TEXAS REGISTER

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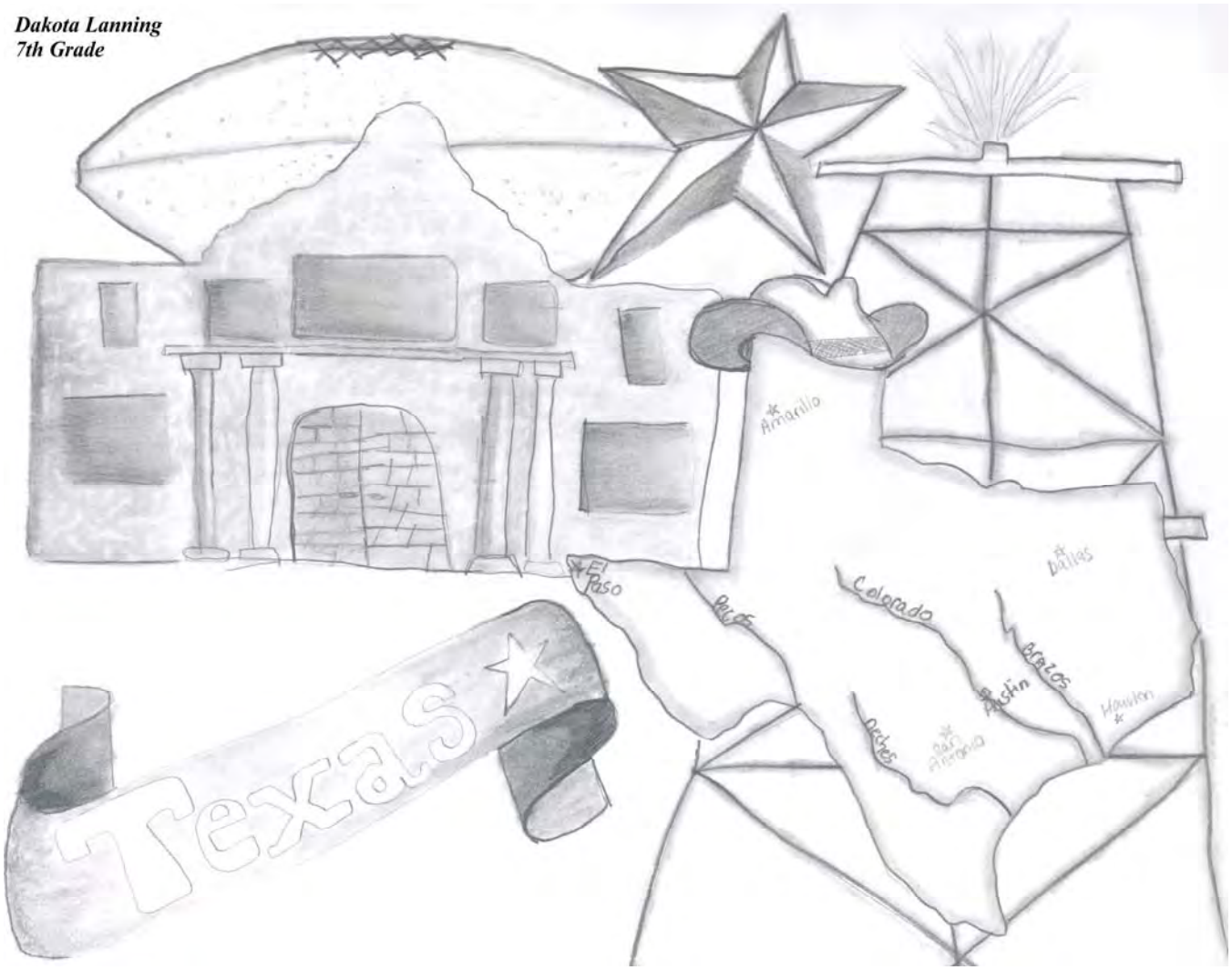

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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IN THIS ISSUE

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions

RQ-1004-GA

Requestor:

The Honorable Mark A. Marshall

McCulloch County Attorney

105 North Church

Brady, Texas 76825

Re: Approval of expenditures from the asset forfeiture fund of a district attorney (RQ-1004-GA)

Briefs requested by November 21, 2011

RQ-1005-GA

Requestor:

The Honorable Joe C. Pickett

Chair, Defense and Veterans' Affairs Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Proration of homestead property tax exemption, under section 11.131, Tax Code, for a fully disabled veteran who dies during 2011; and application of that exemption to the surviving spouse of a veteran who dies during 2011 (RQ-1005-GA)

Briefs requested by November 21, 2011

RQ-1006-GA

Requestor:

The Honorable Jim Jackson

Chair, Committee on Judiciary & Civil Jurisprudence

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether recently enacted subsection 52.072(e), Election Code, applies to all elections, including those governed by section 130.037, Education Code (RQ-1006-GA)

Briefs requested by November 24, 2011

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

TRD-201104613
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: October 26, 2011

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EMERGENCY RULES

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

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

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

22 TAC §§153.1, 153.5, 153.16, 153.17, 153.27

The Texas Appraiser Licensing and Certification Board is renewing the effectiveness of the emergency adoption of amendments to §§153.1, 153.5, 153.16, 153.17, and 153.27, for a 11-day period. The text of the amended sections were originally published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4209).

Filed with the Office of the Secretary of State on October 17, 2011.

TRD-201104407
Devon V. Bijansky
General Counsel
Texas Appraiser Licensing and Certification Board
Original Effective Date: June 23, 2011
Expiration Date: October 31, 2011
For further information, please call: (512) 936-3652

♦ ♦ ♦

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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 57. OUTSIDE COUNSEL CONTRACTS

1 TAC §§57.1 - 57.9

The Office of the Attorney General (OAG) proposes a new Chapter 57, §§57.1 - 57.9, to Texas Administrative Code, Title 1, Part 3, relating to OAG process regarding the approval of outside counsel contracts and review of invoices.

The proposal will establish new rules relating to administration of the OAG's review and approval of outside counsel contracts, as well as the OAG's review of invoices submitted by outside counsel. The new rules are proposed pursuant to Texas Government Code §402.0212, as amended by Senate Bill 367 during the 82nd Legislature, Regular Session, as well as Texas Government Code Chapter 2254, relating to contingency fee contracts for legal services.

Texas Government Code §402.0212(a) - (f) requires the OAG to approve a contract for legal services, to review invoices submitted by outside counsel and confirm counsel's eligibility for payment, to charge an administrative fee to outside counsel for reviewing their contracts with state agencies and to adopt rules necessary to administer the sections. The proposed new rules do not affect any other statutes and no other rules are proposed under this chapter at this time.

Katherine Cary, the OAG's General Counsel, has determined that for each of the first five years following the adoption of Chapter 57, §§57.1 - 57.9, the anticipated public benefit of the proposed new rules will be to increase the state's effective and efficient retention of outside counsel and to ensure legal fees are legally justified by reviewing outside counsel's invoices. An additional public benefit is the collection of the administration fee on behalf of the state, which will be used to support the operations of the state and fund the OAG's review of outside counsel contracts.

The OAG's General Counsel has determined that during each of the first five-years following the adoption of Chapter 57, the fiscal impact to the state is estimated to be a positive impact of approximately an average of $224,532 per fiscal year in accordance with projected administrative fees to be collected. Based on a sliding scale in relation to the contract cap amount, the General Counsel has concluded that the administrative fee reasonably relates to the cost of the resources expended to perform the review and approval of outside counsel contracts and the accompanying review of invoices for legal services. Accordingly, there is no need to consider less costly alternatives to the rules.

The General Counsel has further determined that there will not be any foreseeable fiscal impact to local governments that is likely to result from adoption of the new rules. Also, the General Counsel has determined that the enactment of Chapter 57 is not likely to have an adverse economic impact on micro-business or small business.

The OAG seeks comments related to the proposed new rules. Comments should relate to subject matter of the proposed new rules, should be organized in a manner consistent with the organization of the proposed new rules, and should identify the specific section of the proposed rules to which the comment relates.

Written comments on the proposal may be submitted, by mail or email, for 30 days following the publication of this notice to Katherine Cary, General Counsel, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, katherine.cary@oag.state.tx.us.

The new rules are proposed in accordance with Texas Government Code §402.0212, which requires the OAG to set procedures for approving outside counsel contracts, reviewing outside counsel invoices and charging an administrative fee to outside counsel.

The proposed new rules do not affect any other statutes.

§57.1. Definitions.

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

(1) Agency--A department, commission, board, authority, office, or other agency in the executive branch of state government, including university systems and institutions of higher education as defined by §61.003 of the Education Code, but excluding public junior colleges.

(2) Chief Administrator--Has the meaning defined by §660.002(4) of the Government Code.

(3) Contingency Fee--That part of a fee for legal services, the amount or payment of which, is contingent on the outcome of the matter for which the legal services were obtained.

(4) Invoice--An itemized list of legal services provided, and fees, charges, or expenses associated with those services, by Outside Counsel to an Agency pursuant to an Outside Counsel Contract.

(5) Invoice Summary--A document furnished by Outside Counsel to the Agency that supports a submitted Invoice by indicating the total number of hours worked by each legal professional during the relevant time period, the total number of hours billed by each timekeeper during the Invoice period, each expense, the total amount of the

Invoice, and the total amount of all Invoices to date under the Outside Counsel Contract.

(6) Outside Counsel--An attorney or law firm selected by an Agency to provide legal services. The term does not include a full-time employee of the Agency or the Office of the Attorney General.

(7) Outside Counsel Contract--A contract for legal services between an Agency and Outside Counsel selected by the Agency that must be approved by the Office of the Attorney General pursuant to this chapter.

(8) Request for Voucher Approval--A request made by an Agency to the Office of the Attorney General for the Office of the Attorney General to:

(A) review an Outside Counsel's Invoice; and

(B) to approve the payment of the Invoice, pursuant to this chapter.

(9) Request to Retain Outside Counsel--A request made by an Agency to the Office of the Attorney General for approval to retain an Outside Counsel pursuant to this chapter.

(10) State Fiscal Biennium--Period of time running concurrent with that set by the General Appropriations Act.

§57.2. Application.

(a) This chapter does not constitute independent authority for any Agency to contract for legal services with Outside Counsel.

(b) This chapter does not apply to an Agency excluded by §402.0212(a) of the Government Code or an Agency granted an exemption by, and at the sole discretion of, the Office of the Attorney General.

(c) The Attorney General, First Assistant Attorney General, or their designee, as designated in writing, may waive or modify any provision or requirement contained in this chapter at their sole discretion. To be effective, any such waiver or modification must be in writing.

(d) The Office of the Attorney General, at its sole discretion, may grant exemptions from or modify the retention of Outside Counsel process and the Request for Voucher Approval process in certain instances. Such exemptions or modifications may be based on the type and subject matter of the Outside Counsel Contract at issue.

§57.3. Retention of Outside Counsel.

(a) The Attorney General serves as the State of Texas' legal counsel and the Office of the Attorney General therefore represents state agencies and institutions of higher education. Accordingly, Agencies may not retain or select any Outside Counsel without first receiving authorization and approval from the Office of the Attorney General to do so. The Office of the Attorney General will determine if retaining Outside Counsel is in the best interest of the State.

(b) An Agency requiring legal services from Outside Counsel must first submit a completed Request to Retain Outside Counsel form to the Office of the Attorney General. The form and instructions for submitting the form are available on the Office of the Attorney General's official website or upon request from the General Counsel Division of the Office of the Attorney General.

(c) No later than ten (10) business days of receipt of the Request to Retain Outside Counsel form, the Office of the Attorney General will notify the requesting Agency that:

(1) the Agency's request has been approved and it may proceed with the process of selecting Outside Counsel;

(2) the Agency's request has been denied; or

(3) the Agency must provide the Office of the Attorney General with additional information before a decision to approve or deny the request will be made.

(d) A notification under subsection (c)(1) of this section may include limitations and requirements on the selection and retention of Outside Counsel, including, but not limited to, the requirement that the requesting Agency use the Request for Qualification Process outlined in §57.4 of this chapter.

(e) A notification under subsection (c)(1) of this section does not constitute approval of an Outside Counsel Contract.

(f) Except as expressly allowed by a Texas statute, final decision by the Texas Supreme Court or a final judgment by a federal court, an Agency requiring legal services from Outside Counsel on a contingency fee arrangement must first seek the written approval of the Executive Director of the Legislative Budget Board, or their authorized designee, before submitting a Request to Retain Outside Counsel form pursuant to subsection (b) of this section. The Office of the Attorney General shall not approve an Agency's Request to Retain Outside Counsel, involving a contingency fee arrangement, until the Agency provides the Office of the Attorney General with the written approval of the Executive Director of the Legislative Budget Board, or their authorized designee.

§57.4. Request for Qualification Process.

(a) An Agency seeking to obtain legal services from Outside Counsel must publish a Request for Qualifications for Outside Counsel in the Texas State Business Daily for thirty (30) days.

(b) The Request for Qualifications for Outside Counsel publication must contain:

(1) a description of the legal services that the Outside Counsel will provide;

(2) the name and contact information for an Agency employee who should be contacted by an attorney or law firm that intends to submit their qualifications;

(3) the closing date for the receipt of qualifications;

(4) the procedure by which the Agency will make a selection of Outside Counsel;

(5) notice that the selection of and contracting with, Outside Counsel is subject to the approval of the Office of the Attorney General; and

(6) any other information the Agency deems necessary.

(c) After the closing date for the receipt of qualifications, the Agency may select an Outside Counsel. The Agency may only select an Outside Counsel that complied with the Request for Qualifications for Outside Counsel. The Agency shall make the selection of Outside Counsel:

(1) on the basis of demonstrated competence and qualifications to perform the legal services; and

(2) for a fair and reasonable price, which includes, but is not limited to, the hourly rates and expenses for legal services.

§57.5. Outside Counsel Contract.

(a) Except as authorized by law, an Outside Counsel Contract or any amendment to an Outside Counsel Contract must be approved by the Office of the Attorney General to be valid and enforceable.

(b) When entering into an Outside Counsel Contract, an Agency and Outside Counsel must use the Outside Counsel Contract template promulgated by the Office of the Attorney General. The

contract template and instructions on submitting it are available on the Office of the Attorney General's official website or upon request from the General Counsel Division of the Office of the Attorney General.

(c) In the event of an inconsistency between this chapter and an executed Outside Counsel Contract, the contract shall prevail.

(d) Once an Agency selects an Outside Counsel, the Agency shall submit one copy of its proposed Outside Counsel Contract to the Office of the Attorney General for approval pursuant to this chapter. The Outside Counsel Contract must be signed by an authorized representative of the Outside Counsel and the chief administrator of the Agency, or authorized designee.

(e) Upon receipt of a proposed Outside Counsel Contract, the Office of the Attorney General will review the contract and either approve or reject it based upon the best interest of the State and compliance with state law.

(f) If the Office of the Attorney General approves a proposed Outside Counsel Contract, an authorized representative of the Office of the Attorney General will indicate that approval on the contract and return the signed copy to the Agency.

(g) If the Office of the Attorney General rejects a proposed Outside Counsel Contract, it will contact the submitting Agency to discuss the basis for the rejection and to explore whether revisions to the proposed contract could rectify the basis for the rejection. In the event the proposed contract is rejected and rectifying amendments are not acceptable or possible, the Office of the Attorney General will contact the submitting Agency to discuss alternatives to representation by the selected Outside Counsel.

§57.6. Invoices for Legal Services and Expenses.

(a) Outside Counsel shall prepare correct and complete Invoices and submit them, along with an Invoice Summary, for the billing period to the Agency for payment. Invoices and Invoice Summaries must be submitted to the Agency no later than thirty (30) days after the last day of the billing period in which legal services are rendered and for which payment is being sought.

(b) A correct and complete Invoice must include, at a minimum, the following information:

(1) Outside Counsel Contract identification number;

(2) Agency name;

(3) Outside Counsel name;

(4) Vendor Identification Number (assigned by the Texas Comptroller of Public Accounts), Social Security Number of an authorized representative of Outside Counsel or other appropriate payment identification number;

(5) Invoice number and date;

(6) Billing period of services rendered for which payment is being sought;

(7) Description and date of the task or service provided, the billable time for the task or service, the name and position (partner, associate, paralegal, etc.) of the timekeeper that performed the task or service, and the applicable hourly rate;

(8) For filing charges, a description of the document filed and the name and location of the entity the document was filed with;

(9) For expenses, a copy of each receipt or other proof of payment; and

(10) Other information requested by the Agency or the Office of the Attorney General.

(c) Unless requested to do so by the Agency or the Office of the Attorney General, Outside Counsel must not include information in its Invoices that is not related to compensable charges or reimbursable expenses.

(d) Outside Counsel must verify, in writing, upon the submittal of each Invoice, that the Invoice is correct and complete and that:

(1) the legal services being billed for were performed and were necessary or advisable;

(2) the legal services being billed for were within the term and scope of services of the Outside Counsel Contract;

(3) the legal billing rates are the same as those set in the Outside Counsel Contract;

(4) any expense that requires the Agency's pre-approval was in fact pre-approved; and

(5) the total amount of the Invoice, along with all prior payments made to Outside Counsel under the Outside Counsel Contract, do not exceed the maximum liability amount set in the Outside Counsel Contract.

§57.7. Agency Review of Invoices.

(a) Upon receipt of an Invoice, the Agency shall immediately mark the Invoice with the date the Agency received the Invoice. The Agency must review the submitted Invoice, and any other information deemed necessary, to verify that:

(1) the legal services contained in the Invoice were actually performed and were necessary or advisable;

(2) the legal services contained in the Invoice were performed within the term and scope of services of the Outside Counsel Contract;

(3) the legal billing rates are the same as those set in the Outside Counsel Contract;

(4) any expense that requires the Agency's pre-approval was in fact pre-approved; and

(5) the total amount of the Invoice, along with all prior payments made to Outside Counsel under the Outside Counsel Contract, do not exceed the maximum liability amount set in the Outside Counsel Contract.

(b) If the Agency determines that the submitted Invoice is correct and complete, and should be paid, the Agency's chief administrator or their designee must:

(1) approve the Invoice;

(2) verify that the requirements in subsection (a)(1) - (5) of this section have been met and attest to that verification with his or her signature;

(3) submit the Invoice and other required information to the Office of the Attorney General pursuant to §57.8(b) of this chapter; and

(4) if necessary, enter relevant information into the Uniform Statewide Accounting System.

(c) If the Agency determines that the Invoice is not correct and complete, and should not be paid, even in part, the Agency's designated representative must immediately notify Outside Counsel in writing that the Invoice is deficient and attempt to resolve the Invoice deficiency with Outside Counsel in a mutually agreeable manner.

(1) If the Invoice deficiency can be resolved in a reasonable time and in a mutually agreeable manner that results in a correct

and complete Invoice, Outside Counsel should submit that Invoice to Agency for review and approval pursuant to §57.6 of this chapter.

(2) If the Invoice deficiency cannot be resolved in a reasonable time, the Agency should reject and deny payment for the disputed portions of the Invoice and approve the undisputed portions of the Invoice pursuant to subsection (b) of this section so that the undisputed portions of the Invoice can be processed for payment pursuant to this chapter. If necessary, Outside Counsel may resubmit the disputed and rejected portions of the Invoice to Agency once the deficiency is resolved in a mutually agreeable manner with Agency. In the event that Outside Counsel and Agency mutually agree on a resolution, then Outside Counsel must follow the steps in §57.6 of this chapter.

(d) Outside Counsel is encouraged to submit to the Agency no more than one Invoice per month under an Outside Counsel Contract.

(e) Contingency Fee Outside Counsel may be required to submit Invoices for review as requested by the Office of the Attorney General.

§57.8. Agency Submission of Request for Voucher Approval to the Office of the Attorney General.

(a) An Invoice may not be paid without the prior approval of the Office of the Attorney General.

(b) If the Agency approves an Invoice, or a portion of an Invoice, pursuant to §57.7(b) of this chapter, the Agency must submit the following information to the Office of the Attorney General within ten (10) business days of receiving the Invoice from Outside Counsel:

(1) a Request for Voucher Approval;

(2) a copy of the Invoice and Invoice Summary at issue;

(3) evidence of the date the Agency received the Invoice;

(4) a copy of the verification required by §57.7(b)(2) of this chapter;

(5) other information requested by the Office of the Attorney General;

(6) any other information the Agency deems necessary for the Office of the Attorney General to conduct a review of the Invoice; and

(7) if necessary, a description of any disputed charge that the Agency has not approved for payment and the reason(s) why it was not approved.

(c) If the Office of the Attorney General determines that a properly submitted Invoice, or a portion thereof, is eligible for payment, it will provide the Agency with a voucher approval and, if necessary, enter relevant information in the Uniform Statewide Accounting System.

(d) If the Office of the Attorney General determines that any portion of an Invoice is not eligible for payment, it will immediately notify the Agency of that decision. The Agency may then, after consulting with Outside Counsel:

(1) abide by the Office of the Attorney General's determination to deny payment;

(2) inform the Office of the Attorney General that the Agency and the Outside Counsel agree that the payment should be denied and the Invoice will be withdrawn; or

(3) submit a new Invoice for review and approval after resolving the Invoice deficiency with Outside Counsel in a mutually agreeable manner.

(e) The Office of the Attorney General will not approve payment of an Invoice in an amount that is greater than the amount approved by the Agency under §57.7(b) of this chapter.

(f) The Office of the Attorney General, at its sole discretion, may permit Agencies to submit information other than the information specified in subsection (b)(1) - (7) of this section before the Office of the Attorney General approves or disapproves payment of an Invoice. The Office of the Attorney General will specify what information is acceptable for an Agency to submit under this subsection.

(g) Except as allowed by the Office of the Attorney General, Agencies may submit only one Request for Voucher Approval per billing period per contract.

§57.9. Administrative Fee.

