center	L04482	Kingwood	25	10/01/07
Marble Falls	Austin Heart PA DBA Austin Heart Clinic Marble Falls	L05505	Marble Falls	20	10/03/07
McAllen	Columbia Rio Grande Regional Hospital	L03288	McAllen	47	10/12/07
McAllen	Valley Nuclear Incorporated	L04521	McAllen	24	09/27/07
McKinney	Columbia Medical Center of McKinney Subsidiary LP DBA Medical Center of McKinney	L02415	McKinney	36	10/03/07
Mesquite	HMA Mesquite Hospitals Inc DBA Medical Center of Mesquite	L02428	Mesquite	47	10/03/07
Mesquite	Lone Star HMA LP DBA Mesquite Community Hospital	L02733	Mesquite	38	10/08/07
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	85	09/27/07
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	86	10/09/07
Nassau Bay	Christus Health DBA Christus St John Hospital	L03291	Nassau Bay	27	10/02/07
Odessa	B&A Laboratories Inc DBA Environmental Lab of Texas / Xenco Laboratories	L05499	Odessa	05	10/09/07
Odessa	Suresh N Gadasalli MD PA DBA The Healthy Heart Center	L05156	Odessa	14	10/05/07
Paris	Paris Cardiology Center	L06007	Paris	01	10/09/07
Paris	Physician Reliance Network Inc DBA Paris Regional Cancer Center	L04664	Paris	15	10/08/07
Pasadena	Celanese LTD Clear Lake Plant	L01130	Pasadena	69	09/28/07
Plano	Texas Heart Hospital of the Southwest LLP DBA The Heart Hospital Baylor Plano	L06004	Plano	07	09/28/07
Richardson	Optex Systems Inc	L04332	Richardson	10	10/03/07
Richardson	Siemens Government Services Inc	L05660	Richardson	05	10/11/07
Round Rock	Austin Heart PA DBA Austin Heart	L05456	Round Rock	22	10/03/07
San Antonio	City Public Service	L02876	San Antonio	22	09/27/07
San Antonio	Hector L Nevarez MD	L04698	San Antonio	04	10/08/07
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	235	10/04/07
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L05358	San Antonio	25	10/12/07
San Antonio	US Diagnostic Inc DBA San Antonio Diagnostic Imaging Inc	L04968	San Antonio	22	10/04/07
San Marcos	Austin Heart PA DBA Austin Heart San Marcos	L05452	San Marcos	25	10/03/07
Sherman	North Texas Cardiology	L05395	Sherman	12	10/01/07
Smithville	Smithville Regional Hospital	L04428	Smithville	16	10/02/07
Sugarland	Sugarland Cardiology Associates LP	L05789	Sugarland	04	10/11/07
Tatum	TXU Mining Company	L06081	Tatum	02	10/04/07



AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amendment #	Date of Action
Temple	Kings Daughters Hospital	L00666	Temple	49	09/27/07
Texarkana	J M Hurley MD PA DBA Texarkana Cardiology Associates	L04738	Texarkana	11	10/01/07
Throughout Tx	Desert Industrial X-Ray LP	L04590	Abilene	71	10/01/07
Throughout Tx	Team Industrial Services Inc	L00087	Alvin	169	09/28/07
Throughout Tx	Lotus LLC	L05147	Andrews	14	10/01/07
Throughout Tx	Exxonmobil Chemical Company	L01135	Baytown	69	10/03/07
Throughout Tx	Gessner Engineering LLP	L03733	Brenham	19	10/02/07
Throughout Tx	G & T Paving Company	L04874	Brownsville	05	10/03/07
Throughout Tx	Newpark Mats & Integrated Services LLC	L04708	Carencro, La	16	10/02/07
Throughout Tx	City of Dallas Water Utilities	L03829	Dallas	17	10/04/07
Throughout Tx	Terracon Consultants Inc	L05268	Dallas	22	10/10/07
Throughout Tx	Mestena Uranium LLC	L05939	Encino	04	09/27/07
Throughout Tx	Precision Energy Services Inc	L04286	Fort Worth	70	10/11/07
Throughout Tx	Probe Technology Services Inc	L05112	Fort Worth	18	10/03/07
Throughout Tx	Aster Corporation	L04741	Houston	28	10/05/07
Throughout Tx	Metco	L03018	Houston	176	10/02/07
Throughout Tx	Stork Southwestern Laboratories Inc	L00299	Houston	130	10/02/07
Throughout Tx	Stork Southwestern Laboratories Inc	L00299	Houston	131	10/11/07
Throughout Tx	University of Texas MD Anderson Cancer Center	L00466	Houston	108	10/08/07
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	134	10/12/07
Throughout Tx	Capitan Corporation	L05824	Midland	04	10/11/07
Throughout Tx	Genco Inc	L05146	Midland	11	10/02/07
Throughout Tx	Eagle X-Ray	L03246	Mont Belvieu	94	10/02/07
Throughout Tx	Link Field Services Inc	L05383	Olden	21	10/02/07
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	32	10/03/07
Throughout Tx	Warrington Inc	L03074	Pflugerville	27	10/01/07
Throughout Tx	TXU Mining Company LP DBA Luminant Mining	L04316	Rockdale	22	10/03/07
Throughout Tx	Reece Albert Inc	L02296	San Angelo	18	09/28/07
Throughout Tx	Lamco & Associate	L05152	The Woodlands	08	10/10/07
Throughout Tx	Texoma Engineering Services LLC	L05176	Wichita Falls	03	10/11/07
Tomball	Tomball Hospital Authority DBA Tomball Regional Hospital	L02514	Tomball	46	10/01/07
Tyler	Nutech Inc	L04274	Tyler	63	10/10/07
Tyler	Trinity Mother Frances Health System	L01670	Tyler	130	10/05/07
Webster	Beckman Coulter Inc DBA Diagnostic Systems Laboratories Inc	L03084	Webster	35	10/03/07
Wichita Falls	Clinics of North Texas LLP	L00523	Wichita Falls	52	10/09/07
Wichita Falls	Wichita Falls Cardiac Care PA	L06088	Wichita Falls	01	10/04/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Alvin	Solutia Inc	L00219	Alvin	77	09/28/07
Corpus Christi	Cardinal Health	L04043	Corpus Christi	37	10/09/07
Houston	Doctors Hospital 1997 LP	L01964	Houston	47	09/26/07
Houston	Memorial Cardiology Associates PA	L05349	Houston	09	10/09/07
Lubbock	City of Lubbock	L05066	Lubbock	03	10/08/07
Sherman	Wilson N Jones Memorial Hospital	L02384	Sherman	34	10/03/07
Silsbee	Meadwestvaco Texas LLP	L01095	Silsbee	56	10/12/07
Throughout Tx	Petroleum Perforators Inc	L01314	Alice	14	10/02/07
Victoria	Equistar Chemicals A Lyondell Co	L04101	Victoria	20	09/27/07

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Irving	Las Colinas PET Imaging LLP	L05724	Irving	03	10/09/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200705033  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: October 22, 2007



**Texas Department of Insurance**

Company Licensing

Application for admission to the State of Texas by ENDURANCE REINSURANCE COMPANY OF AMERICA, a foreign fire and/or casualty company. The home office is in White Plains, New York.

Application for admission to the State of Texas by WESTERN GROWERS ASSURANCE TRUST, a foreign Multiple Employer Welfare Arrangement (MEWA). The home office is in Irvine, California.

Application to change the name of GENWORTH LIFE AND HEALTH INSURANCE COMPANY to SUN LIFE AND HEALTH INSURANCE COMPANY (U.S.), a foreign life, accident and/or health company. The home office is in Windsor, Connecticut.