(a) Outside Counsel must pay a non-refundable administrative fee to the Office of the Attorney General for the Invoice review described in §57.8 of this chapter. Outside Counsel may not charge, or seek reimbursement from, the Agency for payment of this administrative fee.

(b) The administrative fee described in subsection (a) of this section is incurred on the date that the first Invoice after the effective date of this chapter is submitted to the Agency. Any Invoice submitted to the Office of the Attorney General by the Agency before the administrative fee has been submitted by the Outside Counsel to the Office of the Attorney General shall be deemed incorrect and incomplete and not eligible for payment.

(c) The administrative fee is set as follows:

(1) For an Outside Counsel Contract with a maximum liability of less than $2,000.00, but more than $0.00, the administrative fee is $100.00.

(2) For an Outside Counsel Contract with a maximum liability equal to or greater than $2,000.00 but less than $10,000.00, the administrative fee is $200.00.

(3) For an Outside Counsel Contract with a maximum liability equal to or greater than $10,000.00 but less than $50,000.00, the administrative fee is $500.00.

(4) For an Outside Counsel Contract with a maximum liability equal to or greater than $50,000.00 but less than $150,000.00, the administrative fee is $1,000.00.

(5) For an Outside Counsel Contract with a maximum liability equal to or greater than $150,000.00 but less than $1,000,000.00, the administrative fee is $1,500.00.

(6) For an Outside Counsel Contract with a maximum liability of equal to or greater than $1,000,000.00, the administrative fee is $2,000.00.

(7) For Contingency Fee Outside Counsel Contracts, the Office of the Attorney General will establish a reasonable administrative fee when Invoices are submitted to the Office of the Attorney General for review.

(d) The administrative fee due under subsection (c) of this section covers the then current State Fiscal Biennium in an Outside Counsel Contract term. Outside Counsel must pay a non-refundable administrative fee to the Office of the Attorney General, as set by subsection (c) of this section, for every State Fiscal Biennium covered in an Outside Counsel Contract term. Subsequent biennial administrative fees are due upon submission of the first Invoice of a new State Fiscal Biennium.

(e) The administrative fee described in subsection (a) of this section is not due for a contract having a zero dollar liability or a contract that is only seeking reimbursement for expenses.

(f) For exceptional circumstances, the Office of the Attorney General, at its sole discretion, may modify the amount of the administrative fee due under subsection (c) of this section. If the Office of the Attorney General, at its sole discretion, permits an Agency to submit information other than the information specified in §57.8(b)(1) - (7) of this chapter, the Office of the Attorney General, in its sole discretion, may reduce or waive the administrative fee.

(g) When an Outside Counsel Contract is amended to increase the maximum liability of the contract to an amount that requires Outside Counsel to pay a higher administrative fee, under subsection (c) of this section, then Outside Counsel shall pay the difference between the original lesser fee, if already paid, and the new higher fee upon submission of the next submitted Invoice.

(h) The administrative fee described in subsection (a) of this section shall be sent to the Office of the Attorney General at P.O. Box, 12548, Austin, Texas 78711-2548.

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, 2011.

TRD-201104445
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: December 4, 2011
For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER A. CONTRACT FORMS

7 TAC §25.3, §25.9

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §25.3, concerning contract forms for sale of prepaid funeral benefits; and to propose new §25.9, concerning package sales of prepaid funeral contracts. The amendment to §25.3 is proposed to update the model form for prepaid funeral benefits contracts. New §25.9 is proposed to clarify procedures for selling funeral goods and services that are bundled together as packages.

The proposed amendment to §25.3 involves a change to figure 7 TAC §25.3(k)(1), the model complaint disclosure notice for prepaid funeral contracts. The amendment updates the website addresses for the Texas Funeral Service Commission and the Texas Department of Insurance and corrects the instructions regarding the placement of the notice to make them consistent with the requirements provided in the rule itself. The proposed amendment to the model notice would remove the inconsistent language.

New §25.9 arises from difficulties in ensuring compliance with Finance Code Chapter 154. Some sellers and funeral providers offer bundles or packages of various funeral goods and services at a single price. However, because items included in such packages do not have individual values listed on the prepaid funeral contract, providers have no guidance as to how to comply with Finance Code §154.1551 in the event of modification of the contract at the time of the beneficiary's death. Specifically, §154.1551 allows reasonable modifications at the time of the funeral, to the funeral goods and services provided under the contract, but prohibits such modifications from exceeding 10% of the original purchase price. Furthermore, §154.1551 places requirements on calculating the value of substituted or surrendered goods and services. It is difficult to comply with these provisions when funeral goods and services have no individual values listed in the contract because they were included in a package sale. In addition, consumers may not understand that unused items in the package are lost, and no refund credit may be available. The proposed new rule seeks to clarify the steps a seller must take to ensure compliance with the Finance Code, and to ensure consumers receive appropriate notice regarding package pricing.

Subsection (d) of proposed new §25.9 establishes that the rule would be effective for contracts executed after January 31, 2012. This delayed application will allow sellers to deplete their stock of printed contracts before being required to include the new package pricing notations in contracts.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules.

Ms. Newberg also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing the rules include providing updated and accurate information for filing complaints in prepaid funeral contracts; clarifying instructions for placement of the complaint disclosure in the prepaid funeral contract; and providing clearer pricing information in prepaid funeral contracts regarding package sales.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed.

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

To be considered, comments on the proposed amended and new sections must be submitted no later than 5:00 p.m. on December 5, 2011. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment to §25.3 and new §25.9 are proposed under Finance Code §154.051, which authorizes the commission to adopt rules to enforce and administer Finance Code Chapter 154.

Finance Code Chapter 154 is affected by the proposed amended and new sections.

§25.3. What Requirements Apply to a Non-Model Contract or Waiver?

(a) - (j) (No change.)

(k) Inquiries and complaints notice. Your proposed prepaid funeral benefits contract must disclose how a purchaser, potential purchaser or consumer can make consumer inquiries and complaints to the department [~~Department~~] as required by Finance Code, §11.307(a), and §25.41 of this title (relating to How Do I Provide Information to Consumers on How to File a [~~Consumer~~] Complaint and What Action Must I Take When I Receive a Complaint?), and to other specified state regulatory agencies with appropriate jurisdiction.

(1) This disclosure must appear exactly as set out in the relevant model contract, including the names and contact information for each regulatory agency, without modification, and will vary in context depending on whether the proposed contract is trust-funded or insurance-funded. The model disclosures for both trust-funded and insurance-funded contracts appear in:
Figure: 7 TAC §25.3(k)(1)
[~~Figure: 7 TAC §25.3(k)(1)~~]

(2) (No change.)

(l) - (m) (No change.)

§25.9. Package Sales.

(a) For purposes of this section, the term "package sale" means a grouping of multiple funeral goods and services which is offered to the purchaser at a single price.

(b) Each good or service included in a package sale may have its individual value listed on the prepaid contract.

(1) If individual values are listed, and the package price is different than the sum of the listed values of each good or service included in the package sale, the contract must represent the package sale by listing a discount, credit, or price adjustment representing the difference.

(2) If individual values are listed, the value assigned to any funeral good or service included in a package sale, minus a proportional fraction of the package discount or credit, must be used:

(A) for purposes of compliance with Finance Code §154.1551 in the event of modification after the death of the beneficiary; and

(B) as the "agreed price" for purposes of preparing a written pre-need to at-need reconciliation under Finance Code §154.161(a)(2)(B).

(c) If individual values are not listed for each good or service included in a package sale, the word "included" must be listed for each item, provided that the contract includes the following disclosure statement: "No refund or credit will be issued for package sale goods or services which remain unused by the customer at the time of need."

(1) Such disclosure statement may be included in the contract form, the provider's price list, or provided as an addendum. If included in the contract form, the disclosure statement must be included on page one or two of the contract. If included on the price list, the disclosure statement must be on each package price page. If provided as an addendum to the contract, it must be signed by both parties.

(2) In the event of modification after the death of the beneficiary, prices of funeral goods and services at the time of death must be used for purposes of compliance with Finance Code §154.1551.

(d) This section is effective for contracts executed after January 31, 2012.

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 21, 2011.

TRD-201104499
A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: December 16, 2011
For further information, please call: (512) 475-1300

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CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.53

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §33.53, concerning exemption from licensing for debt management service (DMS) providers. The new rule is proposed to allow an exemption from money transmission licensing for DMS providers that are registered with the Office of the Consumer Credit Commissioner (OCCC).

Texas Finance Code Chapter 394 concerns debtor assistance, and specifically Subchapter C (§394.201 et seq.) regulates consumer debt management services under the authority of the OCCC. Debt management services are essentially when a person, on behalf of a consumer, interacts with the consumer's creditors to seek more favorable repayment terms. Sometimes as part of this service, DMS providers accept funds from consumers and distribute them to creditors on behalf of the consumers. In March 2011, the department received an inquiry from the National Policy Group, on behalf of members of the credit counseling industry, regarding the application of the Money Services Act to DMS providers. Specifically, the letter inquired about arrangements where a consumer pays a single monthly payment to a DMS provider, the provider negotiates concessions from the consumer's creditors such as reduced interest rates or fees, then pays the creditors on behalf of the consumer. This model is similar to third party bill payment, which the Money Services Act expressly includes within the meaning of money transmission. (Finance Code §151.301(b)(4)(A)(iii).)

Under Finance Code Chapter 151, a person who engages in money transmission must obtain a money transmission license from the department. As a result, the Finance Code would require such DMS providers who receive consumer funds for distribution to creditors, to both register with the OCCC and to obtain a money transmission license from the department. Certain DMS providers are thus subject to regulation by two administrative agencies with discrete regulatory schemes.

The regulatory scheme under Chapter 394 requires DMS providers to register with the OCCC and obtain security in the form of a bond or an insurance policy. To perform DMS, registered DMS providers must enroll a consumer in a debt management plan, which requires a written agreement that conforms to a list of statutory requirements. If the DMS provider

accepts funds from the consumer for distribution to creditors, the funds must be placed in a trust account, and the provider must give the consumer written reports containing detailed information regarding all payments and deductions made with the funds. A registered DMS provider must also annually renew its registration and file a report with the OCCC disclosing its assets and liabilities, total number of debt management plans in place, and total average fees charged to consumers. Regarding fees, Chapter 394 also imposes substantial restrictions on the fees a DMS provider may charge a consumer.

Currently, there are 56 registered DMS providers, and the OCCC reports minimal consumer complaints regarding DMS activity. In part for this reason, the department has not required DMS providers registered with the OCCC to obtain money transmission licenses, provided the transmission only occurred in connection with its debt management services. The National Policy Group inquiry has revealed a need for clarification and formalization of the department's policy regarding these DMS providers. New §33.53 would codify this policy.

The proposed new rule would exempt from money transmission licensing a DMS provider that is registered and in good standing with the OCCC, so long as the DMS provider remains in compliance with Chapter 394 and all OCCC rules, and only performs money transmission as part of its DMS activities. This exemption will more efficiently achieve the purposes of the Finance Code, minimize regulatory burden on these DMS providers, and will facilitate more efficient use of department resources. Because registered DMS providers are already under the oversight authority of the OCCC, and have met the qualifications and requirements of Chapter 394, including the provisions described above, requiring a money transmission license of these DMS providers is not necessary to further protect consumers. Moreover, as long as a DMS provider only performs money transmission in connection with its DMS activities, and only to the extent necessary to conduct those activities, requiring a money transmission license in addition to the requirements of Chapter 394 is not necessary to achieve the purposes of the Money Services Act.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is continued accomplishment of the purposes of the Money Services Act by effectively regulating DMS providers with the least bureaucratic burden.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

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

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on December 5, 2011. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Finance Code, §151.003(10), which grants the commission authority to exclude from licensing a class of persons if licensing is not necessary to achieve the purposes of the Money Services Act, and under Finance Code, §151.102, which authorizes the commission to adopt rules to administer the Money Services Act.

Finance Code, §151.302, is affected by the proposed new section.

§33.53. Exemption for Debt Management Service Providers.

(a) For purposes of this section, the terms "debt management service" and "provider" have the meanings assigned by Texas Finance Code §394.202.

(b) A debt management service provider who, in the course of conducting its debt management services, receives money from consumers for distribution to the consumer's creditors need not obtain a money transmission license if that provider:

(1) is registered and in good standing with the Office of Consumer Credit Commissioner as a debt management service provider under Finance Code Chapter 394;

(2) is in compliance with all requirements of Finance Code Chapter 394 and 7 TAC Chapter 88 (relating to Consumer Debt Management Services); and

(3) conducts no money transmission as defined by Finance Code §151.301, except as necessary to provide debt management services to contractual customers.

(c) Any debt management service provider who receives money from consumers and who is exempted from registration by the Office of Consumer Credit Commissioner for any reason, including under Finance Code §394.203(c)(5), must contact the Department of Banking to seek a determination as to whether a money transmission license is required.

(d) Any debt management service provider exempted from money transmission licensing under subsection (b) of this section must immediately contact the Department of Banking in the event that any of the conditions listed in subsection (b) of this section 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 21, 2011.

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A. Kaylene Ray
General Counsel
Texas Department of Banking
Proposed date of adoption: December 16, 2011
For further information, please call: (512) 475-1300

PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 76. MISCELLANEOUS

The Finance Commission of Texas proposes new 7 TAC Chapter 76, §§76.1 - 76.7, 76.12, 76.21 - 76.26, 76.41 - 76.47, 76.61, 76.71 - 76.73, 76.91 - 76.103, 76.105 - 76.110, 76.121, and 76.122, concerning Miscellaneous. The addition of the rules un-

der new Chapter 76 is proposed to allow the Texas Department of Savings and Mortgage Lending (the department) to reorganize its rules and provide for additional rules.

The text of the rules proposed as new 7 TAC Chapter 76 is identical to the text currently found in 7 TAC Chapter 79 which has been proposed for repeal in this issue of the *Texas Register.*

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the proposed sections are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these sections.

Commissioner Foster has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of the proposed new Chapter 76 will be that the reorganization of the department's rules clarify the rules and allow for additional rules to be implemented. There will be no effect on individuals required to comply with the addition of the new sections as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed new sections may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to sml-info@sml.texas.gov within 30 days of publication in the *Texas Register.*

SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

7 TAC §§76.1 - 76.7, 76.12

The new sections are proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed new sections are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§76.1. Location of Books and Records.

Unless otherwise authorized by the commissioner, a savings bank shall keep at its home office correct and complete books of account and minutes of the meeting of members and directors. Complete records of all business transacted at the home office shall be maintained at the home office. Records of business transacted at any branch or agency office may be kept at such branch or agency office; provided, that control records of all business transacted at any branch or agency office shall be kept at the home office.

§76.2. Accounting Practices.

Every savings bank shall use such forms and observe such accounting principles and practices as the commissioner may require from time to time.

§76.3. Reproduction and Destruction of Records.

Any savings bank may cause any or all records kept by such institution to be copied or reproduced by any photostatic, photographic, or microfilming process which correctly and permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a film or other durable material, and such savings bank may thereafter dispose of the original record. Any such copy or reproduction shall be deemed to be an original record. A facsimile, exemplification, or certified copy shall, for all purposes, be deemed a facsimile, exemplification, or certified copy of the original record.

§76.4. Financial Statements; Annual Reports; Audits.

(a) Before March 1 of each year, each savings bank shall submit a statement of condition (balance sheet) as of the last business day of December of the preceding year to the commissioner, upon a form to be prescribed and furnished by the commissioner.

(b) For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank is required to have an independent audit of its financial statements. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of 12 Code of Federal Regulations Part 363 Federal Deposit Insurance Corporation Regulations regarding annual independent audits and reporting requirements are incorporated herein, with the exception of any matters specifically addressed by the Act or its related rules.

(c) A copy of the independent audit and all correspondence reasonably related to the audit shall be provided to the Commissioner upon completion.

§76.5. Misdescription of Transactions.

No savings bank by any system of account or any device of bookkeeping shall, either directly or indirectly, knowingly make any entry upon its books that is not truly descriptive of the transaction which causes the entry.

§76.6. Charging Off or Setting Up Reserves against Bad Debts.

The commissioner, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be set up by transfers from surplus or paid in capital.

§76.7. Examinations.

(a) The commissioner shall examine every state savings bank once in each year, or more frequently if the commissioner determines that the condition of the savings bank justifies more frequent attention to enforce the Act. The commissioner may defer an examination for not more than six months if the commissioner considers the deferment appropriate to the efficient enforcement of the Act and consistent with the safe and sound operation of the institution.

(b) An examination under this section may be performed jointly or in conjunction with an examination by the Federal Deposit Insurance Corporation or any other federal depository institutions regulatory agency having jurisdiction over a savings bank, and/or the commissioner may accept an examination made by such banking agency in lieu of an examination pursuant to this section.

§76.12. Bylaws.

(a) The bylaws of a state savings bank shall contain sufficient provisions to govern the institution in accordance with the Texas Savings Bank Act, the Texas Business Corporation Act, the Texas Miscellaneous Corporation Laws Act, and other applicable laws, rules and regulations, or the association's articles of incorporation. Bylaws may contain a provision which permits such bylaws to be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board of directors of the savings bank. Bylaw amendments may not take effect before being filed with and approved by the commissioner.

(b) A state savings bank is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as contained in the Texas Miscellaneous Corporation Laws Act, Article 1302-7.06 to the same extent permitted under state law for banks and savings

and loan associations. Such bylaw provision is optional and within the discretion of the state savings bank.

(c) Other optional bylaws may be adopted by a state savings bank with the approval of the commissioner.

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

Filed with the Office of the Secretary of State on October 21, 2011.

TRD-201104509
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 475-1350

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SUBCHAPTER B. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§76.21 - 76.26

The new sections are proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed sections are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§76.21. Capital Requirements.

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

(1) Capital for a capital stock savings bank--Shall include the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the savings bank's capital under generally accepted accounting principles) plus any retained earnings and paid in surplus as well as such other items as the commissioner may approve in writing for inclusion as capital.

(2) Capital for a mutual association--Shall include its pledged savings liability and expense fund plus any retained earnings and such other items as the commissioner may approve in writing for inclusion as capital.

(3) Total liabilities--Shall mean total savings liability of a savings bank, plus all amounts the savings bank owes or which are payable by it or which it may be obligated to pay for any reason, including unapplied mortgage credits, dealer participation reserves, dealer hold-back reserves, all consignment items, and all other liabilities.

(b) Minimum capital requirement. Each association shall maintain capital at levels which are required for institutions whose accounts are insured by the Federal Deposit Insurance Corporation.

§76.22. Increase or Decrease of Minimum Capital Requirements.

(a) The commissioner may increase or decrease the minimum capital requirement set forth in this chapter, upon written application by an association or by supervisory directive if the commissioner shall have affirmatively found from the data available and/or the application and supplementary information submitted therewith that:

(1) the association's failure to meet the minimum net worth requirement is not due to unsafe and unsound practices in the conduct of the affairs of the association, a violation of any provision of the articles of incorporation or bylaws of the association, or a violation of any law, rule, or supervisory order applicable to the association or any condition that the commissioner has imposed on the association by written order or agreement. For purposes of this chapter, unsafe and unsound practices shall mean, with respect to the operation of an association, any action or inaction that is likely to cause insolvency or substantial dissipation of assets or earnings or to otherwise reduce the ability of the association to timely satisfy withdrawal requests of savings account holders, including, without being limited to, excessive operating expenses, excessive growth, highly speculative ventures, excessive concentrations of lending in any one area, and non-existent or poorly followed lending and underwriting policies, procedures, and guidelines;

(2) the association is well managed. In determining whether the applying association is well managed, the commissioner may consider:

(A) management's record of operating the association;

(B) management's record of compliance with laws, regulations, directives, orders, and agreements;

(C) management's timely recognition and correction of regulatory violations, unsafe and unsound practices, or other weaknesses identified through the examination or supervisory process;

(D) management's ability to operate the association in changing economic conditions; and

(E) such other factors as the commissioner may deem necessary to properly evaluate the quality of the association's management;

(3) the savings bank has submitted a plan acceptable to the commissioner for restoring capital within a reasonable period of time. Such plan shall describe the means and schedule by which capital will be increased. The plan shall also specifically address restrictions on dividend levels; compensation of directors, executive officers, or individuals having a controlling interest; asset and liability growth; and payment for services or products furnished by affiliated persons as defined in Chapter 77 of this title (relating to Loans, Investments, Savings, and Deposits). The plan shall provide for improvement in the savings bank's capital on a continuous or periodic basis from earnings, capital infusions, liability and asset shrinkage, or any combination thereof. A plan that projects no significant improvement in net worth until near the end of the waiver or variance period or that does not appear to the commissioner to be reasonably feasible will not be acceptable. The commissioner may require modification of the savings bank's plan in order for the institution to receive or to continue to receive such waiver or variance.

(b) Any savings bank which receives an increase or decrease of its minimum capital requirement from the commissioner must file quarterly progress reports regarding compliance with its capital plan. The commissioner may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be submitted to the commissioner for approval.

(c) With respect to the granting of any waiver or variance of the minimum capital requirement, the commissioner may impose any condition, limitation, or restriction on such increase or decrease as the commissioner may deem necessary to ensure compliance with law and regulations and to prevent unsafe and unsound practices.

(d) The commissioner may withdraw or modify any increase or decrease granted pursuant to this section if:

(1) the institution fails to comply with its capital plan;

(2) the increase or decrease was granted contingent upon the occurrence of events that do not subsequently occur;

(3) the savings bank undergoes a change of control or a material change in management that was not approved by the commissioner;

(4) the savings bank engages in practices inconsistent with achieving its minimum capital requirement;

(5) information is discovered that was not made available to the commissioner at the time that the increase or decrease was granted and that indicates that the increase or decrease should not have been granted;

(6) the savings bank engages in unsafe and unsound practices, violates any provision of its articles of incorporation or bylaws, or violates any law, rule, or supervisory order applicable to the savings bank or any condition that the commissioner has imposed upon the savings bank by written order or agreement;

(7) the savings bank fails to submit the reports required by this section.

§76.23. Business Plans.

(a) All savings banks whose operations are considered by the commissioner unsafe or unsound pursuant to the Texas Savings Bank Act or which have total capital less than the amount required under §76.21 of this title (relating to Capital Requirements) or §76.22 of this title (relating to Increase or Decrease of Minimum Capital Requirements) shall develop a business plan and have such business plan available for review by the examiners. The period covered by the business plan shall not be less than one year, but may be for any greater number of periods that the commissioner may require.

(b) The savings bank's business plan shall be reviewed to determine its continued viability in accordance with current economic conditions and approved or revised, as determined by its board of directors, at least annually.

§76.24. Capital Notes and Debentures.

No savings bank may issue and sell its capital notes or debentures without the prior written approval of the commissioner and subject to any conditions the commissioner may impose with regard to safety and soundness and maintenance of adequate financial condition particularly in areas of preservation of capital, quality of earnings, and adequacy of reserves.

§76.25. Provisions for Issuance of Secured or Unsecured Capital Obligations.

A savings bank may, by resolution of its board of directors and with prior approval of the commissioner, issue capital notes, debentures, bonds, or other secured or unsecured capital obligations, which may be convertible in whole or in part to shares of permanent reserve fund stock, or may be issued with warrants attached, to purchase at a future date, shares of permanent reserve fund stock of the issuing savings bank, provided:

(1) the savings bank provides adequate proof to the satisfaction of the commissioner that the holders of such obligations will receive properly amortized payments of both principal and interest at regularly stated intervals, or that proper provision is made for sinking fund allocations to retire all principal of and interest on such obligations; and

(2) sufficient evidence is furnished to the commissioner as to the need and utilization of such funds by the savings bank in a profitable manner.

§76.26. Joint Issuance of Capital Obligations.

On the same terms and conditions as stated in §76.25 of this title (relating to Provisions for Issuance of Secured or Unsecured Capital Obligations), a savings bank may, by resolution of its board of directors and with prior approval of the commissioner, join other savings banks in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations if it meets the terms and conditions of §76.25 of this title.

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

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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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SUBCHAPTER C. HOLDING COMPANIES

7 TAC §§76.41 - 76.47

The new sections are proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed sections are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§76.41. Registration.

A holding company shall register with the commissioner on forms prescribed by the commissioner within 90 days after the date of becoming a holding company. The forms must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the commissioner finds necessary and appropriate. On application, the commissioner may extend the time within which a holding company shall register and file the required information.

§76.42. Reports.

Each holding company and each subsidiary of a holding company, other than a savings bank, shall file with the commissioner reports required by the commissioner. The reports must be made under oath and must be in the form and for the periods prescribed by the commissioner. Each report must contain information concerning the operations of the holding company and its subsidiaries as the commissioner may require. A holding company shall file with the commissioner copies of any filings, documents, statements, or reports required to be filed with the appropriate federal regulatory authorities.

§76.43. Books and Records.

Each holding company shall maintain books and records as may be prescribed by the commissioner.

§76.44. Examinations.

Each holding company and each subsidiary of a holding company is subject to examinations as the commissioner may prescribe. The holding company shall pay the cost of an examination. The confidentiality provisions of the Texas Savings Bank Act, §96.356, shall apply to this section. The commissioner may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States. For purposes of this section, the commissioner, to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

§76.45. Agent for Service of Process.

The commissioner may require a holding company or a person, other than a corporation, connected with a holding company to execute and file a prescribed form of irrevocable appointment of agent for service of process.

§76.46. Release from Registration.

The commissioner at any time, on the commissioner's own motion or on application, may release a registered holding company from a registration made by the company if the commissioner determines that the company no longer controls a savings bank.

§76.47. Mutual Holding Companies.

(a) A savings bank may reorganize as a mutual holding company by complying with the provisions of Finance Code Chapter 97, Subchapter B (Finance Code §97.051). The savings bank shall provide to the commissioner an application to reorganize in a form specified by the commissioner. The applicant shall provide one signed original and at least one copy of the application together with complete exhibits. The application shall include:

(1) two copies of the articles of incorporation for the proposed subsidiary savings bank which shall comply with the requirements of Finance Code §92.051 and §92.052 or §92.053, as applicable;

(2) two copies of the bylaws for the proposed subsidiary;

(3) two copies of the proposed restated articles of incorporation and bylaws of the mutual holding company;

(4) the complete plan of reorganization;

(5) a certification by the president or secretary as to how that the reorganization, including the amendments to the articles of incorporation and bylaws of the mutual holding company have been approved by a majority of the members or shareholders of the reorganizing savings bank in accordance with Finance Code Chapter 97, Subchapter B.

(6) A fee which shall be in the amount of the fee required for the conversion of a mutual savings bank into a stock savings bank under §76.106 of this title.

(b) On receipt of the application, the commissioner may conduct an examination of the applicant savings bank.

(c) The commissioner shall approve the reorganization without a hearing if the commissioner determines:

(1) that the resulting savings bank will be in sound condition and meets all requirements of Finance Code Chapter 92, Subchapter B, and relevant rules of the commissioner and the Finance Commission; and

(2) the applicant has received all approvals required under federal law for the creation of a bank or thrift holding company.

(d) If the commissioner denies an application to reorganize, the applicant may appeal in the same manner as provided in Finance Code §92.304.

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

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

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

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

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

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TRD-201104511
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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SUBCHAPTER D. FOREIGN SAVINGS BANKS

7 TAC §76.61

The new section is proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed section are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§76.61. Foreign Savings Banks.

The rules and regulations in §75.10 of this title (relating to Change of Name) and §§75.31 - 75.36, 76.38, 76.39, and 76.41 of this title (relating to Additional Offices) shall be applicable to foreign savings banks.

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-201104512

Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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SUBCHAPTER E. HEARINGS

7 TAC §§76.71 - 76.73

The new sections are proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed sections are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§76.71. Hearings Officer.

The Texas Banking Act, §1.011(b), House Bill 1543, Acts, 74th Legislature, provides that the Finance Commission may employ a hearings officer, who for purposes of Texas Civil Statutes, Government Code, §2003.021, is an employee of the Texas Department of Savings and Mortgage Lending, Department of Banking and the Office of the Consumer Credit Commissioner. The Finance Commission hearings officer shall conduct hearings under provisions of the Act.

§76.72. Rules of Procedure for Contested Hearings.

Rules of procedure for contested hearings as set forth in the Texas Administrative Code, Title 7, Chapter 9, Subchapter A and B, as revised, are incorporated herein by reference.

§76.73. Publication of Hearing Notice.

The provisions of §75.3 of this title (relating to Publication of Notice of Charter Application), §75.84 of this title (relating to Publication), and §75.91 of this title (relating to Mutual to Stock Conversion) provide specific requirements regarding the form, content and time for publication of notice of hearing. Notwithstanding these provisions, content of the publication notice may be modified with approval of the commissioner to facilitate joint publication of the notice with other regulatory agencies having jurisdiction in the matter, expedite the hearing process, or provide other information relevant to the hearing or arrangement and scheduling therefor.

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-201104513
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 475-1350

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SUBCHAPTER F. FEES AND CHARGES

7 TAC §§76.91 - 76.103, 76.105 - 76.110

The new sections are proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed sections are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§76.91. Fee for Charter Application.

Applicants for new charters for savings banks shall pay a fee of $10,000. This fee shall be paid at the time of filing and shall include the cost of filing and processing of said application. In addition, the applicant shall pay the cost of a formal record and any cost incurred by the department in connection with the hearing, investigation, and travel expenses.

§76.92. Fee for Branch Office.

Applicants for branch offices under §75.33 of this title (relating to Branch Office Applications) shall pay a fee of $1,500. This fee shall be paid at the time of filing and shall include the cost of filing, and processing of said application. In addition, the applicants shall pay the cost of a formal record and any cost incurred by the department in connection with the hearing, investigation and travel expenses.

§76.93. Fee for Mobile Facility.

Applicants for a mobile facility under §75.35 of this title (relating to Mobile Facilities) shall pay a fee of $500 plus $100 for each location. This fee shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of said application. In addition, the applicants shall pay the cost of a formal record and any cost incurred by the department in connection with the hearing, investigation, and travel expenses.

§76.94. Fee for Change of Name or of Location.

Applicants for change of name or change of location of any branch office, approved or existing, shall pay a fee of $500. This fee shall be paid at the time of filing and shall include the cost for filing, processing, and hearing of said application. In addition, the applicants shall pay the cost of a formal record and any cost incurred by the department in connection with the hearing, investigation and travel expenses.

§76.95. Fee for Special Examination or Audit.

Each association subject to a special examination shall pay to the commissioner an examination fee based upon a per day rate of $325 for each day during which each examiner is engaged in the examination of the affairs of such institution. For the purposes of this section, a special examination shall include only those examinations which the commissioner conducts or causes to have conducted after the institution has completed one annual examination or such other additional examinations as the commissioner deems to be necessary. This special examination fee shall not be charged for an institution's annual regular examination.

§76.96. Fee for Charter and Bylaw Amendments.

The commissioner shall collect a filing fee of $100 for each amendment to a charter or to the bylaws of a savings bank.

§76.97. Fee for Permission To Issue Capital Obligations.

The commissioner shall collect a filing fee of $1,000 for each application by a savings bank for permission to issue capital notes, debentures, bonds, or other capital obligations to cover processing and investigation of such applications.

§76.98. Annual Fee To Do Business.

All savings banks chartered under the laws of the state and all foreign savings banks organized under the laws of another state of the United States holding a certificate of authority to do business in this state shall

pay to the commissioner such annual fee or assessment and examination fees as are set by the Finance Commission of Texas. Annual fees and assessments shall be established based upon the total assets of the association at the close of the calendar quarter immediately preceding the effective date of the fee or assessment.

§76.99. Fee for Reorganization, Merger, and Consolidation.

(a) Any association seeking to reorganize, merge, and/or consolidate, pursuant to the Texas Savings Bank Act, Subchapter H, and §§75.81 - 75.88 of this title (relating to Reorganization, Merger, Consolidation, Conversion, Purchase, and Assumption and Acquisition) shall pay to the commissioner, at time of filing its plan, a fee of $2,500 for each financial institution involved in a plan of reorganization, merger and/or consolidation. For each financial institution involved in a plan filed for a purchase and assumption acquisition, a fee of $2,000 shall be paid to the commissioner. No fee is required for a reorganization, merger, or consolidation pursuant to §75.89 of this title (relating to Reorganization, Merger or Conversion to Another Financial Institution Charter) where the resulting institution is not a state savings bank. No additional fee is required for an interim charter to facilitate a transaction under §§75.81 - 75.88 of this title.

(b) The fee set forth in subsection (a) of this section shall cover the cost of filing and processing with respect to the plan. In addition, such savings bank shall pay the cost of a formal record, if applicable, any cost incurred by the department in connection with the hearing, investigation, and travel expenses.

§76.100. Fees for Expedited Applications.

Applicants for expedited applications under §75.26 of this title (relating to Expedited Applications) shall pay the following fees: branch office $500; mobile facilities $500; office relocation $250; reorganization, merger or consolidation $2,500; and purchase and assumption transactions $2,000. All fees shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of said application.

§76.101. Fee for Change of Control.

The commissioner shall collect a filing fee of $10,000 for each change of control application filed pursuant to §§75.121 - 75.127 of this title (relating to Change of Control) and $2,500 for rebuttal of control of a savings bank or rebuttal of concerted action.

§76.102. Fee for Subsidiaries.

The commissioner shall collect a fee of $1,500 for each application by a savings bank for permission to make an initial investment in a subsidiary corporation pursuant to §§77.91 - 77.95 of this title (relating to Authorized Loans and Investments) to cover the processing and investigation of such applications, and an additional fee of $100 for each office other than the home office of a subsidiary that is applied for. The commissioner shall collect a fee of $500 for service corporation application to engage in a new activity; $300 for redesignation of an operating subsidiary; and $100 for each application by a savings bank to change the name of a subsidiary or the location of a subsidiary office.

§76.103. Fee for Charter Application under 7 TAC §75.36.

The commissioner shall collect a filing fee of $500 for the processing of an application for a charter for a savings bank where the sole purpose of such application is the purchase of the assets, assumption of liabilities, and continuation of the business of any institution deemed by the commissioner to be in an unsafe condition, pursuant to §75.36 of this title (relating to Designation as and Exemption for Supervisory Sale).

§76.105. Fee for Conversion into a Savings Bank.

The commissioner shall collect a filing fee for each application filed pursuant to §75.90 of this title (relating to Conversion into a Savings Bank) for conversion into a savings bank pursuant to the following schedule: $ 0 - 125 million $2,500; $125 - 500 million $5,000; $500 million - 1 billion $10,000; and Over 1 billion $15,000.

§76.106. Fee for Mutual to Stock Conversion.

The commissioner shall collect a filing fee of $7,500 for each application filed pursuant to §75.91 of this title (relating to Mutual to Stock Conversion) for conversion into a stock savings bank.

§76.107. Fee for Holding Company Registration.

The commissioner shall collect a filing fee of $2,000 for each application filed pursuant to §76.41 of this title (relating to Holding Companies) as registration of a holding company.

§76.108. Fees for Open Records Requests.

(a) The fees for copies of records of the department which are subject to public examination pursuant to the Texas Open Records Act shall be as follows:

(1) $.10 per page for readily available information which takes less than 15 minutes to obtain, with less than 50 pages of standard-size paper up to 8 inches by 14 inches;

(2) an additional $15 per hour personnel charge for readily available information of 50 pages or more;

(3) $.10 per page, plus $15 per hour personnel charge, plus $3.00 per hour overhead charge for any quantity of information that requires over 15 minutes to obtain and is therefore not readily available;

(4) $.50 per minute if computer resources are required to obtain the requested information;

(5) actual postage and shipping charges are added to all requests;

(6) $.10 per page for a local facsimile transmission, $.50 per page for a long distance facsimile transmission in the same area code, and $1.00 per page for a long distance facsimile transmission in a different area code;

(7) nonstandard-size copies would consist of a diskette at $2.00 each, an audio cassette at $1.00 each, and paper larger than 8 inches by 14 inches at $.50 per page;

(8) if certification is requested of any item, a charge of $5.00 will be added to the total charges;

(9) any additional reasonable cost will be added at actual cost, with full disclosure to the requesting party as soon as it is known; and

(10) a reasonable deposit may be required for requests where the total charges are over $200.

(b) All requests will be treated equally. The commissioner may waive charges at his discretion.

(c) If records are requested to be inspected instead of receiving copies, access will be by appointment only during regular business hours of the department and will be at the discretion of the commissioner.

(d) Confidential documents will not be made available for examination or copying except under court order or other directive.

(e) All open records requests will be referred to the commissioner's designee before the department will release the information.

§76.109. Fee for Protest Filing.

(a) A person or entity filing a protest to an application shall pay a fee of $2,500 simultaneously with such protest filing. The purpose of this fee is to partially offset the department's increased cost of

processing an application and reduce costs incurred by the applicant that result solely from the protest.

(b) Additionally, the Administrative Law Judge for a contested hearing may allocate costs incurred by the department to the parties pursuant §76.72 of this title (relating to Rules of Procedure for Contested Hearings). In such cases, the fee paid pursuant to subsection (a) of this section shall be applied toward payment of the protestant's allocation of hearing costs; however, no amount will be refunded and any additional amounts will be billed.

(c) Notwithstanding the provisions of subsection (a) of this section, a member of the general public allowed to testify under oath or affirmation in a contested case, who is not deemed a party by the Administrative Law Judge under the provisions incorporated by §76.72 of this title is not subject to this fee.

§76.110. Fees Nonrefundable.

All filing fees must be paid at the time of filing and are nonrefundable. Except for fees established by statute, the commissioner may exercise discretion to reduce or waive any filing fee and shall charge fees on a consistent and nondiscriminatory basis.

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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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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SUBCHAPTER G. STATEMENTS OF POLICY

7 TAC §76.121

The new section is proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed section are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§76.121. Application of the Statutory Parity Provision.

A savings bank may make any loan or investment or engage in any activity permitted under state law for banks or savings and loan associations or under the laws of the United States for federal savings and loan associations, savings banks or national banks with principal offices located in this state. The commissioner and the Finance Commission reserve the authority to impose by limitations or restrictions on the preceding parity provision. However, any such limitations and/or restrictions shall only be effective if such specifically states that it overrides the §93.008 parity provision of the Texas Savings Bank Act.

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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Douglas B. Foster
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Texas Department of Savings and Mortgage Lending
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SUBCHAPTER H. CONSUMER COMPLAINT PROCEDURES

7 TAC §76.122

The new section is proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed section are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§76.122. Consumer Complaint Procedures.

(a) Definitions

(1) "Privacy notice" means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Texas Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Texas Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 475-1505, E-mail: smlinfo@sml.texas.gov.

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal hous-

ing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) If a state savings bank maintains a web site, the required notice must be included in a screen which the consumer must view whenever the site is accessed.

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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Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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CHAPTER 79. MISCELLANEOUS

The Finance Commission of Texas proposes the repeal of 7 TAC Chapter 79, §§79.1 - 79.7, 79.12, 79.21 - 79.26, 79.41 - 79.47, 79.61, 79.71 - 79.73, 79.91 - 79.103, 79.105 - 79.110, 79.121, and 79.122, concerning Miscellaneous.

The repeal of 7 TAC Chapter 79 is proposed to allow the Texas Department of Savings and Mortgage Lending (the department) to reorganize its rules and provide for additional rules. The text of the rules currently found in 7 TAC Chapter 79 will be proposed as new rules under new 7 TAC Chapter 76.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the repeal of these rules.

Commissioner Foster has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the proposed repeal will be that the reorganization of the department's rules clarify the rules and allow for additional rules to be implemented. There will be no effect on individuals required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed repeal may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register.*

SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

7 TAC §§79.1 - 79.7, 79.12

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

The repeal is proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§79.1. Location of Books and Records.

§79.2. Accounting Practices.

§79.3. Reproduction and Destruction of Records.

§79.4. Financial Statements; Annual Reports; Audits.

§79.5. Misdescription of Transactions.

§79.6. Charging Off or Setting Up Reserves against Bad Debts.

§79.7. Examinations.

§79.12. Bylaws.

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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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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SUBCHAPTER B. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §§79.21 - 79.26

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

The repeal is proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§79.21. Capital Requirements.

§79.22. Increase or Decrease of Minimum Capital Requirements.

§79.23. Business Plans.

§79.24. Capital Notes and Debentures.

§79.25. Provisions for Issuance of Secured or Unsecured Capital Obligations.

§79.26. Joint Issuance of Capital Obligations.

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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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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SUBCHAPTER C. HOLDING COMPANIES

7 TAC §§79.41 - 79.47

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

The repeal is proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§79.41. Registration.

§79.42. Reports.

§79.43. Books and Records.

§79.44. Examinations.

§79.45. Agent for Service of Process.

§79.46. Release from Registration.

§79.47. Mutual Holding Companies.

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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Douglas B. Foster
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Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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SUBCHAPTER D. FOREIGN SAVINGS BANKS

7 TAC §79.61

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

The repeal is proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§79.61. Foreign Savings Banks.

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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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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SUBCHAPTER E. HEARINGS

7 TAC §§79.71 - 79.73

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

The repeal is proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§79.71. Hearings Officer.

§79.72. Rules of Procedure for Contested Hearings.

§79.73. Publication of Hearing Notice.

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

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SUBCHAPTER F. FEES AND CHARGES

7 TAC §§79.91 - 79.103, 79.105 - 79.110

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

The repeal is proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§79.91. Fee for Charter Application.
§79.92. Fee for Branch Office.
§79.93. Fee for Mobile Facility.
§79.94. Fee for Change of Name or of Location.
§79.95. Fee for Special Examination or Audit.
§79.96. Fee for Charter and Bylaw Amendments.
§79.97. Fee for Permission To Issue Capital Obligations.
§79.98. Annual Fee To Do Business.
§79.99. Fee for Reorganization, Merger, and Consolidation.
§79.100. Fees for Expedited Applications.
§79.101. Fee for Change of Control.
§79.102. Fee for Subsidiaries.
§79.103. Fee for Charter Application under §75.36.
§79.105. Fee for Conversion into a Savings Bank.
§79.106. Fee for Mutual to Stock Conversion.
§79.107. Fee for Holding Company Registration.
§79.108. Fees for Open Records Requests.
§79.109. Fee for Protest Filing.
§79.110. Fees Nonrefundable.

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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For further information, please call: (512) 475-1350

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SUBCHAPTER G. STATEMENTS OF POLICY

7 TAC §79.121

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

The repeal is proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§79.121. Application of the Statutory Parity Provision.

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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Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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SUBCHAPTER H. CONSUMER COMPLAINT PROCEDURES

7 TAC §79.122

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

The repeal is proposed under Texas Finance Code §11.302 and §92.201, which authorize the Texas Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapters 91, 92, 93, 96 and 97.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 91, 92, 93, 96, and 97.

§79.122. Consumer Complaint Procedures.

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

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CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

The Finance Commission of Texas proposes new 7 TAC Chapter 79, §§79.1 - 79.5, 79.20, 79.30, 79.40, and 79.50, concerning Residential Mortgage Loan Servicers. The new rules are proposed to implement the provisions of Senate Bill 17 as passed by the 82nd Legislature.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the proposed sections are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these sections.

Commissioner Foster has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of the proposed sections will be that the Texas Department of Savings and Mortgage Lending will have rules implementing the provisions of Senate Bill 17 passed in the 82nd Legislature. There will be no effect on individuals required to comply with the sections as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed new sections may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to sml-info@sml.texas.gov within 30 days of publication in the *Texas Register.*

SUBCHAPTER A. REGISTRATION

7 TAC §§79.1 - 79.5

The new sections are proposed under Texas Finance Code §158.003, which authorizes the Finance Commission of Texas, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 158.