Application to change the name of PRINCIPAL HEALTH INSURANCE COMPANY to PRINCIPAL NATIONAL LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Des Moines, Iowa.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200705136  
 Gene C. Jarmon  
 Chief Clerk and General Counsel  
 Texas Department of Insurance  
 Filed: October 24, 2007



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of CLAIMETRICS MANAGEMENT, LLC, a foreign third party administrator. The home office is RENO, NEVADA.

Application of ATTENTA, INC., a foreign third party administrator. The home office is BIRMINGHAM, ALABAMA.

Application of CUNNINGHAM LIDSEY U.S. INC., a domestic third party administrator. The home office is SAN ANTONIO, TEXAS.

Application to change the name of RXWEST, INC. to WELLDYNERX, INC., a foreign third party administrator. The home office is DOVER, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200705135  
 Gene C. Jarmon  
 Chief Clerk and General Counsel  
 Texas Department of Insurance  
 Filed: October 24, 2007



**Texas Department of Insurance, Division of Workers' Compensation**

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation (Division), proposed new 28 TAC §134.403 and §134.404, concerning health facility fees. The proposal was published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7214). The documents contain the following errors as submitted by the Division.

**In the preamble:**

Page 7221, right column, 3rd paragraph, 1st sentence: The phrase "by the facility" at the end of the sentence should be removed.

The sentence should read as follows: "Proposed new §134.403(g) addresses the use of implantables, and states, when billed separately by

the facility or a surgical implant provider in accordance with subsection (f)(1)(B) of this section, implantables shall be reimbursed at the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) actually paid to the manufacturer, plus 10 percent or \$1,000, whichever is less."

Page 7223, left column, 2nd paragraph, 1st sentence: The phrase "by the facility" at the end of the sentence should be removed.

The sentence should read as follows: "Proposed new §134.404(g) addresses the use of implantables, and states, that when billed separately by the facility or a surgical implant provider in accordance with subsection (f)(1)(B) of this section, implantables shall be reimbursed at the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) actually paid to the manufacturer, plus 10 percent or \$1,000, whichever is less."

**In the rule text:**

Section 134.403(g) on page 7226, left column: The phrase "by the facility" should be removed at the end of the subsection.

The subsection should read as follows: "(g) Implantables, when billed separately by the facility or a surgical implant provider in accordance with subsection (f)(1)(B) of this section, shall be reimbursed at the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) actually paid to the manufacturer, plus 10 percent or \$1,000, whichever is less."

Section 134.404(g) on page 7227, right column: The phrase "by the facility" should be removed at the end of the subsection.

The subsection should read as follows: "(g) Implantables, when billed separately by the facility or a surgical implant provider in accordance with subsection (f)(1)(B) of this section, shall be reimbursed at the lesser of the manufacturer's invoice amount or the net amount (exclusive of rebates and discounts) actually paid to the manufacturer, plus 10 percent or \$1000, whichever is less."

TRD-200705138



**Notice of Public Hearing**

The Texas Department of Insurance, Division of Workers' Compensation (TDI) will hold a public hearing on Monday, November 12, 2007 in Room 100 at the Hobby Building, 333 Guadalupe Street in Austin.

The public hearing will begin at 1 p.m. and TDI will take testimony on the following rules:

CHAPTER 134 - Benefits - Guidelines for Medical Services, Charges and Payments

Subchapter E - Health Facility Fees

§134.403. Hospital Fee Guideline - Outpatient (New).

§134.404. Hospital Fee Facility Guideline - Inpatient (New).

These proposed rules were published in the *Texas Register* on October 12, 2007, and may be viewed on the TDI website at <http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html>. The comment period for these rules will close on November 12, 2007 at 5 p.m.

TDI offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Idalia Cantu at (512) 804-4403 at least of two days prior to the hearing date.

For further information regarding this notice, contact Blanca Guardiola at (512) 804-4716.

TRD-200704943

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: October 17, 2007



**Texas Lottery Commission**

**Instant Game Number 1022 "\$250,000 Bingo"**

**1.0 Name and Style of Game.**

A. The name of Instant Game No. 1022 is "\$250,000 BINGO". The play style for the game SLOTS is "key symbol match". The play style for the game INSTANT BONUS is "auto win" The play style for the game BINGO is "bingo".

**1.1 Price of Instant Ticket.**

A. Tickets for Instant Game No. 1022 shall be \$10.00 per ticket.

**1.2 Definitions in Instant Game No. 1022.**

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 BELL SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, STACK OF BILLS SYMBOL, BAG OF MONEY SYMBOL, COIN SYMBOL, HORSESHOE SYMBOL, CLOVER SYMBOL, GRAPES SYMBOL, ORANGE SYMBOL, CROWN SYMBOL, LEMON SYMBOL, POT OF GOLD SYMBOL, 7 SYMBOL, KEY SYMBOL, DICE SYMBOL, CHEST SYMBOL, \$10.00, \$20.00, \$50.00, \$75.00, \$100, \$250, \$500, TRY AGAIN SYMBOL, B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and FREE.

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. 1022 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
I30	
N31	
N32	
N33	
N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	

G47	
G48	
G49	
G50	
G51	
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74	
75	
FREE	
BELL SYMBOL	BELL
DIAMOND SYMBOL	DMND
GOLD BAR SYMBOL	BAR
STACK OF BILLS SYMBOL	DOLR
BAG OF MONEY SYMBOL	BAG
COIN SYMBOL	COIN
HORSESHOE SYMBOL	SHOE
CLOVER SYMBOL	CLVR
GRAPES SYMBOL	GRAPES
ORANGE SYMBOL	ORG
CROWN SYMBOL	CROWN
LEMON SYMBOL	LEMON
POT OF GOLD SYMBOL	PT GOLD
7 SYMBOL	SEVEN
KEY SYMBOL	KEY
DICE SYMBOL	DICE
CHEST SYMBOL	CHEST
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$75.00	SVY FIV
\$100	ONE HUND
\$250	TWO FTY
\$500	FIV HUND
TRY AGAIN SYMBOL	TRY AGAIN

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. 1022 - 1.2E

CODE	PRIZE
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 Ø, 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 format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$75.00, \$100, \$125, \$175, \$250 or \$500.

I. High-Tier Prize - A prize of \$750, \$1,000, \$2,500, \$10,000 or \$250,000.

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 (1022), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1022-0000001-001.

L. Pack - A pack of "\$250,000 BINGO" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed. All packs will be tightly shrinkwrapped. There will be no breaks between the tickets in a 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 "\$250,000 BINGO" Instant Game No. 1022 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 "\$250,000 BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 193 (one hundred ninety-three) play symbols. For the game SLOTS, if a player reveals 3 matching play symbols in any one PULL, the player wins PRIZE for that pull. For the game INSTANT BONUS, if a player reveals a prize amount play symbol, the player wins that amount instantly. For the game BINGO, the player must scratch off the CALLER'S CARD area to reveal 30 (thirty) Bingo Numbers. The player must scratch all the Bingo Numbers on CARDS 1 through 6 that match the Bingo Numbers on the CALLER'S CARD. Each "CARD" has a corresponding prize box. Players win by matching those same numbers on the six Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an X pattern, the player wins a prize according to the legend of the respective playing grid. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical or diagonal line pattern in any one card, the player

wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in any one card, the player wins prize according to the legend of the respective playing card. 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 193 (one hundred ninety-three) 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 193 (one hundred ninety-three) 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 193 (one hundred ninety-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 193 (one hundred ninety three) 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. Adjacent tickets within a pack will not have identical patterns. Two tickets have identical patterns when they have the same symbols in the same positions.

B. The CALLING AREA is defined as the CALLER'S CARD.

C. The numbers in the CALLING AREA will be unique.

D. The CALLING AREA will have a minimum of three (3) numbers from each letter range.

E. The CALLING AREA will have a maximum of eight (8) numbers from each letter range.

F. Each number in the CALLING AREA will appear on at least one of the BINGO CARDS.

G. There will be one (1) FREE symbol per card fixed in the center of each BINGO CARD.

H. The number range used for each letter (B,I,N,G,O) will be as follows: B(1-15), I(16-30), N(31-45), G(46-60), O(61-75).

I. All BINGO CARDS will be unique on a ticket. Two cards are identical if and only if they have the same number symbols in the same positions.

J. Non-winning BINGO CARDS will have a minimum of three (3) numbers called.

K. All numbers within each BINGO CARD will be unique.

L. There will be no more than four (4) identical numbers in all cards combined.

M. There can only be one winning pattern on each BINGO CARD.

N. A near win is a winner less one (1) number, except X where there are two (2) distinct numbers less (one from each diagonal line).

O. SLOTS: Non-winning prize symbols will be unique.

P. SLOTS: There will be no more than two (2) identical non-winning symbols combined in all PULLS.

Q. SLOTS: Non-winning PULLS will be unique. This means no two PULLS will have the same symbols in the same positions.

R. SLOTS: At least one (1) \$500 prize symbol will be displayed on all tickets unless otherwise restricted by the prize structure.

S. SLOTS: Non-winning prize symbols will not match winning prize symbols.

T. SLOTS: Play symbols in any non-winning PULL will not match symbols in any PULL which wins with three (3) identical symbols.

U. SLOTS: Winning PULLS will be distributed evenly among all PULLS.

V. SLOTS: On games that win two or more times, winning symbols will be unique.

W. SLOTS: There will be at least one (1) near win. A near win is a PULL where all but the last position contains identical symbols.

X. INSTANT BONUS: The INSTANT BONUS box will contain one (1) prize symbol or the TRY AGAIN symbol.

Y. INSTANT BONUS: The winning INSTANT BONUS box will contain one (1) prize symbol per the prize structure.

Z. INSTANT BONUS: The non-winning INSTANT BONUS box will contain the TRY AGAIN symbol.

AA. Near wins will occur among all PULLS randomly.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "\$250,000 BINGO" Instant Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$75.00, \$100, \$125, \$175, \$250, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00, \$75.00, \$100, \$125, \$175, \$250 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$250,000 BINGO" Instant Game prize of \$750, \$1,000, \$2,500, \$10,000 or \$250,000, 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 "\$250,000 BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$250,000 BINGO" 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 "\$250,000 BINGO" 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 6,000,000 tickets in the Instant Game No. 1022. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1022 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	1,320,000	4.55
\$20	360,000	16.67
\$30	25,000	240.00
\$50	130,000	46.15
\$75	15,000	400.00
\$100	25,000	240.00
\$125	10,000	600.00
\$175	10,000	600.00
\$250	8,125	738.46
\$500	6,170	972.45
\$750	275	21,818.18
\$1,000	34	176,470.60
\$2,500	10	600,000.00
\$10,000	8	750,000.00
\$250,000	9	666,666.70

\*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 3.14. The individual odds of winning for a particular prize level may vary based on sales, distribution, 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. 1022 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. 1022, 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-200704944  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: October 18, 2007



Instant Game Number 1023 "The Flintstones"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1023 is "THE FLINTSTONES". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1023 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1023.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, BONE SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000, and \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1023 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
<b>BONE SYMBOL</b>	<b>AUTO</b>
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$20,000	20THOU

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 val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1023 - 1.2E

<b>CODE</b>	<b>PRIZE</b>
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
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 Ø, 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, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$200.

I. High-Tier Prize - A prize of \$2,000 or \$20,000.

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 (1023), 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: 1023-0000001-001.

L. Pack - A pack of "THE FLINTSTONES" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded 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 "THE FLINTSTONES" Instant Game No. 1023 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 "THE FLINTSTONES" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a "bone" play symbol, the player wins that PRIZE instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. Non-winning prize symbols will not match a winning prize symbol on a ticket.
- C. No three or more identical non-winning prize symbols on a ticket.
- D. No duplicate WINNING NUMBERS play symbols on a ticket.
- E. There will be no correlation between the matching symbols and the prize amount.
- F. The "BONE" (auto win) play symbol will appear only once on winning tickets.
- G. The top prize will appear on all tickets unless otherwise restricted by the prize structure.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "THE FLINTSTONES" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "THE FLINTSTONES" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "THE FLINTSTONES" 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 "THE FLINTSTONES" 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 "THE FLINTSTONES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

## 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1023. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1023 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	1,093,440	7.35
\$4	562,800	14.29
\$5	96,480	83.33
\$10	112,560	71.43
\$20	48,240	166.67
\$50	42,210	190.48
\$200	4,757	1,690.14
\$2,000	40	201,000.00
\$20,000	15	536,000.00

\*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 4.10. 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. 1023 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. 1023, 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-200704945  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: October 18, 2007



Instant Game Number 1026 "Blazin' Hot Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1026 is "BLAZIN' HOT BUCKS". The play style for GAME 1 is "beat score". The play style for GAME 2 is "key number match". The play style for GAME 3 is "match 3 of 9".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1026 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1026.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$2,000 or \$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. 1026 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND



\$200	TWO HUND
\$2,000	TWO THOU
\$50,000	50 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 val-

idation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 1026 - 1.2E**

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
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 \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100 or \$200.

I. High-Tier Prize - A prize of \$2,000 or \$50,000.

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 (1026), 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: 1026-0000001-001.

L. Pack - A pack of "BLAZIN' HOT BUCKS" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 "BLAZIN' HOT BUCKS" Instant Game No. 1026 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 "BLAZIN' HOT BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 61 (sixty-one) Play Symbols. For GAME 1, if a player's YOUR NUMBER play symbol beats THEIR NUMBER play symbol in the same row, the player wins PRIZE shown for that row. For GAME 2, if a player matches any of YOUR NUMBERS play symbols to any of the HOT NUMBERS play symbols, the player wins PRIZE shown for that number. For GAME 3, if a player reveals three (3) matching dollar amounts play symbols, the player wins that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 61 (sixty-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

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 61 (sixty-one) 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 61 (sixty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 61 (sixty-one) 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. The top prize will appear on every ticket unless otherwise restricted.
- C. GAME 1: No duplicate non-winning rows.
- D. GAME 1: No two matching play symbols will appear in adjacent positions in a column.
- E. GAME 1: No more than two matching non-winning prize symbols.
- F. GAME 1: No non-winning prize symbol will match a winning prize symbol in this game.

G. GAME 1: No ties between YOUR NUMBER and THEIR NUMBER within a row.

H. GAME 2: No duplicate non-winning YOUR NUMBERS play symbols.

I. GAME 2: No duplicate HOT NUMBERS play symbols.

J. GAME 2: No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 20 and \$20).

K. GAME 2: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

L. GAME 2: No more than two matching non-winning prize symbols in this game.

M. GAME 3: No four or more matching prize symbols in a game.

N. GAME 3: No three or more pairs in a game.

O. GAME 3: This game can only win one time.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "BLAZIN' HOT BUCKS" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00, \$50.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BLAZIN' HOT BUCKS" Instant Game prize of \$2,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BLAZIN' HOT BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BLAZIN' HOT BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BLAZIN' HOT BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1026. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1026 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	880,000	6.82
\$10	480,000	12.50
\$15	80,000	75.00
\$20	100,000	60.00
\$25	80,000	75.00
\$50	80,000	75.00
\$100	4,000	1,500.00
\$200	2,500	2,400.00
\$2,000	300	20,000.00
\$50,000	10	600,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.52. 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. 1026 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. 1026, 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-200704946  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: October 18, 2007



Instant Game Number 1091 "Big Money Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1091 is "BIG MONEY BINGO". The play style is "bingo".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1091 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1091.