The statutory provisions affected by the proposed sections are contained in Texas Finance Code, Chapter 158.

§79.1. Definitions.

(a) "Department" means the Department of Savings and Mortgage Lending.

(b) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Finance Code §180.002(12).

(c) "Commissioner" means the Savings and Mortgage Lending Commissioner.

(d) "Commissioner's designee" means an employee of the Department performing his or her assigned duties of such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in the Act.

(e) "Person" means an individual, corporation, company, limited liability company, partnership or association.

§79.2. Required Disclosure.

(a) A registrant shall provide to the borrower of each residential mortgage loan the following notice not later than the 30th day after the registrant begins servicing the loan.

(b) In order to let its consumer know how to file complaints, Residential Mortgage Loan Servicer registrants must include the following notice in all correspondence provided the consumer:
Figure: 7 TAC §79.2(b)

§79.3. Registration - General.

(a) Applications for Residential Mortgage Loan Servicer registrations must be submitted through the Nationwide Mortgage Licensing System and Registry and must be on the prescribed application form.

(b) A registration, notice, or any other filing with the Department will be deemed submitted only 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 the Department any information or supplemental documentation within 30 days from the date of request, the application may be deemed withdrawn.

(c) All registrations issued shall be valid for a term of not more than one year from the date of issuance and shall expire on December 31st of the year issued.

(d) The fees for the registration of a residential mortgage loan servicer 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.

(e) The registrant must notify the Department of any change to any information provided in the registration application within 30 days after the date of the information change.

§79.4. Bond Requirement.

(a) Bonds submitted for the approval of a Residential Mortgage Loan Servicer registration application must be on the prescribed form and for the amount determined applicable under Finance Code §158.055(b) or (c).

(b) Bonds should be payable to the Commissioner; any recovery made against a bond by the Commissioner shall require a new bond to be filed within 10 days.

(c) The name of the principal insured on the bond must match exactly the name as it will appear on the registration information as approved by the Texas Secretary of State. The surety seal and an attached power of attorney must accompany the bond when submitted to the Department.

§79.5. Renewal of Registration.

A registration may be renewed upon:

(1) the submission of a completed application for renewal through the Nationwide Mortgage Licensing System and Registry together with the payment of the application renewal fee; and

(2) determination that the applicant continues to meet the minimum requirements for registration issuance.

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-201104588

Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 475-1352

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SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

7 TAC §79.20

The new section is proposed under Texas Finance Code §158.003, which authorizes the Finance Commission of Texas, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 158.

The statutory provisions affected by the proposed section are contained in Texas Finance Code, Chapter 158.

§79.20. Complaints and Investigations.

(a) Upon receipt of a signed, written complaint from a person setting forth known, suspected, or asserted facts relating to acts or omissions of a person required to be registered under the Act, the Commissioner or the Commissioner's designee will:

(1) make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation;

(2) if it has been determined that the complaint warrants an investigation, advise the residential mortgage loan servicer who is the subject of the complaint by written notice to the authorized office specified on that person's registration that a complaint has been filed;

(3) if it is determined that a complaint does not warrant investigation, so advise the complainant and close the file, advising the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered;

(4) if an investigation is to be conducted, advise the party who is the subject of the complaint that an investigation will be conducted and conduct such investigation as is deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(A) review of documentary evidence;

(B) interviews with complainants, registrants, and third parties;

(C) obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and

(D) such other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

(E) If the Department requests reports or other information of registrant and registrant does not respond as required a $150 penalty may be assessed against the registrant.

(b) A complaint investigation fee may be assessed against a person required to be registered under this Act after the Department opens a fifth complaint or expends 12 hours of investigative work on an annual basis from September 1st to August 31st. The amount of the complaint investigation fee assessed will be at the discretion of the Commissioner and may be set at an amount not to exceed $975 per complaint.

(c) The Commissioner may conduct a Departmental investigation if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of the Act.

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 C. HEARINGS AND APPEALS

7 TAC §79.30

The new section is proposed under Texas Finance Code §158.003, which authorizes the Finance Commission of Texas, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 158.

The statutory provisions affected by the proposed section are contained in Texas Finance Code, Chapter 158.

§79.30. Appeals and Hearings.

The Hearings Officer for the Finance Commission is designated as the hearings officer for hearings under this chapter. All such hearings are to be conducted in accordance with Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), including, but not limited to motions for rehearing, notices of appeal, and applications for review. All such hearings, unless specifically authorized by the Commissioner, shall be conducted in Austin, Travis County, Texas. Such rules, as set forth in Chapter 9 of this title, are incorporated herein by reference for all purposes.

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

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SUBCHAPTER D. INTERPRETATIONS

7 TAC §79.40

The new section is proposed under Texas Finance Code §158.003, which authorizes the Finance Commission of Texas,

under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 158.

The statutory provisions affected by the proposed section are contained in Texas Finance Code, Chapter 158.

§79.40. Interpretations.

In order to provide clarification as to how the Act will be construed and implemented, the Commissioner may, from time to time, publish written interpretations of the Act and these regulations.

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. SAVINGS CLAUSE

7 TAC §79.50

The new section is proposed under Texas Finance Code §158.003, which authorizes the Finance Commission of Texas, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 158.

The statutory provisions affected by the proposed section are contained in Texas Finance Code, Chapter 158.

§79.50. Savings Clause.

If any portion or provision of this chapter is found to be illegal, invalid, or unenforceable, such illegality, invalidity, or lack of enforceability shall not affect or impair the legality, validity, and enforceability of the remainder thereof, all of which shall remain in full force and effect.

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

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3012

The Finance Commission of Texas (commission) proposes new §83.3012, concerning provisional licenses for credit access businesses.

In general, the purpose of the new rule is to facilitate the implementation of House Bill (HB) 2594, as enacted by the 82nd Texas Legislature. HB 2594 requires credit access businesses that provide payday or title loans under Texas Finance Code, Chapter 393 to obtain a license with the Office of Consumer Credit Commissioner. The proposed rule provides a provisional license procedure that will assist the industry and the agency in complying with the statutory provisions effective January 1, 2012.

The agency believes that approximately 900 applications for 3,500 locations will be filed before January 1, 2012. The licensing process contains several time-consuming elements, including conducting criminal background investigations, establishing net assets, and processing other required licensing information. The agency believes that a transition period is necessary and appropriate to fulfill HB 2594. Thus, the proposed rule will allow a credit business applicant to provide certain information to obtain a provisional license and maintain operation while its permanent license is pending. The individual purposes of each subsection are provided in the following paragraphs.

Subsection (a) describes the effects of a provisional license, which authorizes the holder to operate as a credit access business during the provisional period. In addition, the holder of a provisional license must comply with all legal requirements (aside from those involving permanent licensure) as if the holder had been issued a permanent license.

The information required to obtain a provisional license is outlined by §83.3012(b). The applicant must submit five items in order to be granted a provisional license: the application for license form (including location information, responsible person, registered agent, and owners and principal parties), the consent form, entity documents, a financial statement and supporting financial information, and new license fees. The details for each requirement are provided by permanent licensing rules, §83.3002, concerning Filing of New Application, and §83.3010, concerning Fees, as adopted separately in this issue of the *Texas Register.*

Subsection (c) provides the provisional period for provisional licenses granted before January 1, 2012. A provisional license granted before January 1 will be effective through March 30, 2012 or until the applicant's permanent license is either granted or a denial becomes final.

Section 83.3012(d) delineates the provisional period for provisional licenses granted on or after January 1 but before April 1, 2012. Provisional licenses issued during this "grace period" will be effective for 90 days from the date issued or until the applicant's permanent license is either granted or a denial becomes final. Additionally, during the 90-day grace period of January 1 through April 1, 2012, a person may continue to operate as a credit access business under Texas Finance Code, Chapter 393.

The provisional period may be extended by the commissioner for good cause under §83.3012(e). A provisional license holder may receive an extension of 30 days for one or more terms.

Subsection (f) outlines the due process rights of applicants who receive notice of the denial of their permanent licenses during the provisional period. A provisional license holder has a right to request a hearing to challenge the denial of the permanent license. Upon notice of the denial, the provisional period is tolled until the permanent license is either granted or the denial is final. Section 83.3012(f) also describes the status of the provisional license when the applicant requests a hearing, or when the applicant does not request a hearing.

Section 83.3012(g) provides the additional requirement for applicants that engage in unlicensed activity. Paragraph (1) defines the circumstances that will constitute "unlicensed activity" under the rule. Under paragraph (2), applicants having engaged in unlicensed activity must specifically establish that the business will be operated lawfully and fairly in a sworn written statement.

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

For each year of the first five years the new rule is in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed new rule will be a more streamlined procedure to provide credit access businesses the ability to continue to operate while the agency processes their applications for permanent licenses. Additionally, this rule will benefit Texas consumers who will be able to access these short-term credit products with minimal or no interruption in service.

There is no anticipated cost to persons who are required to comply with the proposed new rule, as the costs involved are simply a portion of those required under the permanent license application rules. *(See* §83.3010, concerning Fees, adopted elsewhere in this issue.) There is no anticipated adverse economic effect on small businesses or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

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

This new section is proposed under Texas Finance Code, §393.622, which authorizes the Finance Commission to adopt rules necessary to enforce and administer Subchapter G, Licensing and Regulation of Certain Credit Services Organizations, under Chapter 393.

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

§83.3012. Provisional License.

(a) Effects of provisional license.

(1) Authorized activities. A provisional license granted under this section authorizes the person receiving the provisional license to operate as a credit access business under Texas Finance Code, Chapter 393 during the provisional period as determined by subsection (c) or (d) of this section, as applicable.

(2) Laws applicable to provisional license holder. Aside from the licensing provisions not included in subsection (b) of this section, the holder of a provisional license is required to comply with all requirements of Texas Finance Code, Chapter 393 and other applicable laws for credit access businesses as if the provisional license holder had been issued a permanent license.

(b) Required information. If an applicant for a credit access business license provides all information required by the following provisions of this title, the applicant will be issued a provisional license under this section. The information required for a provisional license is:

(1) Application for license as provided in §83.3002(1)(A) of this title (relating to Filing of New Application), including location information, responsible person, registered agent, and owners and principal parties;

(2) Consent form as provided in §83.3002(1)(E) of this title, signed by an authorized individual;

(3) Entity documents as provided in §83.3002(2)(B) of this title;

(4) Financial statement and supporting financial information as provided in §83.3002(2)(C) of this title; and

(5) Fees for new licenses as provided in §83.3010(a) of this title (relating to Fees), including a $200 investigation fee, assessment fees of $600 per active license and $250 per inactive license, and a fee not to exceed $200 for the Texas financial education endowment.

(c) Provisional period for provisional license granted before January 1, 2012. If an application including the required information under subsection (b) of this section is received before January 1, 2012, the applicant will be issued a provisional license effective through March 30, 2012, or until the applicant's permanent license is either granted or a denial becomes final.

(d) Provisional period for provisional license granted on or after January 1 but before April 1, 2012.

(1) If an application including the required information under subsection (b) of this section is received on or after January 1 but before April 1, 2012, the applicant will be issued a provisional license effective for 90 days after the date issued, or until the applicant's permanent license is either granted or a denial becomes final.

(2) Grace period. During the 90-day grace period provided in paragraph (1) of this subsection, a person may continue to operate as a credit access business under Texas Finance Code, Chapter 393.

(e) Extension of provisional period. The commissioner may extend a license holder's provisional period for one or more terms of 30 days for good cause.

(f) Due process.

(1) Right to hearing on permanent license denial. If a provisional license holder receives notice during the provisional period that its application for a permanent license has been denied, the provisional license holder has a right to request a hearing to challenge the denial of its permanent license as provided in §83.3007(d) of this title (relating to Processing of Application).

(2) Effect of permanent license denial on provisional period. If a provisional license holder receives notice during the provisional period that its application for a permanent license has been denied, the provisional period is tolled from the date the denial is received by the holder until its permanent license is either granted or the denial becomes final.

(3) No hearing requested. If the provisional license holder does not request a hearing after denial of its permanent license, the denial will become final and the provisional license will be canceled the date the final order is effective.

(4) Hearing requested. If the provisional license requests a hearing after denial of its permanent license and:

(A) the permanent license is subsequently granted, the provisional license will convert to a permanent license, providing the business continuous authority to operate under Texas Finance Code, Chapter 393.

(B) the denial of the permanent license is subsequently upheld, the provisional license will be canceled the date the final order is effective.

(g) Additional requirement for applicant that engaged in unlicensed activity under Texas Finance Code, Chapter 393.

(1) Unlicensed activity. An applicant or person that operates under Texas Finance Code, Chapter 393 under the following circumstances will be engaged in unlicensed activity:

(A) operating on or after April 1, 2012, without submitting an application;

(B) operating on or after April 1, 2012, if the applicant has filed an application but has not provided the required information under subsection (b) of this section;

(C) operating after cancellation of the applicant's provisional license; or

(D) operating after denial of the applicant's permanent license becomes final.

(2) Additional requirement to specifically establish lawful and fair operation. If an applicant engaged in unlicensed activity under Texas Finance Code, Chapter 393, the applicant must provide specific information to establish that the applicant will command the confidence of the public and that the applicant will warrant the belief that the business will be operated lawfully and fairly. This information must be provided in a sworn written statement signed by an authorized individual for the applicant.

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 21, 2011.

TRD-201104526
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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DIVISION 6. CONSUMER DISCLOSURES AND NOTICES

7 TAC §§83.6001 - 83.6008

The Finance Commission of Texas (commission) proposes new 7 TAC §§83.6001 - 83.6008, concerning the disclosure and notice requirements of credit access businesses.

In general, the purpose of the rules is to implement House Bill (HB) 2592, as enacted by the 82nd Texas Legislature. HB 2592 requires the commission to prescribe a consumer disclosure to be used by credit access businesses that engage in payday or auto title loans. The bill also requires credit access businesses to post certain fee information and notices. The purpose of the proposed rules is to provide the content of the consumer disclosures, related procedural rules, and rules concerning the posting of fee schedules and notices.

As a note of background regarding these rules, credit access businesses will be 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. Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and received written comments from interested stakeholders. Subsequently, the agency held a stakeholders meeting where stakeholders provided verbal testimony and elaborated on their written comments to the ANPR.

Upon review of all the commentary provided, the agency also distributed a proposed consumer disclosure 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 rulemaking 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.

During the development of the consumer disclosures, the agency reviewed and incorporated concepts from the Federal Reserve. See Jeanne M. Hogarth and Ellen A. Merry, "Designing Disclosures to Inform Consumer Financial Decisionmaking: Lessons Learned from Consumer Testing," Federal Reserve Bulletin, Vol. 97, No. 3 (August 2011). As recommended by the Federal Reserve, the agency sought to create disclosures that would have plain but meaningful language, use thoughtful design to guide consumer understanding (e.g., titles, headings, tables, charts), and provide contextual information to show the consumer how the different part of the disclosure relate to the whole form. Additionally, the agency plans to conduct field testing of the forms during the official comment period to further refine the disclosures.

Section 83.6001 outlines the purpose of the new rules in Division 6, which is to provide disclosures and notices for credit access businesses transactions under Texas Finance Code, Chapter 393.

Section 83.6002 provides general definitions to be used throughout the division, including the incorporation of definitions contained in the Texas Finance Code. The section also provides acceptable acronyms and alternate terminology. These definitions will help ensure consistent treatment and application of the defined terms.

Section 83.6003 delineates the manner in which fees schedules and other notices are to be posted as required by Texas Finance

Code, §393.222. In general, the fees and notices must be prominently posted in a conspicuous location whether for in-person sales or business conducted via the Internet. Specific provisions for Internet business include guidelines for direct links to the posted information.

Section 83.6004 outlines the particular types of fees to be included in a credit access business's fee schedule. For three to five examples of the most common loans transacted by the credit access business, the business must list the standard fee rate, the APR, any additional fees charged at inception of the loan, the standard loan term, and any late fees or nonsufficient funds fees, if charged. The examples must be provided for each loan product offered. Additional information may be included on the fee schedule at the option of the business as long as it is not misleading.

Section 83.6005 explains the relationship of federal law to the state requirements. The section describes how any conflicts or inconsistencies will be resolved.

Section 83.6006 prescribes the general format of the consumer disclosures under Texas Finance Code, §393.223, including readable typefaces and the requirement that the forms be provided in a separate document on a single sheet of paper, printed on both sides.

Section 83.6007 provides the required disclosures under Texas Finance Code, §393.222 to be provided to consumers before consummation of a payday or auto title loan. Four disclosures are contained in the figures accompanying subsections (a) - (d) to accommodate the four main products offered by the industry: single payment payday loan, multiple payment payday loan, single payment auto title loan, and multiple payment auto title loan.

Section 83.6008 describes the permissible changes that may be made to each of the disclosures. The disclosures are strict, prescribed forms that may only be changed according to the exclusive list outlined in §83.6008(a). One permissible change involves the ability of the credit access business to add an optional, dated signature block to record the consumer's acknowledgment of receipt of the disclosure. In addition, subsection (b) states that certain information within the disclosures will be updated periodically.

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 also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the changes will be increased protection of consumers, clear and consistent regulations for credit access businesses, and enhanced compliance with the law.

The required consumer disclosures are mandated by Texas Finance Code, §393.223, as contained in HB 2592. There may be some nominal costs to licensees in order to comply with the new statutory provisions, such as expenses related to creating and maintaining these single-page forms (front and back) and employee training to implement the disclosures. Any requirements are imposed by the Texas Legislature through the enactment of HB 2592 and are not a result of the proposed new rules. Thus, aside from the costs required by the new statutory provisions, the agency does not anticipate any additional costs to or effects on persons who are required to comply with the new rules as proposed.

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

Comments on the proposed 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 email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed rules are published in the *Texas Register.* At the conclusion of the 31st day after the proposed rules are published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

Sections 83.6001, 83.6003, and 83.6004 are proposed under Texas Finance Code, §393.222, which authorizes the Finance Commission to adopt rules to necessary to implement Texas Finance Code, §393.222, Posting of Fee Schedule; Notices. Sections 83.6001, 83.6002, and 83.6005 - 83.6008 are proposed under Texas Finance Code, §393.223, which requires the Finance Commission to adopt by rule a consumer disclosure including the statutory information in a form prescribed by the commission.

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

§83.6001. Purpose.

The purpose of the rules contained in this division is to provide disclosures and notices for credit access business transactions under Texas Finance Code, Chapter 393. These rules prescribe the form and content of the disclosures under Texas Finance Code, §393.222 and §393.223.

§83.6002. Definitions.

Words and terms used in this division that are defined in Texas Finance Code, Chapter 393 have the same meanings as defined in Chapter 393. The following words and terms, when used in this division, will have the following meanings, unless the context clearly indicates otherwise.

(1) Credit access business--has the meaning assigned by Texas Finance Code, §393.221(1). Credit access businesses ("CABs") are organized as credit services organizations ("CSOs") under Chapter 393. After providing the full terminology followed by the acronym, a credit access business may refer to itself using the following acronyms: "CAB" or "CSO."

(2) Deferred presentment transaction--has the meaning assigned by Texas Finance Code, §393.221(2). Another name for a "deferred presentment transaction" is a "payday loan," and these terms may be used synonymously.

(3) Motor vehicle title loan--has the meaning assigned by Texas Finance Code, §393.221(3). Another name for a "motor vehicle title loan" is an "auto title loan," and these terms may be used synonymously.

§83.6003. Posting of Fee Schedule and Notices.

(a) In-person sales. A credit access business must prominently display the following in the licensee's office in a conspicuous location visible to the general public:

(1) a schedule of all fees to be charged for services performed by the credit access business in connection with deferred presentment transactions and motor vehicle title loans, as applicable;

(2) the following consumer credit notice: "This business is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, consumer.complaints@occc.state.tx.us, www.occc.state.tx.us."; and

(3) the notice required by Texas Finance Code, §393.222(a)(1).

(b) Internet sales. For business conducted through the Internet, a credit access business must prominently display the information provided in subsection (a) of this section in a conspicuous location on the business's website and on any website where the business advertises to the public.

(1) Direct link for fee schedule. The posting required by subsection (a)(1) of this section may be accessible via a direct link with the subject matter listed substantially similar to the following: "Fee Schedule" or "Schedule of All Fees."

(2) Direct link for consumer credit notice. The posting required by subsection (a)(2) of this section may be accessible via a direct link with the subject matter listed substantially similar to the following: "Consumer Credit Notice," "OCCC Notice," or "Complaints and Inquiries Notice."

§83.6004. Fee Schedule Content.

(a) Required information. For three to five examples of the most common loans transacted by a credit access business, the business must post the following under Texas Finance Code, §393.222(a)(1):

(1) standard fee rate;

(2) annual percentage rate (APR);

(3) any additional fees charged at the inception of the loan;

(4) standard loan term; and

(5) any late fees or nonsufficient funds fees, if charged.

(b) Schedule required for each product. All information required by subsection (a) of this section must be posted for each loan product offered by the credit access business.

(c) Additional information permitted. Additional information may be included on the fee schedule at the option of the credit access business as long as it is not misleading.

§83.6005. Relationship with Federal Law.

In the event of an inconsistency or conflict between the disclosure or notice requirements in these provisions and any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation, or interpretation will control to the extent of the inconsistency.

§83.6006. Format.

(a) Disclosures for credit access business transactions must be printed in an easily readable font and type size. If other state or federal law requires a certain type size for a specific disclosure or notice, the type size specified by the other law should be used.

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

(c) The consumer disclosure for each product offered under Texas Finance Code, Chapter 393 must be provided to consumers as a separate document. Each product disclosure must fit on one standard-size sheet of paper (8 1/2 by 11 inches), printed on both sides.