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: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 1X SYMBOL, 2X SYMBOL, 3X SYMBOL and 5X 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. 1091 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
I30	
N31	
N32	
N33	
N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	

G47	
G48	
G49	
G50	
G51	
G52	
G53	
G54	
G55	
G56	
G57	
G58	
G59	
G60	
O61	
O62	
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63	
64	
65	
66	
67	
68	
69	

70	
71	
72	
73	
74	
75	
FREE	
1X SYMBOL	PRIZE
2X SYMBOL	PRIZE
3X SYMBOL	PRIZE
5X SYMBOL	PRIZE

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 val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1091 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
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 Ø, 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 format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$25.00, \$30.00, \$40.00, \$50.00, \$75.00, \$100, \$200 or \$500.

I. High-Tier Prize - A prize of \$1,000, \$2,000, \$5,000, \$20,000 or \$50,000.

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 (1091), 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: 1091-0000001-001.

L. Pack - A pack of "BIG MONEY BINGO" 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 "BIG MONEY BINGO" Instant Game No. 1091 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 "BIG MONEY BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 181 (one hundred eighty-one) play symbols. The player must scratch off the "CALLER'S CARD" area to reveal 24 (twenty-four) Bingo Numbers and six (6) Bonus Numbers. The player must scratch all the Bingo Numbers on cards 1 through 6 that match the Bingo Numbers and Bonus Numbers on the "CALLER'S CARD". Each "CARD" has a corresponding prize box. Players win by matching those same numbers on the six Player's Cards. If the player finds a diagonal, vertical



or horizontal straight line, the four corners of the grid, or an X pattern, they win a prize according to the corresponding prize box. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical or diagonal line pattern in any one card, the player wins prize according to corresponding prize box. If the player matches all bingo numbers in all four (4) corners pattern in any one card, the player wins prize according to the corresponding prize box. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in any one card, the player wins prize according to the corresponding prize box. The player can only win one prize per "CARD". In the PRIZE MULTIPLIER PLAY AREA, the player must scratch the "PRIZE MULTIPLIER" BOX. If a player reveals a "2X", "3X" or "5X" play symbol, any prize won on cards 1 through 6 is multiplied by that amount. 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 181 (one hundred eighty-one) 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 181 (one hundred eighty-one) 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 181 (one hundred eighty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 181 (one hundred eighty-one) 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. Adjacent tickets within a pack will not have identical patterns. Two tickets have identical patterns when they have the same symbols in the same positions.

B. There will be a random distribution of all symbols on the ticket unless affected by other constraints, play action or prize structure.

C. The CALLING AREA is defined as the combined areas of the CALLER'S CARD and the BONUS NUMBERS.

D. The numbers in the CALLING AREA will be unique.

E. The CALLING AREA will have a minimum of three (3) numbers from each letter range.

F. The CALLING AREA will have a maximum of eight (8) numbers from each letter range.

G. Each number in the CALLING AREA will appear on at least one of the BINGO CARDS.

H. There will be one (1) FREE symbol per card fixed in the center of each BINGO CARD.

I. The number range used for each letter (B, I, N, G, O) will be as follows: B(1-15), I(16-30), N(31-45), G(46-60), O(61-75).

J. All BINGO CARDS will be unique on a ticket. Two cards are identical if and only if they have the same number symbols in the same positions.

K. Non-winning BINGO CARDS will have a minimum of three (3) numbers called.

L. All numbers within each BINGO CARD will be unique.

M. There will be no more than four (4) identical numbers in all cards combined.

N. The Prize Multiplier consists of one (1) Multiplier Symbol.

O. There can only be one winning pattern on each BINGO CARD.

P. Winning tickets will display one of the Multiplier Symbols per the prize structure.

Q. A near win is a winner less one (1) number, except X where there are two (2) distinct numbers less (one from each diagonal line).

R. The PRIZE MULTIPLIER symbols will be distributed evenly on non-winning tickets.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "BIG MONEY BINGO" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$40.00, \$50.00, \$75.00, \$100, \$200, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00, \$30.00, \$40.00, \$50.00, \$75.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BIG MONEY BINGO" Instant Game prize of \$1,000, \$2,000, \$5,000, \$20,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BIG MONEY BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BIG MONEY BINGO" 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 "BIG MONEY BINGO" 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 20,040,000 tickets in the Instant Game No. 1091. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1091 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	2,672,000	7.50
\$10	1,336,000	15.00
\$15	801,600	25.00
\$20	267,200	75.00
\$25	180,360	111.11
\$30	100,200	200.00
\$40	58,450	342.86
\$50	70,273	285.17
\$75	35,070	571.43
\$100	16,700	1,200.00
\$200	12,525	1,600.00
\$500	4,835	4,144.78
\$1,000	70	286,285.70
\$2,000	34	589,411.80
\$5,000	45	445,333.30
\$20,000	17	1,178,824.00
\$50,000	15	1,336,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.61. The individual odds of winning for a particular prize level may vary based on sales, distribution, 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. 1091 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. 1091, 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-200704947  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: October 18, 2007



Instant Game Number 1096 "Instant Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1096 is "INSTANT BINGO". The play style is "bingo with bonus spot".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1096 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1096.

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: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66,

67, 68, 69, 70, 71, 72, 73, 74, 75, FREE, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 and TRY AGAIN.

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. 1096 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
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N40	
N41	
N42	
N43	
N44	
N45	
G46	

G47	
G48	
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66	
67	
68	
69	

70	
71	
72	
73	
74	
75	
FREE	
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
TRY AGAIN SYMBOL	TRY AGAIN

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 val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1096 - 1.2E

CODE	PRIZE
TWO	\$2.00
THR	\$3.00
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
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 Ø, 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 format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100 or \$500.

I. High-Tier Prize - A prize of \$1,000 or \$30,000.

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 (1096), 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: 1096-0000001-001.

L. Pack - A pack of "INSTANT BINGO" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

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 "INSTANT BINGO" Instant Game No. 1096 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 Proce-



dures, and the requirements set out on the back of each instant ticket. A prize winner in the "INSTANT BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 131 (one hundred thirty-one) play symbols. The player must scratch off the CALLER'S CARD area to reveal 24 (twenty-four) Bingo Numbers and six (6) Bonus Numbers. The player must scratch all the Bingo Numbers on cards 1 through 4 that match the Bingo Numbers and the Bonus Numbers on the CALLER'S CARD. Each CARD has a corresponding prize box. Players win by matching those same numbers on the four Bingo Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an X pattern, they win a prize according to the prize box of the respective playing card. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical or diagonal line pattern in any one card, the player wins prize according to the prize box of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card, the player wins prize according to the prize box of the respective playing card. If the player matches all bingo numbers plus the Free Space to make a complete "X" pattern in any one card, the player wins prize according to the prize box of the respective playing card. In the Instant Bonus play area, if a player reveals a prize amount, the player wins prize indicated automatically. The player can win only one time per "CARD". 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 131 (one hundred thirty-one) 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 131 (one hundred thirty-one) 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 131 (one hundred thirty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 131 (one hundred thirty-one) 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. Adjacent tickets within a pack will not have identical patterns. Two tickets have identical patterns when they have the same symbols in the same positions.

B. The CALLING AREA is defined as the combined areas of CALLER'S CARD and BONUS NUMBERS.

C. The numbers in the CALLING AREA will be unique.

D. The CALLING AREA will have a minimum of three (3) numbers from each letter range.

E. The CALLING AREA will have a maximum of eight (8) numbers from each letter range.

F. Each number in the CALLING AREA will appear on at least one of the BINGO CARDS.

G. There will be one (1) FREE symbol per card fixed in the center of each BINGO CARD.

H. The number range used for each letter (B,I,N,G,O) will be as follows: B(1-15), I(16-30), N(31-45), G(46-60), O(61-75).

I. All BINGO CARDS will be unique on a ticket. Two cards are identical if and only if they have the same number symbols in the same positions.

J. Non-winning BINGO CARDS will have a minimum of three (3) numbers called.

K. All numbers within each BINGO CARD will be unique.

L. There can only be one winning pattern on each BINGO CARD.

M. A near win is a winner less one (1) number, except X where there are two (2) distinct numbers less (one from each diagonal line).

N. INSTANT BONUS: The INSTANT BONUS box will contain one (1) prize symbol or the TRY AGAIN symbol.

O. INSTANT BONUS: The winning INSTANT BONUS box will contain one (1) prize symbol per the prize structure.

P. INSTANT BONUS: The non-winning INSTANT BONUS box will contain the TRY AGAIN symbol.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "INSTANT BINGO" Instant Game prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00, \$100, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "INSTANT BINGO" Instant Game prize of \$1,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "INSTANT BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "INSTANT BINGO" 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 "INSTANT BINGO" 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. 1096. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1096 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	3,480,000	8.62
\$3	1,320,000	22.73
\$5	1,440,000	20.83
\$10	360,000	83.33
\$15	120,000	250.00
\$20	240,000	125.00
\$30	61,250	489.80
\$50	82,500	363.64
\$100	30,625	979.59
\$500	2,250	13,333.33
\$1,000	65	461,538.46
\$30,000	15	2,000,000.00

\*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 4.20. The individual odds of winning for a particular prize level may vary based on sales, distribution, 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. 1096 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. 1096, 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-200704987  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: October 18, 2007



Instant Game Number 1097 "Bonus Cashword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1097 is "BONUS CASHWORD". The play style is "crossword".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1097 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1097.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and blackened square.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1097 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	

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. 1097 - 1.2E

CODE	PRIZE
THR	\$3.00
FIV	\$5.00
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 Ø, 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 \$3.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$100 or \$500.

I. High-Tier Prize - A prize of \$5,000 or \$35,000.

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 (1097), 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: 1097-000001-001.

L. Pack - A pack of "BONUS CASHWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

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 "BONUS CASHWORD" Instant Game No. 1097 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS CASHWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 141 (one hundred forty-one) possible play symbols. The player must scratch off all 18 (eighteen) boxed squares in the YOUR LETTERS play area to reveal 18 play symbol letters and the boxed squares in the BONUS play area to reveal 2 play symbol letters; then scratch the corresponding letters found in the BONUS CASHWORD puzzle grid play area. If a player scratches at least three (3) complete "words" in the BONUS CASHWORD puzzle grid play area, the player will win the prize according to the legend of the corresponding prize box. For each of the 20 play symbol letters revealed in YOUR LETTERS and BONUS play areas, the player must reveal the identical key play symbol letter in the BONUS CASHWORD puzzle grid play area. Letters com-

binated to form a complete "word" must appear in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS CASHWORD puzzle grid. Only letters within the BONUS CASHWORD puzzle grid that are matched with the YOUR LETTERS and BONUS LETTERS can be used to form a complete "word". The three (3) small letters outside the squares in the YOUR LETTERS area are for validation purposes and cannot be used to play BONUS CASHWORD. In the BONUS CASHWORD puzzle grid, every lettered square within an unbroken horizontal or vertical sequence must be matched with the YOUR LETTERS or BONUS LETTERS to be considered a complete "word". Words within a word are not eligible for a prize. For example, all the YOUR LETTERS play symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". A complete "word" must contain at least three letters. Letters combined to form a complete "word" must appear in an unbroken vertical (top to bottom) or horizontal (left to right) string of letters in the BONUS CASHWORD. To form a complete word, an unbroken string of letters cannot be interrupted by a block space. Any other words contained within a complete word are not added or counted for purposes of prize legend. Every single letter in the vertical (top to bottom) or horizontal (left to right) unbroken string must: (a) be one of the 18 larger outlined play symbols letters revealed in the play area, YOUR LETTERS or be one of the 2 larger outlined play symbols letters revealed in the play area, BONUS LETTERS, and (b) be included to form a complete "word". The possible complete words for this ticket are contained in the BONUS CASHWORD play area. Each possible complete word must consist of three (3) or more letters and occupy an entire word space. Players must match all of the play symbol letters to the identical key play symbols in a possible complete word in order to complete the word. If the letters revealed form three (3) or more complete words each of which occupy a complete word space on the BONUS CASHWORD play area, the player will win the prize according to the legend of the corresponding prize box shown in the prize legend for forming that number of complete words. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. One hundred forty-one (141) possible Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
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 141 (one hundred forty-one) possible Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 141 (one hundred forty-one) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 141 (one hundred forty-one) possible Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Adjacent tickets within a pack will not have identical patterns. Two tickets have identical patterns when they have the same symbols in the same positions.
- B. There will be a random distribution of all symbols on the ticket unless affected by other constraints, play action or prize structure.
- C. There will be twenty (20) grids.
- D. There must not be any relationship between the exposed words on a ticket and its status as either a winner or non-winner.
- E. Each grid will contain exactly same amount of letters.
- F. Each grid will contain exactly same amount of words.
- G. All words used will be unique on the ticket.

H. All words used on the ticket will be from the TEXAS APPROVED LIST CASHWORD/CROSSWORD v1.0.

I. All words will contain a minimum of three (3) letters.

J. All words will contain a maximum of nine (9) letters.

K. The CALLER AREA is defined as the combined area of YOUR LETTERS area and the BONUS area.

L. All letters in the CALLER AREA will be unique.

M. There will be a minimum of three (3) vowels in the CALLER AREA. Vowels are considered to be A, E, I, O, U.

N. At least Fifteen (15) of letters in the CALLER AREA will match at least one letter in the crossword grid.

O. At least one of the letters in the BONUS area will match at least one letter in the crossword grid.

P. The presence or absence of any letter or combination of letter in the CALLER AREA will not be indicative of winning or non-winning.

Q. The arrangement of letters in the CALLER AREA will be random.

R. No one letter will appear more than nine (9) times in a standard (11x11) grid.

S. Words in Texas Rejected Words List v1.0 will not appear horizontally, vertically or diagonally in the YOUR LETTERS area.