§83.6007. Consumer Disclosures.

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before consummation of a payday loan to be repaid in one payment is presented in the following figure.
Figure: 7 TAC §83.6007(a)

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before consummation of a payday loan to be repaid in multiple payments is presented in the following figure.
Figure: 7 TAC §83.6007(b)

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before consummation of a auto title loan to be repaid in one payment is presented in the following figure.
Figure: 7 TAC §83.6007(c)

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before consummation of a auto title loan to be repaid in multiple payments is presented in the following figure.
Figure: 7 TAC §83.6007(d)

§83.6008. Permissible Changes.

(a) A credit access business must use the required disclosures under Texas Finance Code, §393.223 as prescribed by Figures: 7 TAC §83.6007(a) - (d) of this title (relating to Consumer Disclosures), but may consider making only limited technical changes, as provided by the following exclusive list:

(1) Filling in any dollar amounts, interest rates, or other dynamic terms specific to the individual consumer's loan;

(2) Substituting the pronouns used to denote the consumer by substituting words such as "you" and "your" for "I" and "my," along with appropriate grammatical changes;

(3) 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 consumer: "ACKNOWLEDGMENT OF RECEIPT: By signing below, I acknowledge only that I have received a copy of this disclosure prior to signing any contract for a payday or auto title loan, this ___ day of _____, 20__."

(4) Combining the Texas Finance Code, §393.223 disclosure with the federal disclosure regarding military borrowers under 10 U.S.C. §987 and 32 C.F.R. Part 232;

(5) Combining the Texas Finance Code, §393.223 disclosure with the federal disclosure requirements for advertising under the Truth in Lending Act, 15 U.S.C. §1632(a), and its implementing regulations, 12 C.F.R. §226.24.

(b) The comparison information regarding alternative forms of debt required by Texas Finance Code, §393.223(a)(1) and the information regarding the typical pattern of repayment required by Texas Finance Code, §393.223(a)(3) will be periodically updated by the OCCC. Updated consumer disclosures required by §83.6007 of this title will be posted on the OCCC website.

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 21, 2011.

TRD-201104527
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 936-7621

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CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES
SUBCHAPTER C. OPERATIONAL REQUIREMENTS

7 TAC §88.304

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

In general, the purpose of the amendments to §88.304 is to remove obsolete language that is no longer necessary.

Section 88.304(c) regarding employee incentives is proposed for deletion. Subsection (c) prohibits credit counselors from receiving commissions or bonuses based on the how many consumers they sign up or how many services they sell. This subsection was enacted during 2007 when for-profit organizations were newly included under the scope of Texas Finance Code, Chapter 394 by the legislature. At that time, abuses had been seen concerning certain sales tactics, as evidenced by a federal study cited in the commission's preamble supporting subsection (c).

It is the agency's belief that the most recent amendments to the Federal Trade Commission's Telemarketing Sales rule address the abuses by prohibiting advance fees. The agency further understands that the type of prohibition in §88.304(c) is not a common regulatory practice for this industry in any other state. Therefore, the agency has determined that the additional regulatory requirement of a sales-commission prohibition is no longer necessary and goes beyond the level of regulation intended by the legislature in light of Senate Bill 141, as enacted by the 82nd Texas Legislature. The commission invites comments from interested parties on the effect of the proposed deletion of the prohibition in §88.304(c).

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

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will implement recent legislative concepts and that there will be enhanced flexibility for debt management services providers in Texas.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There is no anticipated adverse economic effect on small businesses or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

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

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

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.304. Credit Counseling Standards.

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

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

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

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

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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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 (the Commission) proposes amendments to §91.801, concerning Investments in Credit Union Service Organizations.

The Commission withdraws the proposed amendments to §91.801 as previously published in the July 1, 2011, issue of the *Texas Register* (36 TexReg 4062). In its place, the Commission proposes new amendments to the rule to address comments received on the prior proposed amendments. The revised proposal defines investment to include unsecured loans, clarifies the investment limits, requires a thirty-day notice period, and

allows a credit union to go forward with an investment or new activity if the commissioner does not issue a written objection. The revisions also provide that a credit union can appeal if the commissioner objects to the investment or new activity, and make other nonsubstantive changes for greater clarity.

The amendments are withdrawn, modified, and proposed for republication in response to comments received on the earlier proposal, as well as because of the Texas Credit Union Department's general rule review.

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

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be a clearer understanding of credit union investments in credit union service organizations (CUSO). There will be no effect on small or micro businesses as a result of adopting the amended rule. Costs to the credit union system or to individuals for complying with the new provisions of the amended rule if adopted will depend on the size and complexity of CUSO investment activity.

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.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code; and under Texas Finance Code, §124.351 and §124.352, which address permitted investments and investment limits.

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

§91.801. Investments in Credit Union Service Organizations.

(a) Definitions [~~Definition~~]. As used in this section: [~~When used in this section, a~~]

(1) A credit union service organization (CUSO) is an organization whose primary purpose is to strengthen or advance the credit union movement, serve or otherwise assist credit unions or their operations, and provide products or services authorized by [~~subsection (f) of~~] this section to credit unions and their members.

(2) An investment in a CUSO includes the following:

(A) an investment in the stock, bonds, debentures, or investment certificates of the CUSO;

(B) any investment in, or extension of, unsecured credit to the CUSO, including unsecured loans granted by the credit union to the CUSO or to any subsidiary or joint venture of the CUSO; and

(C) loans granted by a third party to the CUSO which are guaranteed in writing by the credit union.

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

(1) their respective business transactions, accounts, and records are not intermingled;

(2) each observes the formalities of its [~~their~~] separate corporate or other organizational procedures;

(3) each is adequately capitalized as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

(4) each is held out to the public as a separate and distinct enterprise;

(5) all transactions between them are at arm's [~~arms~~] length and consistent with sound business practices as to each of them; [~~and~~]

(6) unless the credit union has guaranteed a loan to the CUSO, all borrowings by the CUSO indicate that the credit union is not liable; and[~~.~~]

(7) their respective activities are in compliance with any licensing or registration requirements imposed by applicable federal or state law.

(c) Notice; Authorization; Supplemental Information; Written Objection.

(1) Required Notice. A credit union shall provide at least 30 days' written notice to the commissioner of its intent to make or increase its [~~an initial~~] investment in a CUSO, make a secured [~~an initial~~] loan to a CUSO, [~~make a material change to a CUSO's organizational structure,~~] or engage in additional or substitute [~~perform new~~] activities through [~~in~~] an existing CUSO [~~at least 15 days prior to commencing such activity~~]. The written notice shall [~~must~~] includeas applicable:

(A) a [~~complete~~] description of the organizational and legal structure of the CUSO and the proposed method of capitalizing the organization; [~~credit union's investment in or loan to the CUSO,~~]

(B) a description of the loan, including the purpose, terms, guarantors, and collateral;

(C) a description of the products or services [~~activity~~] to be offered by the CUSO and the customer base it will serve; [~~conducted, and~~]

(D) an explanation of how the CUSO will primarily serve credit unions or members of credit unions, or how the activities of the CUSO could be conducted directly by a credit union or are incidental to the conduct of the business of a credit union; and

(E) a representation [~~and undertaking~~] that the activities [~~activity~~] will be conducted in accordance with applicable law, the requirements of this section, and in a manner that will limit [~~potential~~] exposure of the credit union to no more than the loss of funds invested in, or loaned to, the CUSO. [~~The credit union shall provide any additional information reasonably requested by the commissioner, which may include a written legal opinion that the CUSO has either been established in a manner that will limit the credit union's potential exposure, or that the new activity or change to its organizational structure will not result in the credit union's potential exposure being more than the loss of funds invested in or loaned to the CUSO.~~]

(2) Authorization to Proceed. A credit union may proceed with the proposed transaction or the CUSO may engage in the new activities 30 days after the department receives the required notice, unless the commissioner takes one of the following actions before the expiration of that time period:

(A) the commissioner notifies the credit union that it must file additional information supplementing the required notice. If a credit union is required to file additional information, it may proceed with the proposed transaction or the CUSO may engage in the new activities 30 days after the department receives the requested information,

unless the commissioner issues a written objection before the expiration of that time period; or

(B) the commissioner notifies the credit union of an objection to the proposed transaction or new activity.

(3) Request for Supplemental Information. A credit union shall provide any additional information reasonably requested by the commissioner.

(4) Action on a Notice. The commissioner shall object to a proposed transaction or activity if the commissioner finds that:

(A) there is inadequate capital to support the proposed transaction or activity;

(B) the proposed transaction or activity does not comply with this section;

(C) the credit union's concentrated exposures to the CUSO give rise to safety and soundness issues; or

(D) the credit union has regulatory or operational deficiencies which would materially affect its ability to properly and effectively manage and monitor the risk associated with the CUSO.

(5) Written Objection. If the commissioner determines that an objection should be interposed, the commissioner will notify the credit union in writing of the determination and the actions the credit union must take to proceed with the proposed transaction or activity. A credit union receiving notification of an objection may appeal the commissioner's finding to the commission in the manner provided by Chapter 93, Subchapter C of this title (relating to Appeals of Preliminary Determinations on Applications).

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

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

(1) if any officer, director, committee member, or employee of the [~~such~~] credit union or any member of the immediate family of such persons owns or makes an investment in or has made or makes a loan to the CUSO;

(2) unless the organization is structured as a corporation, limited liability company, registered limited liability partnership, or limited partnership; [~~, and~~]

(3) unless the credit union has obtained [~~a~~] written legal advice [~~opinion~~] that the CUSO has or will be [~~is~~] established in a manner that will limit the credit union's potential exposure to no [~~not~~] more than the amount [~~loss~~] of funds invested in or loaned to the [~~such~~] CUSO. The legal advice shall address factors that have led courts to pierce the corporate veil such as inadequate capitalization, lack of separate corporate identity, common boards of directors and employees, control of one entity over the other, and lack of separate books and records;

(4) [~~(3)~~] if the CUSO engages in any revenue-producing [~~revenue producing~~] activity other than the performance of services for credit unions or members of credit unions, and such activity equals or exceeds one half (1/2) of the CUSO's total revenue;

(5) [~~(4)~~] unless prior to investing in or making a loan to a CUSO the credit union obtains a written agreement which requires the CUSO to follow GAAP, render financial statements to the credit union at least quarterly, and provide the department, or its representatives, complete access to the CUSO's books and records at reasonable times without undue interference with the business affairs of the CUSO;

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

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

(8) [~~(7)~~] if any director of the credit union is an employee of the CUSO, or anticipates becoming an employee of the CUSO upon its formation.

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

(1) operational services including credit and debit card services, cash services, wire transfers, audits, ATM and other EFT services, share draft and check processing and related services, shared service center operations, electronic data processing, development, sale, lease, or servicing of computer hardware and software, alternative methods of financing and related services, other lending related services, and other services or activity, including consulting, related to the routine daily operations of credit unions;

(2) financial services including financial planning and counseling, securities brokerage and dealer activities, estate planning, tax services, insurance services, administering retirement, or deferred compensation and other employee or business benefit plans;

(3) internet-based [~~internet based~~] or related services including sale and delivery of products to credit unions or members of credit unions; or

(4) any other product, service or activity deemed economically beneficial or attractive to credit unions or credit union members if approved, in writing, by the commissioner.

(g) Compensation. A credit union director, senior management employee, or committee member or immediate family member of any such person may not receive any salary, commission, or other income or compensation, either directly or indirectly, from a CUSO affiliated with their credit union, unless received in accordance with a written agreement between the CUSO and the credit union. The agreement shall describe the services to be performed, the rate of compensation (or a description of the method of determining the amount of compensation) and any other provisions deemed desirable by the CUSO and the credit union. The agreement, and any amendments, must be approved by the board of directors of the credit union and the board of directors (or equivalent governing body) of the CUSO prior to any performance of service or payment and annually thereafter. For purposes of this sec-

tion, senior management employee shall include the chief executive officer, any assistant chief executive officers ([~~e.g.~~] vice presidents and above), and the chief financial officer. Immediate[~~; and immediate~~] family shall include a person's spouse or any other person living in the same household.

(h) Examination fee. If the commissioner requests a CUSO [~~is requested by the commissioner~~] to make its books and records available for inspection and examination, the CUSO shall pay a supplemental examination fee as prescribed in §97.113(e) of this title (relating to Supplemental examination fees). The commissioner may waive the supplemental examination fee or reduce the fee [~~as he deems appropriate~~].

(i) Exception [~~Exclusion~~]. A credit union which has a net worth ratio greater than six percent (6%) and is deemed adequately capitalized by its insuring organization may make an investment [~~invest~~] in or make loans to a CUSO that is not limited by the restriction set forth in subsection (e)(4)[~~(3)~~] of this section,[~~;~~] provided the activities of the CUSO are [~~exclusively~~] limited to activities which could be conducted directly by a credit union or are incidental to the conduct of the business of a credit union. Notwithstanding this exception [~~exclusion~~], all other provisions of the act and this chapter applicable to a CUSO apply. In the event a credit union's net worth declines below the required thresholds, the credit union may not renew, extend the maturity of, or restructure an existing loan, advance additional funds, or increase the investment in the CUSO without the prior written approval of the commissioner.

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

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

Filed with the Office of the Secretary of State on October 24, 2011.

TRD-201104538
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 837-9236

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PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 155. PAYOFF STATEMENTS

SUBCHAPTER A. REGISTRATION

7 TAC §§155.1 - 155.3

The Finance Commission of Texas (the Commission) on behalf of the Commission, and the three Finance Agencies, the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, the Finance Agencies) proposes new 7 TAC Chapter 155, §§155.1 - 155.3, concerning Payoff Statements. The new rules are proposed to implement new statutory provisions.

House Bill 558, 82nd Texas Legislature, 2011 added §343.106 to the Finance Code. This new statute requires the Commission to adopt rules governing requests from title insurance companies for payoff information from mortgage servicers related to home loans, including rules prescribing a standard payoff statement form. New Chapter 155 contains rules that fulfill this statutory requirement.

Proposed new §155.1, concerning Definitions, provides a definition of "home loans" needed to correctly interpret Chapter 155.

Proposed new §155.2, concerning Payoff Statement Form, sets out the requirements of the prescribed standard form to be used by a mortgage servicer when providing a payoff statement at a title company's request on a home loan. Proposed subsection (a) meets the statutory requirements of Finance Code §343.106(d). Proposed subsection (b) is optional prescribed language that a servicer may use if applicable to a particular loan. Pursuant to House Bill 558, a servicer will not be required to use the form before the 90th day after the Commission adopts the rules.

The proposed new §155.3, concerning Time of Delivery of Payoff Statement, sets forth the number of business days a servicer has to deliver the payoff statement after a payoff request is received.

Douglas B. Foster and the Executive Directors of the Texas Finance Commission, the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending and the Office of Consumer Credit Commissioner, has each determined that for the first five-year period the proposed sections are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these sections.

Mr. Foster has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of the proposed sections will be that the Commission and the Finance Agencies will have rules implementing the provisions of House Bill 558 passed in the 82nd Legislature. There will be no effect on individuals required to comply with the sections as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed new sections may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to sml-info@sml.texas.gov within 30 days of publication in the *Texas Register.*

The new sections are proposed under Texas Finance Code §343.106, which requires the Commission to adopt rules governing requests by title insurance companies for payoff information form mortgage servicers related to home loans and the provision of that information, including rules prescribing a standard payoff statement form that must be used by mortgage servicers to provide those payoff statements, and §§11.301, 11.302, and 11.304, which authorize the Commission to adopt rules relating to state banks, state savings banks and consumer credit laws.

Texas Finance Code, Chapter 343 is affected by the proposed new sections.

§155.1. Definitions.

"Home loans" has the same meaning as that found in Texas Finance Code §343.001.

§155.2. Payoff Statement Form.

(a) When requested by a title insurance company, a mortgage servicer shall provide a payoff statement related to a home loan. The payoff statement must comply with all applicable federal and state laws relating to payoff statements, and contain the following:

(1) The proposed closing date for the sale or other transaction;

(2) The payoff amount that is valid through the proposed closing date; and

(3) Sufficient information to identify the loan for which the payoff information is provided.

(b) If applicable, the payoff statement may contain:

(1) Adjustable rate mortgage information;

(2) Per diem amount;

(3) Late charge information;

(4) Escrow disbursement information;

(5) A statement regarding which party is responsible for the release of lien; and

(6) Other information necessary to provide a clear and concise payoff statement.

Figure: 7 TAC §155.2(b)(6)

§155.3. Time of Delivery of Payoff Statement.

A mortgage servicer shall deliver a payoff statement required under §155.2 of this title (relating to Payoff Statement Form) to the title company by the eighth business day after the date the request is received unless federal law requires a shorter response time.

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 24, 2011.

TRD-201104546

Caroline C. Jones

General Counsel, Texas Department of Savings and Mortgage Lending

Joint Financial Regulatory Agencies

Earliest possible date of adoption: December 4, 2011

For further information, please call: (512) 475-1352

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS

SUBCHAPTER F. RECORDS STORAGE STANDARDS

13 TAC §§7.161 - 7.166

The Texas State Library and Archives Commission proposes new 13 TAC §§7.161 - 7.166, concerning storage of local government records. The new rules are proposed to establish minimum storage requirements for permanent records and court records, and to establish recommended and optimal storage conditions for all local government records.

Sarah Jacobson, Manager, Records Management Assistance, has determined that for each year of the first five years the rules are in effect, there may be fiscal implications for state or local governments as a result of administering or enforcing the rules. The amount of any fiscal implications cannot be determined. Ms. Jacobson does not anticipate either a loss of, or an increase in, revenue to state or local governments as a result of the proposed rules.

Ms. Jacobson has also determined that for each year of the first five years the rules are in effect the public benefit will be that the new rules will help to provide better management of, and public access to, public records by improving storage conditions for permanent records.

There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the rules as proposed.

Written comments on the proposed rules may be submitted to Michael Reagor, Government Information Analyst, Box 12927, Austin, Texas 78711; by fax to (512) 936-2306; or by email to michael.reagor@tsl.state.tx.us.

The new rules are proposed under Government Code §441.025 which directs the agency to adopt rules for the storage of court documents filed with, otherwise presented to, or produced by a court in this state before January 1, 1951; and Local Government Code §203.048 which requires the commission to adopt rules for the proper care and storage of local government records of permanent value.

The proposed rules affect Government Code §441.025 and Local Government Code §203.048.

§7.161. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this subchapter shall have the meanings defined in the Local Government Code, Chapter 201.

(1) Court record--Any instrument, document, paper, or other record filed with, otherwise presented to, or produced by a court in this state before January 1, 1951.

(2) Local government record--Any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business, except for materials excluded under the Local Government Code, Chapter 201.

(3) Permanent record--Any local government record for which the retention period on a records retention schedule issued by the commission is given as permanent or which has been identified by the records management officer as possessing permanent historical value.

(4) Records management officer--The person identified under the Local Government Code, §203.001 or designated under the Local Government Code, §203.025 as the records management officer.

(5) Retention period--The minimum time that a local government record must be retained as established on a records retention schedule accepted for filing by the Texas State Library and Archives Commission pursuant to Local Government Code, §203.043.

§7.162. General.

(a) This subchapter establishes minimum, recommended, and optimal storage condition requirements for court records and permanent records held by local governments.

(b) Unless otherwise noted, the requirements of this subchapter apply only to paper records. Storage requirements for local government records stored micrographically or electronically are adopted under §7.26 and §7.76 of this title (relating to Storage of Original Microfilm and Maintenance of Electronic Records Storage Media) respectively.

§7.163. Minimum Storage Conditions for Non-Permanent Court Records.

(a) Court records with retention periods less than permanent must be stored under conditions that meet the requirements of this section. Court records with permanent retention, e.g. case papers, must be stored under conditions that meet the requirements of §7.164 of this title (relating to Minimum Storage Conditions for Permanent Records).

(b) Records must be stored in a building or storage area that complies with the following:

(1) offers protection from fire, water, steam, structural collapse, unauthorized access, theft, and other similar hazards;

(2) has an operational fire detection system; and

(3) has an operational fire suppression system or an adequate supply of fire extinguishers.

§7.164. Minimum Storage Conditions for Permanent Records.

(a) Permanent records must be stored under conditions that meet the requirements of this section.

(b) Records must be stored in a building or storage area that complies with the following:

(1) offers protection from fire, water, steam, structural collapse, unauthorized access, and other similar hazards;

(2) has an operational fire detection system;

(3) has an operational fire suppression system;

(4) has a maximum temperature of 70 degrees Fahrenheit and a constant relative humidity of 45% with a maximum variance of plus/minus 5% relative humidity in a 24-hour period; and

(5) is well-lighted, but does not expose records to direct sunlight.

(c) Records must be stored at least 4 inches off the floor.

(d) Records may not be stored in the basement of a building located in a 100 year flood plain area.

§7.165. Recommended Storage Conditions for All Records

(a) Whenever possible, records should be stored under conditions that meet the recommendations of this section.

(b) Records should be stored in a building or storage area that complies with the following:

(1) offers protection from fire, water, steam, structural collapse, unauthorized access, theft, and other similar hazards;

(2) has an operational fire detection system;

(3) has an operational fire suppression system;

(4) has a maximum temperature of 70 degrees Fahrenheit and a constant relative humidity of 45% with a maximum variance of plus/minus 5% relative humidity in a 24-hour period;

(5) is well-lighted, but does not expose records to direct sunlight;

(6) has a pest management program;

(7) is sited a minimum of five feet above and 100 feet from any 100 year flood plain areas, or be protected by an appropriate flood wall that conforms to local or regional building codes; and

(8) has appropriate shelving.

(A) Shelving should be constructed of metal or other non-porous material.

(B) The lowest shelf should be at least 4 inches from the floor.

(C) Shelving should be arranged such that records are at least 4 inches from exterior walls.