T. On each winning ticket, at least one letter in the BONUS area will match at least one letter in a completed word.

U. Each grid will have two (2) complete words.

V. Each ticket will have at least five (5) near wins. A near win is defined as a word in a crossword grid with all but one letter revealed.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS CASHWORD" Instant Game prize of \$3.00, \$5.00, \$10.00, \$20.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BONUS CASHWORD" Instant Game prize of \$5,000 or \$35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS CASHWORD" Instant Game prize, the claimant must sign the winning ticket, thoroughly

complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BONUS CASHWORD" 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 "BONUS CASHWORD" 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 therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 tickets in the Instant Game No. 1097. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1097 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	4,800,000	6.25
\$5	3,600,000	8.33
\$10	600,000	50.00
\$20	360,000	83.33
\$100	63,000	476.19
\$500	11,000	2,727.27
\$5,000	78	384,615.40
\$35,000	46	652,173.90

\*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 3.18. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1097 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. 1097, 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-200704986  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: October 18, 2007



**Texas State Board of Pharmacy**

Appointment of Individuals to the Texas State Board of Pharmacy/Texas Medical Board Joint Committee on Narrow Therapeutic Index Drugs

The Texas State Board of Pharmacy announces the appointment of the following individuals to the Texas State Board of Pharmacy/Texas Medical Board Joint Committee on Narrow Therapeutic Index Drugs:

Jose Benavides, M.D.; W. Michael Brimberry, R.Ph.; W. Benjamin Fry, R.Ph.; Melinda McMichael, M.D.; Larry Price, D.O.; and Jeanne D. Waggener, R.Ph.

A meeting of the committee is scheduled for 9:00 a.m. on November 19, 2007, in Room 2-225 of the William P. Hobby State Office Building at 333 Guadalupe, Austin, Texas 78701. An agenda for the meeting will be posted in the next few weeks.

TRD-200704942

Gay Dodson, R.Ph.  
 Executive Director/Secretary  
 Texas State Board of Pharmacy  
 Filed: October 17, 2007



**Texas Department of Public Safety**

Hazard Mitigation Grant Program (HMGP) FEMA-1730-DR

As a result of Tropical Storm Erin, a major disaster (FEMA-1730-DR) was declared by the President on October 2, 2007. Due to this declaration, Texas is authorized federal funds through the Hazard Mitigation Grant Program (HMGP). This program is a 75/25 federal to local cost-share program by the Federal Emergency Management Agency (FEMA), and administered by the State of Texas. The HMGP is a mitigation grant with a single mission to provide a means to:

- \* prevent or reduce future losses to lives and property through the identification and funding of cost-effective mitigation measures.
- \* minimize the costs of future disaster response and recovery.

The HMGP can fund mitigation measures that protect both public and private property, so long as the measures fit within the overall mitigation strategy for the disaster area, are cost effective, and comply with all federal and state program guidelines.

All eligible applicants, which include local governments, state agencies, certain non-profit organizations and institutions, and Indian tribes or authorized tribal organizations are invited and encouraged to take advantage of this opportunity and apply for HMGP funds. These funds will be allocated to applicants based on a competitive application process.

If your organization is interested in participating in the HMGP process, you are invited to submit a Notice of Interest to be post-marked by midnight on December 7, 2007 to the Texas Hazard Mitigation Officer, Texas Department of Public Safety, Division of Emergency Management, P.O. Box 4087, Austin, Texas 78773-0226, or by e-mail to hildy.soper@txdps.state.tx.us or by fax to (512)



424-5647. The HMGP application deadline for this disaster will be midnight on March 14, 2008. Detailed information including an HMGP Fact Sheet and the forms to use for development and submission of both a notice of interest (NOI), and HMGP application are available on the Department of Public Safety/Governor's Division of Emergency Management website located at the following address: <http://www.txdps.state.tx.us/dem/pages/downloadable-forms.htm#hmgpgrants>.

If you have questions or need assistance, please contact state Mitigation Grants Officer Hildy Soper at (512) 424-2454 or by e-mail to: [hildy.soper@txdps.state.tx.us](mailto:hildy.soper@txdps.state.tx.us).

TRD-200705132

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Filed: October 24, 2007



## Public Utility Commission of Texas

### Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 16, 2007, for 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 VTX Communications, L.P. for a State-Issued Certificate of Franchise Authority, Project Number 34916 before the Public Utility Commission of Texas.

Applicant intends to provide cable and video service. The requested CFA service area includes the municipal boundaries of Annarose, Artesia Wells, Concepcion, El Sauz, Encino, Fowlerton, Hargill, LaSara, McCook, Millet, Mirando City, Port Mansfield, San Isidro, San Miguel, San Perlita, Stillman, Tilden, Dilley, Charlotte, Santa Rosa, Three Rivers, George West, Agua Dulce, Orange Grove, Premont, Somerset, Lyford, Sebastian, Falfurrias, Raymondville, Jourdanton, Rio Grande City and Roma, and portions of unincorporated areas of the following counties: Duvall, Jim Wells, Live Oak, McMullen, Dimmit, LaSalle, Webb, Brooks, Jim Hogg, Starr, Hidalgo, Atascosa, Frio, Willacy, Zavala, Zapata, Cameron, Nueces, and Bexar.

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 34916.

TRD-200705028

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: October 19, 2007



### Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on October 16, 2007, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary in Guadalupe County, Texas.

Docket Style and Number: Application of AT&T Texas to Amend a Certificate of Convenience and Necessity for a Minor Boundary Amendment between the Marion, New Braunfels, and Seguin Exchanges. Docket Number 34917.

The Application: The minor boundary amendment is being filed to realign the boundary between AT&T Texas' Marion, New Braunfels and Seguin exchanges.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by November 9, 2007, 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 use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34917.

TRD-200704994

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: October 18, 2007



### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 19, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Central Telephone Company of Texas, Inc. d/b/a Embarq for a Service Provider Certificate of Operating Authority, Docket Number 34922 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 7, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34922.

TRD-200705104

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: October 23, 2007



### Notice of Application to Amend Certificated Service Area Boundaries in Liberty County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 18, 2007, for an amendment to certificated service area boundaries within Liberty County, Texas.

Docket Style and Number: Application of Centerpoint Energy Houston Electric, LLC. to Amend a Certificate of Convenience and Necessity for an Electric Service Area Exception within Liberty County, Texas. Docket Number 34920.

The Application: CenterPoint Energy Houston Electric, LLC. (CenterPoint Energy) seeks to provide service to a specific customer located within the certificated service area of Entergy Gulf States, Inc. (EGSI) within Liberty County, Texas. CenterPoint Energy and EGSI are the only electric utilities that are affected by the proposed boundary changes and both parties agree to the boundary amendment.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 9, 2007 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 use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34920.

TRD-200705103

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: October 23, 2007



### Public Notice of Workshop on the Rulemaking Relating to Nuclear Decommissioning Costs and Requirements for Certain Units Constructed by a Power Generation Company

The staff of the Public Utility Commission of Texas (commission) will hold a workshop for the creation of the rule relating to nuclear decommissioning costs and requirements for certain units constructed by a power generation company on Tuesday, November 13, 2007, at 10:00 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 34888, *Rulemaking Relating to Nuclear Decommissioning Costs and Requirements for Certain Units Constructed by a Power Generation Company*, has been established for this proceeding. The workshop will provide an opportunity for interested persons to advise the commission staff of their views and insights on how the rule should be developed.

Ten days prior to the workshop the commission will make available in Central Records under Project Number 34888 an agenda for the format of the workshop and a copy of a draft rule. The commission requests that persons planning on attending the workshop register by phone with Rich Lain, Rate Regulation, (512) 936-7454.

Questions concerning the workshop or this notice should be referred to Rich Lain, Rate Regulation, (512) 936-7454. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200705129

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: October 24, 2007



## Texas Residential Construction Commission

### Notice for Comment on Penalty Guidelines

Pursuant to Commission Rule 10 TAC §305.22, the commission is publishing the following guidelines for administrative penalties for public

comment. The commission will review the guidelines in an open meeting no earlier than 30 days prior to the date these guidelines are published in the *Texas Register*.

Those interested in commenting on these guidelines should submit their comments in writing to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13509, Austin, TX 78711-3509. Comments may be submitted by mail, in which 16 copies should be provided. Or, comments may be submitted electronically to **comments@trcc.state.tx.us**. Comments submitted electronically should have "Penalty Guidelines" in the subject line. Comments submitted electronically without the requested subject line or to a different address may not be considered.

### Guidelines for Administrative Penalties Related to First Violations of Filing, Payment, and Response Requirements

A. These guidelines will be used by staff to determine the amount of administrative penalty to recommend to the commission for a person's first violation of a filing, payment, or response requirement under the Texas Residential Construction Commission Act, title 16, Texas Property Code (the Act) or the rules of the Texas Residential Construction Commission, title 10, Texas Administrative Code (the commission rules). These guidelines serve only as a guide and the Executive Director may authorize staff to increase or decrease a penalty recommendation as circumstances may require in an individual case in order to further the objectives and policies of the Act and commission rules.

B. The filing requirements covered by these guidelines are the following:

- (1) application to renew builder registration under chapter 416 of the Act and chapter 303, subchapter A, of the commission's rules;
- (2) home registration under §426.003 of the Act and chapter 303, subchapter B, of the commission's rules;
- (3) post-SIRP correspondence under §313.27 of the commission's rules;
- (4) change of designated address under §303.13 of the commission's rules;
- (5) change of registered name under §303.15 of the commission's rules;
- (6) change in the form of business organization of the builder under §303.15 of the commission's rules;
- (7) material change in information under §303.17 of the commission's rules; and
- (8) inspection reports under §§313.13, 313.16, and 313.17 of the commission's rules

C. The payment requirements covered by these guidelines are the following:

- (1) builder registration fee or registration renewal fee under §416.004 of the Act;
- (2) late builder registration fee or late builder renewal fee under §303.1 of the commission's rules;
- (3) home registration fee under §426.003 of the Act and §303.150 of the commission's rules;
- (4) late home registration penalty under §426.003 of the Act and §303.150 of the commission's rules;
- (5) SIRP inspection fee or reimbursement of SIRP inspection fee under §§426.004, 428.001, and 428.004 of the Act and §§313.8 and 313.18 of the commission's rules;

(6) reporting fee for change of designated address under §416.010 of the Act and §303.13 of the commission's rules;

(7) reporting fee for change of registered name under §303.15 of the commission's rules;

(8) reporting fee for change in the form of business organization of the builder under §303.15 of the commission's rules;

(9) reporting fee for material change in information under §303.17 of the commission's rules;

(10) failure to honor a check or other instrument of payment issued to the commission, as described in §418.001(6) of the Act; and

(11) processing fee for a returned check or payment as described in §418.001(6) of the Act.

D. The response requirements covered by these guidelines are the following:

(1) response to a commission request for information regarding an incomplete application under §303.1 of the commission's rules; and

(2) response to a commission request for information regarding a complaint under §306.1 of the commission's rules.

E. No previous violation. These guidelines apply to a violation listed in these guidelines only if the person has committed no previous violation or previously has not entered into an agreed order to resolve an issue for purposes of avoiding an administrative hearing on an alleged violation of the Act or commission rules.

F. Corrective action. These guidelines apply only if the person voluntarily takes corrective action to resolve the violation by contacting the commission in response to receipt of the commission's notice(s) of violation issued to the registrant for an alleged violation and initiating a corrective action.

G. Amount of penalty.

(1) No penalty shall be assessed for a violation subject to these guidelines if no corrective action is required by the commission or if the person takes the corrective action that is specified in the notice of violation within 30 days after the date of delivery the notice of violation to the person at the person's official address of record or, if no official address of record exists, to the last address known by the commission for the person;

(2) If the matter is not resolved under subsection (1) of this section, the amount of the penalty for a violation that is subject to these guidelines shall be:

(a) \$1,000 for each violation if the corrective action as specified in the notice of violation is taken between 31 and 60 calendar days after the notice of violation is delivered to the person at the person's official address of record on file with the commission or, if no official address of record exists, to the last address known to the commission for the person;

(b) \$5,000 for each violation if the corrective action as specified in the notice of violation is taken between 76 and 150 days after the notice of violation is delivered to the person at the person's official address of record on file with the commission or, if no official address of record exists, to the last address known to the commission for the person; or

(c) a different amount agreed upon by the commission and the person.

H. Registration to remain in good standing. If these guidelines apply and the registrant takes the corrective action as specified in the commission's notice(s) of violation issued to the registrant, then the builder registration and the designated agent registration of the registrant shall

remain in good standing and not be subject to revocation, suspension, or reprimand by the commission as a result of the violation.

I. Multiple violations. These guidelines shall not apply if the person has committed two or more violations, whether of the same, similar, or different types.

TRD-200705133

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Filed: October 24, 2007



## Notice of Public Hearing

The commission seeks input on proposed rules about the requirements for inspections during residential construction in geographical areas of the state in which municipal inspections are not available. The commission must adopt the rules by June 1, 2008, pursuant to Property Code, Subtitle F, "Inspection of New Residential Construction," which was added to the commission's enabling Act by House Bill 1038, enacted in the 80th Regular Session of the Texas Legislature. Comments received will assist the commission in developing comprehensive rules that provide appropriate guidance to the industry and that aid compliance.

The commission is seeking comment on issues related to the implementation of the legislative mandate in House Bill 1038 that new homes and new residential construction to existing homes that is subject to registration with the commission, that commences on or after September 1, 2008, must be inspected by a fee inspector during appropriate phases of construction. The inspector must then report the inspection outcome to the commission and once satisfactory inspection is achieved for all required phases, the commission will issue a certificate of completion. The new law also requires that a builder obtain windstorm certification when building in areas where certification is required.

Issues relevant to the public discussion of the new inspection procedures may include, but are not limited to: appropriate phases of construction for inspection when the construction project is a material improvement or qualified interior improvement to an existing home; breadth of inspection reports; inspector qualification, recruitment and training; forms and electronic filing options; educational outreach; ensuring compliance; quality control procedures; reporting of windstorm certification where appropriate and coordination with the Texas Department of Insurance; and, water intrusion and drainage certification.

A public hearing will be held at the commission offices in the Commission Hearing Room at the Texas Residential Construction Commission, 311 East 14th Street, Suite 200, Austin, Texas 78701 on November 14, 2007, beginning at 10 a.m. and will conclude at noon.

Persons wishing to attend the public hearing who require auxiliary aids, services or materials in an alternate format, please contact the Texas Residential Construction Commission at least five (5) working days prior to the meeting date. Phone: (512) 463-1040, FAX: (512) 463-9507, E-MAIL: [dora.rivera@trcc.state.tx.us](mailto:dora.rivera@trcc.state.tx.us). TDD Relay Texas: 1-800-relay-VV (for voice), 1-800-TX (for TDD).

Persons wishing to submit written materials for consideration may file their comments with Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13509, Austin, Texas 78711-3509 by November 8, 2008. Please submit 10 copies of written materials for distribution to commissioners and staff in attendance. Comments also may be filed electronically at [comments@trcc.state.tx.us](mailto:comments@trcc.state.tx.us). All comments should reference "Construction Inspections." Although comments received after November

8, 2007 may be considered when drafting a proposed rule, they may not be available during the public hearing on November 14, 2007. Questions concerning this notice should be referred to Ms. Durso at (512) 475-0595 or [susan.durso@trcc.state.tx.us](mailto:susan.durso@trcc.state.tx.us).