(c) Records should be covered or housed in boxes to protect them from deterioration.

§7.166. Optimal Storage Conditions for All Records.

(a) If resources permit, local governments should strive to store records under conditions that meet the recommendations of this section.

(b) Records should be stored in a building or storage area that complies with the following:

(1) offers protection from fire, water, steam, structural collapse, unauthorized access, theft, and other similar hazards;

(2) has an operational fire detection system;

(3) has an operational fire suppression system;

(4) has adequate environmental controls;

(A) A maximum temperature of 70 degrees Fahrenheit and a constant relative humidity of 45% with a maximum variance of plus/minus 5% relative humidity in a 24-hour period should be maintained in the storage area.

(B) Daily temperature/humidity checks should be conducted.

(C) Positive atmospheric pressure should be maintained within the storage area.

(5) is well-lighted, but does not expose records to direct sunlight;

(6) has a pest management program;

(7) is sited a minimum of five feet above and 100 feet from any 100 year flood plain areas, or be protected by an appropriate flood wall that conforms to local or regional building codes; and

(8) has appropriate shelving.

(A) Shelving should be constructed of fire retardant metal with a baked enamel or powder coat finish.

(B) The lowest shelf should be at least 6 inches from the floor.

(C) Shelving should be arranged such that records are not stored near exterior walls and are at least 6 inches from interior walls.

(c) Records should be covered or housed in acid-neutral boxes to protect them from deterioration.

(d) Ultraviolet filtering shields should be affixed to any fluorescent lights or windows.

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 21, 2011.

TRD-201104535
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 463-5459

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §§402.703, 402.704, 402.715

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

The Texas Lottery Commission (Commission) proposes the repeals of 16 TAC §402.703 (Books and Records Inspection), §402.704 (Tax Review Inspection), and §402.715 (Compliance Audit). The purpose of the proposed repeals is to eliminate these provisions from the Charitable Bingo Administrative Rules as the reasons for them no longer exist.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed repeals will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed repeals. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the repeals as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeals will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed repeals will be in effect, the public benefit anticipated is to eliminate unnecessary provisions within the Charitable Bingo Administrative Rules.

The Commission requests comments on the proposed repeals from any interested person. Comments may be submitted to Sandra Joseph, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. The Commission will hold a public hearing on this proposal at 10:00 a.m. on November 16, 2011, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The repeals are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Texas Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed repeals implement Texas Occupations Code, Chapter 2001.

§402.703. Books and Records Inspection.

§402.704. Tax Review Inspection.

§402.715. Compliance Audit.

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

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104460
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 344-5012

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CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.401

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §403.401, relating to Use of Commission Motor Vehicles. The purpose of the proposed amendments is to delete the existing subsection (b) because the underlying statute was repealed in the 82nd Legislature, Regular Session, and to add a new subsection (b) to reflect a statutory requirement not previously reflected in the agency rules.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Mike Fernandez, Director of Administration, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated will be that the rule will conform to current law.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Pete Wassdorf, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§403.401. Use of Commission Motor Vehicles.

(a) A motor vehicle owned by the Commission is state property and may be used for official Commission business only. A Commission motor vehicle may not be assigned to a specific employee or agency head, but must be assigned to the Commission's motor pool and be available for checkout. All Commission motor vehicles will be housed at the Commission's Austin headquarters or at the Commission's business resumption warehouse.

(b) The agency may assign a vehicle to an individual, administrative, or executive employee on a regular or everyday basis, only if, the agency makes a written documented finding that the assignment is critical to the needs and mission of the agency.

~~[(b) An employee operating a Commission motor vehicle must enter the following information in the Commission's vehicle logbook:]~~

~~[(1) beginning and ending mileage;]~~

~~[(2) beginning and ending date(s);]~~

~~[(3) purpose of the use of the vehicle; and]~~

~~[(4) number of passengers being transported in the Commission's motor vehicle.]~~

~~[(c) An employee operating a commission motor vehicle must sign the mileage log book and submit all receipts relating to fuel and maintenance costs to the commission vehicle fleet manager.]~~

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

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104470
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 344-5275

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

SUBCHAPTER O. UNIFORM RECRUITMENT AND RETENTION STRATEGY

19 TAC §§4.240 - 4.245

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

The Texas Higher Education Coordinating Board (Coordinating Board) proposes to repeal §§4.240 - 4.245, concerning the Uniform Recruitment and Retention Strategy. Senate Bill 5, passed by the 82nd Legislature, repealed §61.086 (Uniform Recruitment and Retention Strategy) of the Texas Education Code (TEC), which required institutions to file a report on the recruitment and retention strategies that have been developed or implemented by the institution to recruit and retain students from underrepresented groups and authorized the Coordinating Board to develop guidelines for the report. The repeal of Texas Education Code §61.086 is required in order to be in compliance with Senate Bill 5.

Dr. Judy Loredo, Assistant Commissioner for P-16 Initiatives, has determined that for the first five years the repeal is in effect there will be no fiscal implications for state or local governments as a result of repealing the subchapter.

Dr. Loredo has also determined that the public benefit anticipated as a result of administering the repeal will be the elimination of a redundant reporting requirement. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal. There is no anticipated impact on local employment.

Comments on the proposed repeal may be submitted by mail to Judy Loredo, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at judy.loredo@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under Texas Education Code, §§130.0012, 61.002(a) and (b), 61.027, and §61.051(d) and (e), which authorize Coordinating Board to adopt rules Applying to Public Universities and Health-Related Institutions of Higher Education

The repeal affects Texas Education Code, Chapter 61, Subchapter A, §61.086.

§4.240. Purpose.

§4.241. Authority.

§4.242. Definitions.

§4.243. Evaluation.

§4.244. Reporting.

§4.245. Noncompliance; Sanctions.

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

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104462
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 26, 2012
For further information, please call: (512) 427-6114

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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER J. TEXAS FUND FOR GEOGRAPHY EDUCATION

19 TAC §13.187

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

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §13.187 concerning Reporting that relates to the Texas Fund for Geography Education. Senate Bill 5, passed by the 82nd Legislature, repealed Texas Education Code (TEC) §61.968, which required the board to report to the governor and legislature each even-numbered year the value of the Texas Fund for Geography Education, the membership of the advisory committee, a summary of each project supported by a grant during the preceding state fiscal biennium and other information the Coordinating Board deemed appropriate. The repeal of Texas Education Code §61.9685 requires the Coordinating Board to repeal this section in order to be in compliance with Senate Bill 5.

Dr. Judith Loredo, Assistant Commissioner for P-16 Initiatives, has determined that for the first five years the repeal of the section is in effect there will be no fiscal implications for state or local governments as a result of the repeal.

Dr. Loredo has also determined that the public benefit anticipated as a result of administering the repeal of the section will be a cost-saving in terms of staff time in preparing the report. There is no effect on small businesses. There are no anticipated economic costs to persons or impacts on local employment.

Comments on the proposed repeal may be submitted by mail to Dr. Judith Loredo, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at judith.loredo@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under Texas Education Code §§130.0012, 61.002(a) and (b), and 61.051(d) and (e), which authorize Coordinating Board to adopt rules Applying to Public Universities and Health-Related Institutions of Higher Education in Texas.

The repeal affects Texas Education Code, Chapter 61, Subchapter BB, §61.9685.

§13.187. Reporting.

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

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104463
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 26, 2012
For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER B. DETERMINATION OF RESIDENT STATUS

19 TAC §21.22

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §21.22, concerning Definitions.

Specifically, the amendment to this section adds a definition for "independent institution."

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has estimated that for each year of the first five years the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment as proposed.

Mr. Weaver has also determined that for each year of the first five years the amendment is in effect, the public benefits anticipated as a result of administering the amendment will be a clear understanding of the term "independent institution." There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

The amendment affects Texas Education Code, §§54.0501 - 54.075.

§21.22. Definitions.

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

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

(14) Independent institution--As defined in Texas Education Code, §61.003(15).

(15) [~~(14)~~] Institution or institution of higher education--Any public technical institute, public junior college, public senior col-

lege or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(16) [~~(15)~~] Legal guardian--A person who is appointed guardian under the Texas Probate Code, Chapter 693, or a temporary or successor guardian.

(17) [~~(16)~~] Maintain domicile--To physically reside in Texas such that the person intends to always return to the state after a temporary absence. The maintenance of domicile is not interrupted by a temporary absence from the state, as provided in paragraph (30) [~~(29)~~] of this section.

(18) [~~(17)~~] Managing conservator--A parent, a competent adult, an authorized agency, or a licensed child-placing agency appointed by court order issued under the Texas Family Code, Title 5.

(19) [~~(18)~~] Nonresident tuition--The amount of tuition paid by a person who does not qualify as a Texas resident under this subchapter unless such person qualifies for a waiver program under Subchapter SS [~~X~~] of this chapter (relating to Waiver Programs for Certain Nonresident Persons).

(20) [~~(19)~~] Nontraditional secondary education--A course of study at the secondary school level in a nonaccredited private school setting, including a home school.

(21) [~~(20)~~] Parent--A natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term would not otherwise include a step-parent.

(22) [~~(21)~~] Possessory conservator--A natural or adoptive parent appointed by court order issued under the Texas Family Code, Title 5.

(23) [~~(22)~~] Private high school--A private or parochial school in Texas.

(24) [~~(23)~~] Public technical institute or college--The Lamar Institute of Technology or any campus of the Texas State Technical College System.

(25) [~~(24)~~] Regular semester--A fall or spring semester, typically consisting of 16 weeks.

(26) [~~(25)~~] Residence--A person's home or other dwelling place.

(27) [~~(26)~~] Residence Determination Official--The primary individual at each institution who is responsible for the accurate application of state statutes and rules to individual student cases.

(28) [~~(27)~~] Resident tuition--The amount of tuition paid by a person who qualifies as a Texas resident under this subchapter.

(29) [~~(28)~~] Residential real property--Real property on which a dwelling is located.

(30) [~~(29)~~] Temporary absence--Absence from the State of Texas by a person who has established domicile in the state, with the intention to return, generally for a period of less than five years. For example, the temporary absence of a person or a dependent's parent from the state for the purpose of service in the U.S. Armed Forces, U.S. Public Health Service, U.S. Department of Defense, U.S. Department of State, as a result of an employment assignment, or for educational purposes, shall not affect a person's ability to continue to claim that Texas is his or her domicile.

(31) [~~(30)~~] United States Citizenship and Immigration Services (USCIS)--The bureau of the U.S. Department of Homeland Security that is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

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 24, 2011.

TRD-201104574
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 26, 2012
For further information, please call: (512) 427-6114

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19 TAC §21.30

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §21.30, concerning Special Procedures for Documenting Compliance.

Specifically, the new section addresses concerns that have been expressed about the obligation of institutions towards students who are not U.S. Citizens or Permanent Residents, but who have been classified as residents for higher education purposes in accordance with Texas Education Code, §54.052(a)(3). Such students must provide their institutions a signed copy of an affidavit, by which they pledge to apply for permanent resident status as soon as they are able to do so. Current federal legislation makes most of the students ineligible to apply. The proposed language requires institutions to retain the signed affidavits permanently and to instruct students when they are admitted, annually while they are enrolled, and upon graduation of their obligation to apply for permanent resident status. It also calls for the institutions to refer students to the proper federal agency for instructions on how to apply for such status.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has estimated that for each year of the first five years the new section is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the new section as proposed.

Mr. Weaver has also determined that for each year of the first five years the new section is in effect, the public benefits anticipated as a result of administering the new section will be to ensure students do not forget their pledge to apply for Permanent Resident Status and therefore fulfill their obligation to the state. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

The new section affects Texas Education Code, §54.053(3).

§21.30. Special Procedures for Documenting Compliance.

(a) Signed affidavits, acquired by public or independent institutions of higher education in keeping with §21.25(a)(1)(B) of this chapter (relating to Information Required to Initially Establish Resident Status), must be retained permanently by the institution or until the students (current and former) provide proof that they have applied for Permanent Resident status.

(b) A public or independent institution of higher education that classifies a person who is not a Citizen or Permanent Resident of the United States as a resident under §21.24(a)(1) of this chapter (relating to Determination of Resident Status) shall:

(1) instruct such students upon admission, annually while the students are enrolled, and upon graduation of their obligation to apply for Permanent Resident status as soon as eligible to do so; and

(2) refer students to the appropriate federal agency for instructions on how to achieve such status.

(c) The provisions of this section apply to all persons who are not Citizens or Permanent Residents of the United States and who are enrolled and classified as residents under §21.24(a)(1) of this chapter by a public or independent institution of higher education during any part of the 2011-2012 academic year or later.

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 24, 2011.

TRD-201104573
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 26, 2012
For further information, please call: (512) 427-6114

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SUBCHAPTER X. WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.730 - 21.752

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

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.730 - 21.752, concerning Waiver Programs for Certain Nonresident Persons.

Specifically, Senate Bill 32, 82nd Texas Legislature, transferred the waiver programs located in Texas Education Code, Chapter 54, Subchapter B to Texas Education Code, Chapter 54, Subchapter D. This transfer moved the programs out of the purview of the Coordinating Board's general rulemaking authority for programs in Subchapter B, as stated in Texas Education Code, §54.075. New sections are simultaneously being proposed along with this repeal for the two programs for which the Coordinating Board is assigned specific rulemaking authority by statute.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal as proposed.

Mr. Weaver has also determined that each year of the first five years the repeal is in effect, the public benefit anticipated as a result of this change will be that the Coordinating Board's rulemaking authority will be in line with statute. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed because Texas Education Code, §54.075 which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, Chapter 54, Subchapter B, is no longer applicable to these sections.

The repeal affects Texas Education Code, §§51.930, 54.058, 54.059, 54.060, 54.063, 54.064, 54.066, 54.070, 54.0601, 54.065, 54.069, 54.073, 54.074, 54.207, 54.621, 65.45, and 160.07.

§21.730. Authority and Purpose.
§21.731. Definitions.
§21.732. Effective Date of this Subchapter.
§21.733. General Provisions that Apply to All Waivers.
§21.734. Academic Common Market
§21.735. Center for Technology Development, Management, and Transfer.
§21.736. Citizens of Mexico with Financial Need.
§21.737. Competitive Scholarships.
§21.738. Economic Development and Diversification Program.
§21.739. Foreign Service Officers.
§21.740. General Academic Teaching Institutions Located within 100 Miles of the Texas Border.
§21.741. Good Neighbor Scholarship.
§21.742. Inmates of the Texas Department of Criminal Justice.
§21.743. Military and their Families.
§21.744. North Atlantic Treaty Organization (NATO) Forces, their Spouses and Children.
§21.745. Olympic Athletes.
§21.746. Registered Nurses Enrolled in Postgraduate Nursing Degree Programs.
§21.747. Scholarship Recipients Enrolled in Biological Research.

§21.748. States Bordering Texas.

§21.749. Teachers, Professors, their Spouses and Dependents.

§21.750. Teaching Assistants and Research Assistants, their Spouses and Dependents.

§21.751. Texas Guaranteed Tuition Plan (formerly the Texas Tomorrow Fund) Beneficiaries.

§21.752. Exchange Programs.

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 24, 2011.

TRD-201104575
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 26, 2012
For further information, please call: (512) 427-6114

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SUBCHAPTER SS. WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.2260 - 21.2264

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§21.2260 - 21.2264, concerning Waiver Programs for Certain Nonresident Persons.

Specifically, Senate Bill 32, 82nd Texas Legislature, transferred the waiver programs located in Texas Education Code, Chapter 54, Subchapter B to Chapter 54, Subchapter D. This transfer moved the programs out of the purview of the Coordinating Board's general rulemaking authority for programs in Subchapter B, as stated in Texas Education Code, §54.075. The proposed new sections reflect definitions for waivers, authorized in Texas Education Code §54.0015 and rules for two programs for which the Coordinating Board is assigned specific rulemaking authority by statute. These include the competitive scholarship waiver committee authorized by Texas Education Code, §54.064(a) (which will be recodified to Texas Education Code, §54.213, effective on January 1, 2012), and the waiver program for general academic teaching institutions located within 100 miles of the Texas border with another state, authorized by Texas Education Code, §54.0601.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has estimated that for each year of the first five years the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections as proposed.

Mr. Weaver has also determined that for each year of the first five years the new sections are in effect, the public benefits anticipated as a result of administering the new sections will be guidance to institutions and students regarding these waivers. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §54.0015, which provides the Coordinating Board with the authority to adopt definitions for exemptions and waivers authorized in Texas Education Code, Chapter 54, §54.064(a) (to be recodified as Texas Education Code, §54.213), which provides the Coordinating Board with the authority to develop criteria to select scholarship recipients, and Chapter 54, §54.0601, which provides the Coordinating Board with the authority to set a lowered tuition rate for certain nonresident students under conditions set in that statute.

The new sections affect Texas Education Code, Chapter 54.

§21.2260. Purpose.
The purpose of this subchapter is to provide definitions related to waivers in keeping with Texas Education Code, §54.0015, and to fulfill duties assigned to the Coordinating Board with respect to the state's waiver programs.

§21.2261. Definitions.
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Census date--The date in an academic term for which an institution is required to certify a person's enrollment in the institution for the purposes of determining formula funding for the institution.

(2) Child--Unless otherwise indicated, a person who is the biological or adopted child, or who is claimed as a dependent on a federal income tax return filed for the preceding year or who will be claimed as a dependent on a federal income tax return for the current year.

(3) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Texas Higher Education Coordinating Board.

(4) Coordinating Board or Board--The Texas Higher Education Coordinating Board.

(5) Dependent--A person who:

(A) is less than 18 years of age and has not been emancipated by marriage or court order; or

(B) is eligible to be claimed as a dependent of a parent of the person for purposes of determining the parent's income tax liability under the Internal Revenue Code of 1986.

(6) Financial need--An economic situation that exists for a student when the cost of attendance at an institution of higher education is greater than the resources the family has available for paying for college. In determining a student's financial need an institution must compare the financial resources available to the student to the institution's cost of attendance.

(7) General Academic Teaching Institution--As the term is defined in Texas Education Code, §61.003.

(8) Institution or institution of higher education--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(9) Nonresident tuition--The amount of tuition paid by a person who does not qualify as a Texas resident under Texas Education Code, Chapter 54, Subchapter B.

(10) Parent--A natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term would not otherwise include a step-parent.

(11) Public technical institute or college--The Lamar Institute of Technology or any campus of the Texas State Technical College System.

(12) Remain Continuously Enrolled--Continue to enroll for the fall and spring terms of an academic year. Summer enrollment is not a requirement.

(13) Resident tuition--The amount of tuition paid by a person who qualifies as a Texas resident under Texas Education Code, Chapter 54, Subchapter B.

(14) Waiver--A program authorized by Texas statutes that allows a nonresident student to enroll in an institution of higher education and pay a reduced amount of nonresident tuition.

§21.2262. Effective Date of this Subchapter.

Each institution shall apply this subchapter beginning with tuition and fees paid for the Fall Semester, 2012.

§21.2263. Competitive Scholarships.

(a) Authorizing Statute. The waiver program for scholarship students is authorized through Texas Education Code, §54.213.

(b) Eligible Persons. A nonresident person who receives a competitive scholarship from a Texas public institution of higher education under the following conditions may receive a waiver under the provisions of this section.

(1) The competitive scholarship must meet the following requirements:

(A) total at least $1,000 for the period of time covered by the scholarship, not to exceed 12 months;

(B) be awarded by a scholarship committee authorized in writing by the institution's administration to grant scholarships that permit this waiver of nonresident tuition;

(C) be awarded according to criteria published in the institution's paper or electronic catalog, available to the public in advance of any application deadline;

(D) be awarded under circumstances that cause both the funds and the selection process to be under the control of the institution; and

(E) permit awards to both resident and nonresident persons.

(2) The waiver of nonresident tuition under this provision shall only apply to the semester or semesters for which the enabling scholarship is awarded.

(3) If the scholarship is terminated for any reason prior to the end of the semester or semesters for which it was initially awarded, the person shall pay nonresident tuition for any semester following the termination of the scholarship.

(4) The total number of persons receiving a waiver of nonresident tuition in a given semester under this provision shall not exceed 5 percent of the total number of students enrolled in the institution in the same semester in the prior year.

(c) Eligible Institutions. A waiver received under this section only applies to tuition paid to the institution that awarded the enabling scholarship unless the person is simultaneously enrolled in two or more public institutions of higher education under a program offered jointly by the institutions under a partnership agreement, in which case the person is entitled to a waiver also at the second institution.

(d) Adjusted Tuition Rate. An eligible person shall pay the resident tuition rate.

§21.2264. General Academic Teaching Institutions Located within 100 Miles of the Texas Border.

(a) Authorizing Statute. The waiver program for individuals attending certain institutions located within 100 miles of the Texas border is authorized through Texas Education Code, §54.0601, "Nonresident Tuition Rates at Certain Institutions."

(b) Eligible Persons. Any nonresident person attending an eligible institution may receive a waiver under this section.

(c) Eligible Institutions. An eligible person may use this waiver at any general academic teaching institution located within 100 miles of the boundary of Texas with another state if the governing board of the institution approves the tuition rate as being in the best interest of the institution and the Commissioner finds that such a rate will not cause unreasonable harm to any other institution

(d) Adjusted Tuition Rate. An eligible person shall pay a tuition rate set by the institution, but not less than $30 more than the resident tuition rate.

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 24, 2011.

TRD-201104576
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 26, 2012
For further information, please call: (512) 427-6114

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 36. SUSPENSION OR ADJUSTMENT OF WATER RIGHTS DURING DROUGHT OR EMERGENCY WATER SHORTAGE

30 TAC §§36.1 - 36.8

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §§36.1 - 36.8.