TRD-200705134

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Filed: October 24, 2007



## Texas Department of Transportation

### Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Hondo, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Hondo Municipal Airport during the course of the next five years through multiple grants.

**Current Project:** City of Hondo, Hondo Municipal Airport. TxDOT CSJ No. 0815HONDO. Scope: Provide engineering/design services to replace the center 100' of Runway 17L-35R, extend Runway 17L/35R 400' and construct parallel taxiway to the north, construct partial cross taxiway, and reconstruct existing cross taxiways, at Runway 17L/35R, install MIRLS and PAPI-4 units, mark Runway 17L/35R, and relocate threshold lights on Runway 35.

The HUB goal for the current project is 7%. The TxDOT Project Manager is Stephanie Kleiber.

Future scope work items for engineering/design services within the next five years may include, but are not necessarily limited to, the following:

1. Reconstruct taxiway for Runway 17L-35R
2. Rehabilitate and mark Runway 13-31
3. Install perimeter fencing

The City of Hondo reserves the right to determine which of the above scopes of services may or may not be awarded to the successful firms and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent airport layout plan are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by selecting Hondo Municipal Airport. The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled Aviation Engineering Services Proposal. The form may be requested from TxDOT Aviation Division at 125 East 11th Street, Austin, Texas 78701-2483 or by calling 1-800-68-PILOT (74568). The form may be emailed, by request, or downloaded from the TxDOT web site at [www.dot.state.tx.us/services/aviation/consultant.htm](http://www.dot.state.tx.us/services/aviation/consultant.htm). The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals

may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

#### Please note:

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **November 28, 2007, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government and Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Stephanie Kleiber, Project Manager.

TRD-200705102

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: October 23, 2007



### Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Wellington, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

The following is a listing of proposed projects at Marian Airpark during the course of the next five years through multiple grants.

**Current Project:** TxDOT CSJ No. 0725WLNGT. Scope: Provide engineering/design services to construct phase 1 of runway 17-35, construct connecting taxiway to runway 17 end, and mark runway 17-35.

The DBE goal is set at race neutral. TxDOT Project Manager is Russell Deason.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate apron

2. Construct turnarounds
3. Rehabilitate, widen and mark runways
4. Reconstruct and mark T-hangar TW
5. Extend runway
6. Construct/relocate hangar access TW
7. Install MIRL and PAPI
8. Install fencing
9. Install segmented circle
10. Grading and drainage improvements

The City of Wellington reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria and 5010 drawing are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by selecting "Marian Airpark." The proposal should address a technical approach for the current scope. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at [www.dot.state.tx.us/services/aviation/consultant.htm](http://www.dot.state.tx.us/services/aviation/consultant.htm). The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

**Please note:**

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than November 30, 2007 at 4:00 P.M. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation Division for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Amy Slaughter, Grant Manager. For technical questions, please contact Russell Deason, Project Manager.

TRD-200705122  
 Joanne Wright  
 Deputy General Counsel  
 Texas Department of Transportation  
 Filed: October 24, 2007



**Aviation Division - Request for Proposal for Aviation Engineering Services**

The City of Arlington, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Arlington Municipal Airport during the course of the next five years through multiple grants.

**Current Project:** City of Arlington. TxDOT CSJ No.: 0802ARLNG. Engineering/design for terminal apron expansion. The scope will include coordination during the design and construction with the firm selected for the Design-Build project to construct a new terminal building adjacent to the terminal apron.

The DBE goal for the current project is 8%. TxDOT Project Manager is Alan Schmidt.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Repair concrete joints on RW 16-34, all aprons, parallel and stub taxiways
2. Rehabilitate RW 16-34
3. Reconstruct/overlay south aircraft parking apron
4. Construct west parallel taxiway 75' x 5,000'
5. Construct additional terminal parking apron
6. Construct northeast GA hangar access taxiway
7. Construct T-hangar access roadway
8. Construct north internal support vehicle access drive
9. Construct northeast access road
10. Construct westside cargo apron
11. Construct westside utility infrastructure
12. Install MALSR and ILS critical area signs
13. Environmental Assessment for RW 16-34 extension

The City of Arlington reserves the right to determine which of the above scope of services may or may not be awarded to the successful firms and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent airport layout plan are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by se-

lecting "Arlington Municipal Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at [www.dot.state.tx.us/services/aviation/consultant.htm](http://www.dot.state.tx.us/services/aviation/consultant.htm). The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than November 30, 2007, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation Division for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Amy Slaughter, Grant Manager. For technical questions, please contact Alan Schmidt, Project Manager.

TRD-200705123

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: October 24, 2007



**Public Hearing Notice - Statewide Transportation Improvement Program**

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, November 27, 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 November 2007 Quarterly Revisions to 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 includes 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 require each designated MPO and the state, respectively, to develop a TIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.).

Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected transportation operators, to provide an opportunity for interested parties to participate in the development of the program, and further requires the TIP to be updated at least once every four years and approved by the MPO and the Governor or Governor's designee. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

In accordance with 43 TAC §15.8(d), a copy of the proposed November 2007 Quarterly Revisions to the 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 the department's website at:

[www.dot.state.tx.us](http://www.dot.state.tx.us)

Persons wishing to review the November 2007 Quarterly Revisions to the FY 2008 - 2011 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Monday, November 26, 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, Government and Public Affairs Division, 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 Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas, 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas, 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, December 3, 2007, at 4:00 p.m.

TRD-200705101  
Bob Jackson  
General Counsel  
Texas Department of Transportation  
Filed: October 23, 2007



#### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

[www.txdot.gov/about\\_us/public\\_hearings\\_and\\_meetings/aviation.htm](http://www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm)

Or visit [www.txdot.gov](http://www.txdot.gov), click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PI-LOT.

TRD-200705121  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: October 24, 2007



### The University of Texas System

#### Invitation for Consultants to Provide Offers of Consulting Services

In accordance with the provisions of Chapter 2254, *Texas Government Code*, The University of Texas System Administration (the "University") is currently soliciting proposals in response to an Invitation for Offers for the selection of a consultant to provide aviation consulting services.

The University is looking for a Proposer to provide the assistance the University requires to:

- Evaluate current use of noncommercial aircraft by The University of Texas System
- Determine and outline charter service needs for The University of Texas System

- Establish guidelines for charter service operators
- Develop a Request for Proposal (RFP) for charter services
- Evaluate RFP submissions
- Establish standardized charter service agreement templates
- Evaluate individual charters as proposed
- Review internal flight operations and processes

The Chancellor has made a finding that the Consulting Services are necessary. While the University has a substantial need for the Consulting Services, the University does not currently have staff with expertise or experience with Consulting Services and the University cannot obtain such Consulting Services through a contract with another state governmental entity.

The award for services will be made by an internal review committee using the following criteria:

- Similar work for institutions of higher education
- The proposer's demonstrated competence, knowledge and qualifications
- The reasonableness of the proposer's fee
- If other considerations are equal, preference will be given to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state

The individual to be contacted with an offer to provide such consulting services is:

Nancy Sutherland

The University of Texas System Administration

702 Colorado Street, Suite 3.222

Austin, Texas 78701

Voice: (512) 322-3725

Email: [nsutherland@utsystem.edu](mailto:nsutherland@utsystem.edu)

The proposal submission deadline will be 2:00 p.m. Central Prevailing Time on November 27, 2007.

TRD-200705089  
Francie A. Frederick  
General Counsel to the Board  
The University of Texas System  
Filed: October 22, 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).