Background and Summary of the Factual Basis for the Proposed Rules

In 2011, the 82nd Legislature passed House Bill (HB) 2694, relating to changes to the TCEQ's statutory authority and continuation of the agency for 12 years. HB 2694, §5.03 added §11.053 to the Texas Water Code (TWC). That section states that the executive director may temporarily suspend or adjust water rights during times of drought or other emergency shortage of water.

The commission must adopt rules to implement this section, including rules defining a drought or other emergency shortage of water, and specifying the conditions under which the executive director may issue an order under this section and terms of an order issued under this section, including the maximum duration of a temporary suspension or adjustment under this section. The rules must also set out procedures for notice of, and opportunity for a hearing on, and the appeal to the commission of an order issued under this section.

Section by Section Discussion

The commission proposes new §36.1, Applicability, to explain the scope of the rulemaking. Subsection (a) provides that the chapter applies to water rights except as provided in subsections (b) and (c). Subsection (b) provides that the rulemaking is not intended to apply to a watermaster area, and subsection (c) provides that it is not intended to require suspension or adjustment of a domestic and livestock use right or an exempt right under TWC, §§11.142(b) - 11.1422. The watermaster areas are not included under the applicability of this rule because the watermaster's authority is set out elsewhere in TWC, Chapter 11. The rights in subsection (c) are exempt from permitting but are not superior riparian rights under TWC, Chapter 11, and are therefore not covered by the rule. Domestic and livestock rights that are superior riparian rights under TWC, §11.303(l) or §11.142(a) cannot be curtailed or suspended under this rulemaking, but may be protected (See the definition of "senior water right" under §36.2(4)).

Section 36.2, Definitions, defines eight terms as used in Chapter 36. Paragraph (1) states that an "adjustment" is a partial curtailment of one or more water rights or an adjustment in the timing of diversions under a water right. The executive director may issue an order for adjustment, which would be partial curtailment, under the statute. There will be instances when a water right does not need to be completely suspended, and timing the diversions has been a useful tool in water right management during low flows.

Paragraph (2) is the definition of "drought." There are over 150 different definitions of drought used by academics and water management professionals. For a "drought" under this chapter, the commission proposes to use the measure of moderate drought intensity developed by the National Drought Mitigation Center; streamflows at United States Geological Survey gaging stations that are below the 33rd percentile of the period of record; or demand for surface water exceeds the available supply. The last definition relates to the effects of low precipitation on water supply *(http://drought.unl.edu/Drought Basics/TypesofDrought.aspx).* The intent is to have a "bright line" test that indicates when a shortage of precipitation has resulted in a shortage of water available for all existing water rights. A definition of "drought" is required by TWC, §11.053. This definition is based on scientific data but also includes times of drought that are not as extreme, but are still causing shortages that could adversely impact senior water rights.

Paragraph (3) is a definition of "emergency shortage of water." This is defined as the inability of a senior water right to take surface water under circumstances posing a hazard to public health, public safety, and conditions affecting hydraulic systems which impair or interfere with conveyance or delivery of water for authorized purposes. A definition of "emergency shortage of water" is required by TWC, §11.053. The commission believes the definition of "emergency shortage of water" was intended to be different than the definition of "drought" and intends to include emergency conditions that are not necessarily the result of drought.

Paragraph (4) defines "senior water right" to include senior priority permits and certificates of adjudication, and superior domestic and livestock riparian rights. This paragraph is necessary to describe what water rights the executive director's order will protect.

Paragraph (5) defines a "Suspension or Adjustment Order," or order, that is issued by the executive director under this chapter. This definition is necessary to provide a reference to the order for clarity.

Paragraph (6) provides that "suspension" means the complete curtailment of either the entire water right or the right to use water of a certain type of use or based on a certain priority date in the water rights. This definition is necessary to indicate what an order under this chapter may require.

Paragraph (7) provides a definition of "water right" to clarify that only permits, certificates of adjudication, and riparian domestic and livestock users are included in the term. The term will also mean "water right holder" where the context requires. This definition is necessary to clarify what is included in the chapter.

Section 36.3, Executive Director Action, specifies the action that the executive director may take during droughts or other emergency shortages of water, and that it must be made "in accordance with the priority doctrine in the Texas Water Code" for both drought and emergency shortage of water. It also provides the scope of the impact of the order. As previously stated, the priority doctrine is still the governing principle in TWC, §11.053.

Section 36.4, Suspension or Adjustment Order, provides that the executive director may act under §36.3 by issuing a Suspension or Adjustment Order. This section states the language in TWC, §11.053.

Section 36.5, Conditions for Issuance of Suspension or Adjustment Order, provides what conditions must be met for the executive director to issue an order, and what the executive director shall consider in deciding which water rights the order will protect, suspend, or adjust. The executive director must consider certain factors in determining whether to issue an order in times of drought and in times of emergency shortage of water. These factors include need for the water, ability to beneficially use any water that can be obtained from a suspension or adjustment, and whether a suspension or adjustment would result in any relief. Additionally, the considerations specified in TWC, §11.053(b) are set out. This section is required by TWC, §11.053 and provides the basis for a Suspension or Adjustment Order.

Section 36.6, Contents of a Suspension or Adjustment Order, requires the order to contain the specific water rights subject to the Suspension or Adjustment Order, the location of the suspension or adjustment, an explanation of the reasons for the suspension or adjustment, and the duration of the Suspension or Adjustment Order. The executive director recognizes the possible need for several extensions of the Suspension or Adjustment Order during extended times of low flows. The section also allows the executive director to modify the order based on changed conditions and the requirements of the chapter. This section is required by TWC, §11.053.

Section 36.7, Implementation of Water Conservation Plans and Drought Contingency Plans, describes what actions the executive director may take when considering the efforts of the affected water rights holders to develop and implement the water

conservation plans and drought contingency plans established by TWC, Chapter 11, as required in §36.5(c)(4). The executive director shall consider whether the plans were approved by the TCEQ and the Texas Water Development Board, and whether they were implemented, and if the executive director does not adjust or suspend a junior water right for public welfare reasons he may require implementation of higher levels of the plans if required to maximize beneficial use, avoid waste, and minimize impacts. This section is necessary to provide how the executive director will consider this factor required by TWC, §11.053.

Section 36.8, Notice of and Opportunity for Hearing on the Issuance of a Suspension or Adjustment Order, provides procedures for notice, hearing, and appeal of an order to the commission under this chapter. This procedure follows the procedure for other emergency orders issued by the commission. The order may be issued by the executive director without notice, but there must be a hearing to affirm, modify, or set aside the order before the commission. Notice of the hearing shall be given to all water rights that were suspended or adjusted under the order. This section is required by TWC, §11.053.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in Strategic Planning and Assessment, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are anticipated for other units of state or local government as a result of administration or enforcement of the proposed rules.

HB 2694 provides that the executive director may temporarily suspend or adjust water rights during times of drought or other emergency shortages of water. The commission is required to adopt rules to implement this provision, define a drought or other emergency shortage of water, and specify the conditions under which the executive director may issue such an order under, including the maximum duration of a temporary suspension or adjustment. The rules must also set out procedures for notice, opportunity for a hearing, and the appeal to the commission of an order issued under this section.

No significant fiscal implications are anticipated for the commission to implement and administer these new requirements of HB 2694. The adoption of rules, the issuance of any orders, and any work related to appeals to the commission would be absorbed by water rights and enforcement staff using existing agency resources.

The purpose of the rulemaking is to mitigate the impact to water rights caused by drought or an emergency shortage of water, based on the priority doctrine. Under current law, senior water rights may make calls on water rights junior to them if they cannot get all the water that they need under an authorized water right. Since the TCEQ is presently protecting senior water rights, the proposed rules are not expected to significantly affect current practices with regard to water rights. The commission would be able to consider other factors, such as preferences of use if it is "practicable," but this action would likely allow some water rights, such as municipalities, to continue to take water under their water rights as needed for human health and safety concerns such as for drinking water. Some junior water rights may be impacted by these actions, but the commission is not able to determine whether water would have been available to the junior water right holder even if the right had not been suspended.

Units of local government who are junior water right holders may be affected by the provisions in the proposed rule relating to the potential suspension or curtailment of water rights during a drought or emergency shortage of water. However, under current law, senior water rights may make calls on water rights junior to them if they cannot get all the water that they need under an authorized water right. Since the TCEQ is presently protecting senior water rights, the proposed rule is not expected to significantly affect current practices with regard to water rights. Likewise, local governments who are senior water right holders may be affected by provisions in the proposed rule which would allow them to receive water that they potentially would not have received without the executive director suspension or adjustment.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and specification of the conditions that would be considered when water right suspensions and adjustments are ordered and the appeal process for those orders.

The proposed rulemaking may have fiscal implications for individuals or businesses. Some junior water rights may be impacted by these actions, but the commission is not able to determine whether water would have been available to the junior water right holder even if the right had not been suspended. The proposed rulemaking does not affect or change the law of "first in time, first in right," otherwise known as the priority doctrine. The proposed rulemaking implements sections of HB 2694 and provides specification of the conditions that would be considered when water right suspensions and adjustments are ordered and the appeal process for those orders.

Businesses and individuals who are junior water right holders may be affected by the provisions in the proposed rules relating to the potential suspension or curtailment of water rights during a drought or emergency shortage of water. However, under current law, senior water rights may make calls on water rights junior to them if they cannot get all the water that they need under an authorized water right. Since the TCEQ is presently protecting senior water rights, the proposed rules are not expected to affect current practices with regard to water rights. Likewise, individuals or businesses who are senior water right holders are not expected to be affected by provisions in the proposed rules which would allow them to receive water that they potentially would not have received without the executive director suspension or adjustment.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. A small business is expected to experience the same fiscal impact as that experienced by individuals or large business under the proposed rules.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission evaluated these proposed new rules and performed an analysis of whether these proposed rules require a regulatory impact analysis under Texas Government Code, §2001.0225. This rulemaking is specifically required by TWC, §11.053. The specific intent of these rules is to establish criteria, procedures, and definitions for executive director action to temporarily suspend or adjust water rights in times of drought or emergency shortage of water. This new chapter is not a "major environmental rule" under Texas Government Code, §2001.0225 because the specific intent of the rulemaking is not to protect the environment, and it is not for the purpose of reducing risks to human health from environmental exposure. These rules do not relate to impacts from any type of pollution. Even if the rules were a major environmental rule, a regulatory impact analysis is not required because the proposed rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government to implement a state and federal program, or adopt rules solely under the general powers of the agency instead of specific state law. Therefore the rulemaking does not come under the Texas Government Code, §2001.0225 and no regulatory impact analysis is required under for this rulemaking.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed an analysis of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these rules is to establish criteria, procedures, and definitions for the executive director's temporary suspension or adjustment of surface water rights during times of drought and other emergency shortage of water. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property.

Specifically, the authority granted to the executive director to suspend water rights based on the priority doctrine already exists under TWC, §5.013(a)(1) and §11.027, and this statute was meant to clarify and further define this authority. While some water rights may be suspended or adjusted under these rules, other water rights will be able to divert water that they otherwise could not have diverted without issuance of an order under these rules. Additionally, water rights are granted with express conditions that they are junior to and subject to a senior water rights ability to take their authorized water. Thus, if a senior water right is not able to use the water that it is authorized to under the law, and needs that water, the junior water right holder does not have a right to that water and it is not a statutory or constitutional taking. Thus, this rulemaking does not burden nor restrict or limit the owner's right to existing property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations.

The same reasoning applies to a temporary suspension or adjustment based on emergency shortage of water because the executive director action will be based on the rights of a senior or superior water right holder. The decision to suspend or adjust must be based on the priority doctrine, and several other factors will be used in making the adjustment or suspension. The agency must enact rules to define "other emergency shortage of water," specifying the conditions under which an order may be issued and terms and duration of the order, and providing for notice and an opportunity for a hearing and appeal to the commission. While the rules provide some flexibility in responding to the protection of senior water rights, the commission does not believe that this rulemaking would give rise to a measurable impact on other water rights. The impact to water rights is caused by the drought or emergency shortage of water. The purpose of this rulemaking is to mitigate that impact, based on the priority doctrine. The commission would be able to consider preferences of use if it is "practicable," but this consideration of preferences would generally be to allow some water rights, such as municipalities, to continue to take water under their water rights as needed for human health and safety concerns such as drinking water, or similar actions.

Thus, the "other emergency shortage of water" sections of this rulemaking are actions that are not takings because junior water rights take water under their water rights subject to senior rights, or are taken in response to a real and substantial threat to public health and safety, are designed to significantly advance the health and safety purpose, and do not impose a greater burden than is necessary to achieve the health and safety purpose. When persons or entities cannot obtain water, particularly for domestic or municipal needs, due to some emergency circumstance, their need for water can be a significant health and safety concern and may be immediate. This rulemaking would help provide water to senior water right holders that may have an emergency need for the water.

Therefore, this rulemaking is either not covered by or is exempt from the coverage of Texas Government Code, §2007.003(b)(13).

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include: (1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; and (2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

CMP policies applicable to the proposed rules include those contained in 31 TAC §501.33.

The proposed rules implement TWC, §11.053, which provides that the executive director may temporarily suspend or adjust water rights during a drought or "other emergency shortage of water." Any impact to coastal natural resources is caused by the

drought or other emergency shortage of water. This rulemaking should not result in less water flowing to coastal areas than would occur absent this rule under full exercise of all water rights. Ensuring that senior water rights are able to divert under their water rights allows for economic development by allowing the senior water rights to use the water to accomplish their municipal, industrial, agricultural, or other beneficial uses. The curtailment or suspension of water rights based on "other emergency shortage of water" sections of this rulemaking are actions that are taken in response to a real and substantial threat to public health and safety, and are designed to significantly advance the public health and safety purpose, which allows for continuing multiple human uses of the coastal zone. Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 1, 2011 at 2:00 p.m. in Building E, Room 201-S, Austin, Texas, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-033-036-LS. The comment period closes December 5, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Robin Smith, Environmental Law Division, (512) 239-0463.

Statutory Authority

The new sections are proposed under Texas Water Code, §5.013, providing the commission's authority over water rights permitting and enforcement; §5.102, providing the commission's general powers to perform acts authorized or implied by law; §5.103, providing the commission's authority to adopt rules; and §11.053, providing requirements for executive director suspension or adjustment of water rights during drought or emergency shortage of water.

The proposed new sections implement Texas Water Code, §11.053.

§36.1. Applicability.

(a) Except as otherwise provided by this section, this chapter applies to water rights in the state.

(b) This chapter does not apply to any water rights in a watermaster area created in or under Texas Water Code, Chapter 11.

(c) This chapter does not apply to a water user that is exempt from permitting under Texas Water Code, §§11.142(b) - 11.1422.

§36.2. Definitions.

The following words or terms, as used in this chapter, shall have the following meaning:

(1) Adjustment--The partial curtailment of one or more water rights, or the timing of diversions under a water right.

(2) Drought--A drought occurs when the following criteria are met:

(A) drought conditions in the watershed or part of the watershed subject to the executive director's Suspension or Adjustment Order are classified as at least moderate by the National Drought Mitigation Center,

(B) streamflows at United States Geological Survey gaging stations in the drainage area are below the 33rd percentile of the period of record; or

(C) demand for surface water exceeds the available supply.

(3) Emergency Shortage of Water--The inability of a senior water right holder to take surface water under their water right during:

(A) emergency periods posing a hazard to public health or safety; or

(B) conditions affecting hydraulic systems which impair or interfere with conveyance or delivery of water for authorized users.

(4) Senior water right--A water right that has a priority date that is earlier than another water right holder, or a superior right under Texas Water Code, §11.142(a) or §11.303(l).

(5) Suspension or Adjustment Order, or Order--An order issued by the executive director to suspend or adjust water rights under this chapter. The order may be in the form of a letter signed by the executive director or the executive director's designee.

(6) Suspension--The complete curtailment of either the entire water right or the right to use water of a certain type of use or based on a certain priority date in the water rights.

(7) Water right--A right or any amendment thereto acquired under the laws of this state to impound, divert, store, convey, take, or use state water. This term includes water users for purposes that are superior or exempt from permitting under Texas Water Code, §11.142(a) or §11.303(l), but only to the extent that such a water right may be benefitted by a Suspension or Adjustment Order issued under this chapter. The term includes holders of the water rights where the context requires.

§36.3. Executive Director Action.

(a) During a period of drought or other emergency shortage of water, the executive director may, in accordance with the priority doctrine in Texas Water Code, §11.027:

(1) temporarily adjust the diversion of water by water right holders; and

(2) temporarily suspend the right of any person who holds a water right to use the water.

(b) The temporary suspensions or adjustments must be made on water rights in the smallest area practicable that is necessary to allow the senior or superior water right holder to obtain water.

§36.4. Suspension or Adjustment Order.

The executive director's temporary suspension or adjustment under §36.3 of this title (relating to Executive Director Action) must be made by a Suspension or Adjustment Order, as defined in §36.2(5) of this title (relating to Definitions).

§36.5. Conditions for Issuance of Suspension or Adjustment Order.

(a) The executive director may issue a Suspension or Adjustment Order or modify or extend an existing order under §36.4 of this title (relating to Suspension or Adjustment Order) if the following conditions have been met:

(1) at the time of issuance of the order, all or part of the river basin is in a drought, or an emergency shortage of water exists;

(2) senior water rights are unable to divert the water they need that is authorized under a water right;

(3) senior water rights can beneficially use water as defined in Texas Water Code, §11.002(4); and

(4) suspending or adjusting junior water rights would result in conditions under which the senior water right holder may divert water for a beneficial use.

(b) The executive director shall ensure that the order:

(1) maximizes the beneficial use of water;

(2) minimizes the impact on water rights holders;

(3) prevents the waste of water;

(4) considers the efforts of the affected water right holders to develop and implement the water conservation plans and drought contingency plans required by Texas Water Code, Chapter 11;

(5) to the greatest extent practicable, conforms to the order of preferences established by Texas Water Code, §11.024; and

(6) does not require the release of water that, at the time the order is issued, is lawfully stored in a reservoir under water rights associated with that reservoir.

§36.6. Contents of a Suspension or Order.

A Suspension or Adjustment Order issued under §36.4 of this title (relating to Suspension or Adjustment Order) must contain:

(1) the specific water rights subject to the order, and the location, including the river basin and county, of the suspension or adjustment;

(2) an explanation of the reasons for the suspension or adjustment; and

(3) the duration of the suspension or adjustment.

(A) The duration of a Suspension or Adjustment Order may not be longer than 180 days unless otherwise specified in a Suspension or Adjustment Order.

(B) A Suspension or Adjustment Order may be extended for up to 90 days for each extension.

(C) A Suspension or Adjustment Order may be modified by the executive director based on changed conditions and the requirements of this chapter.

§36.7. Implementation of Water Conservation Plans and Drought Contingency Plans.

(a) The efforts of affected water right holders to develop and implement water conservation and drought contingency plans that the executive director will consider when deciding whether to issue an order under §36.4 of this title (relating to Suspension or Adjustment Order) include but are not limited to:

(1) the water right holder's compliance with commission regulations in Chapter 288 of this title (relating to Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements) and approval of the plans by the commission and Texas Water Development Board; and

(2) the water right holder's implementation and enforcement of the plans.

(b) If the executive director decides not to suspend or adjust a junior water right based on public welfare concerns, the executive director may require the implementation of water conservation and drought contingency plans at more restrictive levels than required by the junior water right's water conservation and drought contingency plans at the time of issuance of the order.

§36.8. Notice of and Opportunity for Hearing on the Issuance of a Suspension or Adjustment Order.

(a) An order under this chapter may be issued by the executive director without notice and an opportunity for hearing.

(b) If an order is issued under this chapter without notice or a hearing, the order shall set a time and place for a hearing before the commission to affirm, modify, or set aside the order to be held as soon as practicable after the order is issued.

(c) Notice of the hearing at which the commission determines whether to affirm, modify or set aside the Suspension or Adjustment Order is not subject to the requirements of Texas Water Code, §11.132, but notice shall be given to all holders of water rights that were suspended or adjusted under the order.

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 21, 2011.

TRD-201104483
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 239-2548

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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 3. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR ON-ROAD AND NON-ROAD VEHICLES

30 TAC §114.622

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §114.622.

If adopted, the amendment will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rule

The 77th Legislature, 2001, enacted Senate Bill 5 establishing the Texas Emissions Reduction Plan (TERP). The TERP provides financial incentives for reducing emissions of on-road heavy-duty motor vehicles and non-road equipment. House Bill (HB) 3399, 82nd Legislature, 2011, amended Texas Health and Safety Code (THSC), Chapter 386, Subchapter C, to revise existing criteria and add additional criteria for receiving an incentive grant under this subchapter. The changes made under HB 3399 are as summarized in the following paragraphs.

Under THSC, §386.104(i), if the commission determines that a heavy-duty motor vehicle or engine must be decommissioned as part of the incentive grant requirements, the new subsection outlines specific criteria for how the vehicle or engine must be destroyed, including making a hole in the engine block and permanently destroying the frame of the vehicle. These requirements are consistent with current practice of the commission in administering the grant programs. In addition, the new subsection requires the commission to provide a means for an applicant to propose an alternative method for complying with the destruction requirements.

Under THSC, §386.104(j), the executive director of the TCEQ is to waive any eligibility requirements established under THSC, §386.104, on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances. In addition to the new language outlining how vehicles and engines are to be destroyed under a grant, this section includes requirements for the operation and use of grant-funded vehicles and equipment in nonattainment areas and affected counties for five years, provisions for meeting cost-effectiveness requirements and other provisions pertaining to the emissions reductions to be achieved by a projects, and provisions related to grant payments for the incremental costs of a project. Under the additional language of THSC, §386.104(j), any of these provisions could potentially be waived by the executive director, on a finding of good cause.

Under THSC, §386.104(k), the commission is to consider an application for the replacement of a vehicle that has been owned, leased, or otherwise commercially financed by the applicant. Under this new subsection, if a vehicle or engine that is leased or otherwise commercially financed must be decommissioned, the commission is to ensure that the applicant has the legal right to decommission the vehicle or engine before a grant is awarded.

Under THSC, §386.104(l), the commission is to consider an application for a vehicle replacement or fleet expansion for a project with an activity life of five years or more, or 400,000 miles, whichever is earlier. This change modifies the previous requirements that vehicles be operated in the nonattainment areas and eligible counties for at least five years, without regard to the accrued mileage.

Finally, under THSC, §386.104(m), the commission is to provide a form that minimizes, to the maximum extent possible, the amount of paperwork required.

The proposed rule incorporates the changes to THSC, §386.104, under HB 3399.

Section Discussion

§114.622, Incentive Program Requirements

Section 114.622 would be amended to incorporate changes and additions to the program eligibility criteria under THSC, §386.104(i), (k), and (l). This section would also be amended to incorporate the provisions of THSC, §386.622(j), directing the executive director to waive project eligibility requirements on a finding of good cause.

Changes are proposed to subsection (b) and a subsection (c) is proposed to implement the requirements from THSC, §386.104(l), which require that for a project involving the replacement, purchase, or lease of a motor vehicle, at least 75% of the vehicle mileage traveled must occur within a nonattainment area or affected county, and including designated highways and roadways, for five or more years, or 400,000 miles, whichever occurs earlier.

Subsection (e) is proposed to establish the requirements for how a vehicle or engine replaced under a grant must be destroyed, in accordance with THSC, §386.104(i). This proposed subsection would also include a provision for the executive director of the TCEQ to allow an applicant to propose an alternative method for complying with the destruction requirements, as required by THSC, §386.104(i).

Subsection (f) is proposed to implement the requirements of THSC, §386.104(k). The proposed subsection would require that a motor vehicle to be replaced under a grant may have been owned, leased, or otherwise commercially financed by the applicant and that the applicant must have a legal right to replace and recycle or scrap the vehicle and engine before a grant is awarded.

Subsection (h) is proposed to direct the executive director of the TCEQ to waive eligibility requirements under subsections (b) - (f) on a finding of good cause, as required by THSC, §386.104(j).

Existing subsections under this section would also be renumbered to account for the addition of subsections.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. The agency will continue to utilize available funding appropriated out of the TERP - Account 5071 to implement the changes made to the program in the proposed rule. For the 2012 - 2013 biennium, appropriated funding for TERP incentive grants is approximately $32 million each year.

The proposed rule would amend Chapter 114 to implement parts of HB 3399. Specifically, the proposed rule will: establish the criteria for decommissioning a heavy-duty motor vehicle or engine; allow the executive director to consider an alternative method of decommissioning; allow the replacement of leased or commercially financed on-road motor vehicles; change the projected period of use for on-road motor vehicles purchased with TERP funds from five years to the earlier of five years or 400,000 miles; and allow the executive director to waive eligibility requirements on a finding of good cause.

Under current TERP grant guidelines, the projected period of use is five years or more regardless of mileage, and the replacement of leased vehicles is not allowed. State agencies and local governments with leased vehicles or vehicles that meet the new use

criteria could experience cost benefits if they qualify for a grant that allows them to purchase or lease a replacement vehicle at a reduced cost. Some examples of qualifying vehicles include commercial trucks, school buses, and transit buses. Applying for a grant would be voluntary, and it is not known at this time how many state agencies or local governments would do so. Under current rules, the typical grant award ranges from $50,000 to $100,000.

Public Benefits and Costs

Nina Chamness also determined that for each of the first five years the proposed rule is in effect, the anticipated public benefit will be an improvement in air quality in the 41 counties eligible to receive TERP incentive grant funding since a greater number of vehicles will become eligible for replacement using grant funds.

The proposed rule may not have a significant fiscal impact on individuals unless they qualify for a TERP grant. Individuals that can utilize TERP funding should experience the same cost benefits as a local government or large business.

Businesses that operate leased vehicles and vehicles that meet the reduced period of use under the proposed rule could experience cost benefits if they are eligible to purchase replacement vehicles or engines with TERP funds. Under current rule, the typical grant award for replacement vehicles or engines ranges from $50,000 to $100,000. Sellers of replacement vehicles or engines could see revenue increase since the proposed rule has the potential to increase the sales volumes of qualifying vehicles. Staff is not able to determine how many additional businesses or individuals would experience increases in sales or become eligible to apply for a grant as a result of these changes.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule may make it easier for a small or micro-business to qualify for a grant under the program, especially if they lease qualifying vehicles or their vehicles meet the revised period of use criteria. Small or micro-businesses are expected to experience the same benefits as a large business either when buying a vehicle or replacement engine or when selling or leasing a replacement vehicle or engine. Staff is not able to determine how many additional small and micro-businesses may become eligible to apply for a grant or experience increased sales as a result of these changes.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required by state law and does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The amended Chapter 114 rule is proposed in accordance with HB 3399, which amended THSC, Chapter 386. The proposed rule adds or revises eligibility requirements for a voluntary grant. Because the proposed rule places no involuntary requirements on the regulated community, the proposed rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, this amendment does not place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rule is subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with HB 3399. The rule makes revisions to a voluntary program and only affects motor vehicles and equipment that are not considered to be private real property. The promulgation and enforcement of the proposed rule is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program

(CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it revises a voluntary incentive grant program and does not govern air pollution emissions.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on November 29, 2011, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-050-114-EN. The comment period closes December 5, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Stephen Dayton, Implementation Grants Section, (512) 239-6824.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emission Reduction Program. Finally, the amendment is proposed as part of the implementation of House Bill 3399.

The proposed amendment implements THSC, §386.104.

§114.622. Incentive Program Requirements.

(a) Eligible projects include:

(1) purchase or lease of on-road and non-road diesels;

(2) emissions-reducing retrofit projects for on-road or non-road diesels;

(3) emissions-reducing repower projects for on-road or non-road diesels;

(4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;

(5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO_x) emissions;

(6) use of qualifying fuel;

(7) implementation of infrastructure projects;

(8) replacement of on-road and non-road diesels with newer on-road and non-road diesels; and

(9) other projects that have the potential to reduce anticipated NO_x emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, [~~or~~] a project involving non-road equipment used for natural gas recovery purposes, a project involving replacement of a motor vehicle, or a project involving the purchase or lease of a motor vehicle, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement.

(c) For a proposed motor vehicle replacement, purchase, or lease project, the period used to determine the emissions reductions and cost-effectiveness of each replacement, purchase, or lease activity included in the project must extend for five years or more, or 400,000 miles, whichever occurs earlier. Not less than 75% of the vehicle miles traveled projected for the period used to determine the emissions reductions must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside of a nonattainment county or affected county to count towards the percentage of use requirement.

(d) [~~(c)~~] For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled or scrapped provided, however, that the executive director may allow permanent removal from the State of Texas in specific grants where the applicant has provided sufficient assurances that the old locomotive will not be returned to the State of Texas.

(e) For a proposed project to replace a motor vehicle, the vehicle and engine must be decommissioned by crushing the vehicle and engine, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the executive director that permanently removes the vehicle and engine from operation in this state. For a proposed project to repower a motor vehicle, the engine being replaced must be decommissioned in a manner consistent with the requirements for decommissioning an engine as part of a vehicle replacement project. The executive director shall allow an applicant for a motor vehicle replacement or repower project to propose an alternative method for complying with the requirements of this subsection.

(f) For a project to replace a motor vehicle, the vehicle being replaced may have been owned, leased, or otherwise commercially financed by the applicant. The applicant must have a legal right to replace and recycle or scrap the vehicle and engine before a grant is awarded for that project.

(g) [~~(d)~~] To be eligible for a grant, the cost-effectiveness of a proposed project as listed in subsection (a) of this section, except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, must not exceed a cost-effectiveness of $15,000 per ton of NO_x emissions reduced. The commission may set lower cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO_x emissions in relation to the funds to be awarded.

(h) The executive director shall waive eligibility requirements established under subsections (b) - (f) of this section on a finding of good cause, which may include a waiver of any ownership and use requirements established for replacement of a motor vehicle for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances.

(i) [~~(e)~~] Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(j) [~~(f)~~] A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(k) [~~(g)~~] A proposed retrofit, repower, replacement, or add-on equipment project must achieve a reduction in NO_x emissions to the level established in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) for that type of project compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(l) [~~(h)~~] If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

(m) [~~(i)~~] Criteria established in the guidelines, including revisions to the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388), apply to the Texas Emissions Reduction Plan program. Notwithstanding the provisions of this chapter, as authorized under Texas Health and Safety Code, §386.053(d), revisions to the guidelines may include, among other changes, adding additional pollutants; adding stationary engines or engines used in stationary applications; adding vehicles and equipment that use fuels other than diesel; or adjusting eligible program categories; as appropriate, to ensure that incentives established under this program achieve the maximum possible emission reductions.

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 21, 2011.

TRD-201104481
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 239-0779

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DIVISION 5. TEXAS CLEAN FLEET PROGRAM

30 TAC §§114.650 - 114.654

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) proposes amendments to §§114.650 - 114.654.

If adopted, the amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rules

Senate Bill 1759, 81st Legislature, 2009, amended the Texas Health and Safety Code (THSC), by adding Chapter 391, Texas Clean Fleet Program (program). This program is designed to encourage eligible fleets to replace diesel vehicles with alternative fuel or hybrid vehicles. House Bill (HB) 3399, 82nd Legislature, 2011, amended THSC, Chapter 391, to revise current eligibility criteria and add additional criteria. The changes made under HB 3399 are as summarized in the following paragraphs.

THSC, §391.002(b), was revised to reduce the number of qualifying vehicles that an entity must place in service in the state in order to be eligible to participate in the program from 25 to 20 vehicles. This provision is then qualified under THSC, §391.002(c), to allow for commission funding of fewer than 20 vehicles under a grant, as long as an entity's application originally included 20 vehicles for replacement under the program. This provision allows an application to be approvable in the event that the commission does not approve one or more vehicles for funding during the application process.

THSC, §391.004(a), was revised to reduce from 100 to 75 the number of vehicles that any entity must operate in its fleet in the state in order to be eligible to apply for and receive a grant under the program.

Under a new THSC, §391.004(d), the commission is directed to minimize, to the maximum extent possible, the amount of paperwork required for an application. In addition, an applicant may be required to submit a photograph or other documentation of a vehicle identification number, registration information, inspection information, tire condition, or engine block identification only if it is requested after the commission has decided to award a grant to the applicant.

THSC, §391.005(b)(2)(A), was revised to allow a vehicle that has been leased or otherwise commercially financed and registered

and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application to be replaced under the program. The previous language only allowed vehicles that had been owned, registered, and operated in Texas by the applicant for the preceding two years to be replaced under the program.

A change was made to THSC, §391.005(c), to revise the requirement that a vehicle funded under the program be operated in the state by grant recipient for at least five years from the date of reimbursement, to require that the vehicle be operated in the state under the earlier of the fifth anniversary of the reimbursement date or until the date the vehicle has been in operation for 400,000 miles after the date of reimbursement.

THSC, §391.005(f), was revised to require the commission to provide a means for an applicant to propose an alternative method of complying with the vehicle or engine destruction requirements of this subsection. The existing requirements include rendering the vehicle permanently inoperable by crushing the vehicle or making a hole in the engine block and permanently destroying the frame of the vehicle.

Finally, a new THSC, §391.005(i), was added to require the executive director of the TCEQ to waive the requirements of THSC, §301.004(b)(2)(A), upon a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances. This subsection includes requirements that an applicant have owned, leased, or otherwise commercially financed, registered, and operated the vehicle to be replaced in Texas for at least two years immediately preceding the submission of a grant application.

These proposed rules incorporate the changes to THSC, Chapter 391, under HB 3399.

Section by Section Discussion

§114.650, Definitions

Proposed revisions to §114.650(2) would amend the definition of an "Eligible Entity" to reduce the number of vehicles in an entity's fleet that must be registered in Texas from 100 to 75 vehicles and the number of vehicles in an entity's fleet that must be eligible for replacement from 25 to 20 vehicles as required under THSC, §391.004.

§114.651, Applicability

Section 114.651(a) would be amended to reduce the number of vehicles that must be included in an application from 25 to 20 vehicles, as required by THSC, §391.002(a).

In addition, proposed subsection (b) would allow an entity to participate in the program if that entity submits a grant application for 20 or more qualifying vehicles, even if the commission denies approval for one or more of the vehicles during the application process, as required by THSC, §391.002(b).

§114.652, Qualifying Vehicles

Section 114.652(b) would be amended to incorporate changes to the requirement for how long a grant-funded qualifying vehicle must be owned, registered, and operated in Texas by a grant recipient. The ownership and use requirement would be changed from a period at least five years from the date of reimbursement of the grant-funded expenses, to until the earlier of the fifth anniversary of the date of reimbursement of the grant-funded expenses or until the date the vehicle has been in operation for 400,000 miles after the date of reimbursement. The amendment is required by THSC, §391.005.

§114.653, Grant Eligibility

The proposed rule would amend §114.653(b) to incorporate changes to the grant eligibility requirements to allow a vehicle that has been leased or commercially financed by the applicant to be replaced under the program, as required by THSC, §391.005.

The proposed rule would also amend §114.653 to add subsection (e) directing the executive director to waive the requirement that a vehicle have been owned, leased, or commercially financed and registered and operated in Texas by the applicant on a finding of good cause, as required by THSC, §391.005.

§114.654, Usage and Disposition

Section 114.654(b) would be amended to include specific criteria for how a vehicle replaced under the program must be rendered permanently inoperable and to direct the executive director to provide a means for an applicant to propose an alternative method for rendering a vehicle inoperable, as required by THSC, §391.005.

Under the specific criteria that would be added to subsection (b), a vehicle or engine replaced under the program would need to be rendered permanently inoperable by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the executive director that permanently removes the vehicle from operation in this state. The executive director would be required to provide a means for an applicant to propose an alternate method for complying with these destruction requirements.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will implement the proposed rules using currently available resources. Other units of state or local government may experience cost benefits from the proposed rules if they qualify for grant funds to replace a diesel vehicle with a vehicle that qualifies for grant funding under the program in Account 5071 - Texas Emission Reduction Plan (TERP). Appropriations for the program are an estimated $2.8 million in each year of the 2012 - 2013 biennium.

The proposed rules would amend Chapter 114 per the requirements of HB 3399, to amend the criteria for the program. The proposed rules will change the definition of an eligible entity. The change in the definition will allow more entities statewide to apply for TERP funding by reducing the size of the fleet the entity must have from 100 vehicles or more to 75 vehicles or more and by reducing the number of vehicles eligible for replacement from at least 25 to at least 20. The proposed rules also revise the required period of use for a qualifying vehicle to be the earliest of the fifth anniversary of reimbursement or 400,000 miles instead of at least five years. The proposed rules will also allow leased or otherwise commercially financed vehicles to be eligible for replacement. The proposed rules also allow the executive director to waive the two-year ownership or lease and registration requirements for the vehicle being replaced upon a finding of good cause. The proposed rules also specify the method by which a motor vehicle or engine must be destroyed while providing a

means by which an applicant can propose an alternate method of destruction.

State agencies or units of local government may experience cost benefits from the proposed rules if they qualify for grant funds to replace a light-duty or heavy-duty diesel vehicle with a vehicle that qualifies for grant funding under the program. The proposed rules are expected to increase the number of eligible grantees and replacement vehicles and motors. The program is a statewide voluntary incentive program, and staff is not able to determine how many state agencies or units of local government would become eligible to apply for a grant at this time. Under current rules, an award from the program ranges from $15,000 to $140,000 depending on the type of vehicle or motor replaced.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved air quality in the state. The proposed rules are expected to expand the universe of potential grantees and vehicles eligible for replacement.

The program is a voluntary statewide grant incentive program. The proposed rules may not have a direct fiscal benefit for individuals, since it is unlikely that an individual would meet the requirement that an applicant own and operate at least 75 vehicles in Texas. However, any eligible individual or entity should experience the same cost savings as those experienced by a local government or large business. Most eligible grantees are expected to be governmental agencies or businesses that own vehicle fleets.

The proposed rules are expected to increase the number of businesses and the number of vehicles and motors that qualify for a grant under the program. Costs for vehicles could range from $30,000 for a light-duty vehicle to $180,000 or more for a large heavy-duty truck. Currently, eligible grant awards offsetting the replacement costs of these vehicles range from $15,000 to $140,000. Under the proposed rules, grantees are expected to experience similar cost savings. The grant program is a voluntary program, and staff is not able to determine how many state agencies or units of local government would become eligible to apply for a grant at this time.

The proposed rules could increase revenue for sellers and lessors of qualifying replacement vehicles and motors since there should be more entities that qualify for grants and allow them to purchase eligible vehicles and motors at a lower cost.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. If a small business meets the eligibility requirements, it should experience the same type of cost savings or increased revenue as a large business. Currently, eligible grant awards offsetting the replacement costs of eligible vehicles range from $15,000 to $140,000.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The amended Chapter 114 rules are proposed in accordance with HB 3399, which amended THSC, Chapter 391. The program offers financial incentives for the voluntary replacement of diesel engines. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Also, none of the proposed amendments place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with HB 3399. The rules amend the criteria for implementing a voluntary program and only affect motor vehicles which are not considered to be private real property. The promulgation and

enforcement of the proposed rules is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it amends a voluntary incentive grant program and does not govern air pollution emissions.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on November 29, 2011, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-051-114-EN. The comment period closes December 5, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Stephen Dayton, Implementation Grants Section, (512) 239-6824.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these amendments are proposed under THSC, Chapter 391, and are part of the implementation of House Bill 3399.

The proposed amendments implement THSC, §§391.002, 391.004, and 391.005.

§114.650. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division will have the following meanings, unless the context clearly indicates otherwise.

(1) Alternative fuel--A fuel, other than gasoline or diesel fuel. When used in this division, this definition is limited to the following: electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85% methanol by volume.

(2) Eligible entity--Any person or entity with a fleet of 75 [~~100~~] or more vehicles that:

(A) are registered in Texas; and

(B) include at least 20 [~~25~~] vehicles that are eligible for replacement.

(3) Golf cart--A motor vehicle designed by the manufacturer primarily for transporting persons on a golf course.

(4) Heavy-duty vehicle--A motor vehicle with a gross vehicle weight rating greater than 8,500 pounds and containing an engine certified to the United States Environmental Protection Agency's heavy-duty engine standards.

(5) Hybrid vehicle--A motor vehicle with at least two different energy converters and two different energy storage systems on board the vehicle for the purpose of propelling the vehicle.

(6) Light-duty motor vehicle--A motor vehicle with a gross vehicle weight rating of less than 10,000 pounds and certified to the United States Environmental Protection Agency's light-duty vehicle emission standards.

(7) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(8) Neighborhood electric vehicle--A motor vehicle that:

(A) is originally manufactured to meet, and does meet, the equipment requirements and safety standards established for "low-speed vehicles" in Federal Motor Vehicle Safety Standard No. 500 (49 Code of Federal Regulations §571.500);

(B) is a slow-moving vehicle, as defined by Texas Transportation Code, §547.001 that is able to attain a speed of more than 20 miles per hour but not more than 25 miles per hour in one mile on a paved, level surface;

(C) is a four-wheeled motor vehicle;

(D) is powered by electricity or alternative power sources;

(E) has a gross vehicle weight rating of less than 3,000 pounds; and

(F) is not a golf cart.

(9) Program--The Texas Clean Fleet Program established under this division.

§114.651. Applicability.

(a) Any eligible entity that will replace 20 [~~25~~] or more on-road diesel vehicles within a twelve-month period with qualifying vehicles may apply for a grant under the Texas Clean Fleet Program to offset the cost of replacing those vehicles with alternative fuel or hybrid vehicles.

(b) Notwithstanding subsection (a) of this section, an entity that submits a grant application for 20 or more qualifying vehicles is eligible to participate in the program even if the commission denies approval for one or more of the vehicles during the application process.

(c) [~~(b)~~] The commission may allow a regional planning commission, council of governments, or similar regional planning agency created under Local Government Code, Chapter 391, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

§114.652. Qualifying Vehicles.

(a) A qualifying vehicle is one that:

(1) is certified to current federal emissions standards;

(2) replaces a diesel-powered on-road vehicle of the same weight classification and use; and

(3) is a hybrid vehicle or fueled by an alternative fuel.

(b) As a condition of receiving a grant the qualifying vehicle must be continuously owned, registered, and operated in Texas by the grant recipient until the earlier of the fifth anniversary of [~~for at least five years from~~] the date of reimbursement of the grant-funded expenses or until the date the vehicle has been in operation for 400,000 miles after the date of reimbursement.

(c) A vehicle is not a qualifying vehicle if it:

(1) is a neighborhood electric vehicle;

(2) has been used as a qualifying vehicle to qualify for a grant under this division for a previous reporting period or by another entity; or

(3) has qualified for a similar grant or tax credit in another jurisdiction.

§114.653. Grant Eligibility.

(a) To be eligible for a grant under the program a project must result in a reduction in emissions of nitrogen oxides of at least 25%, based on:

(1) the baseline emission level set by the executive director; and

(2) the certified emission rate of the new vehicle or engine.

(b) The vehicle being replaced must:

(1) be an on-road vehicle that has been owned, leased, or otherwise commercially financed, and registered[,] and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(2) satisfy any minimum average annual mileage or fuel usage requirements established by the executive director;

(3) satisfy any minimum percentage of annual usage requirements established by the executive director; and

(4) be in operating condition with at least two years of remaining useful life, as determined in accordance with criteria established by the executive director.

(c) At the discretion of the executive director, projects that result in a 25% reduction in other pollutants may be considered eligible for funding under this program.

(d) The executive director may establish additional criteria for purposes of prioritizing projects for selection. Such criteria may include, but are not limited to:

(1) nonattainment status of the primary location in which the eligible vehicles are used; or

(2) cost per ton benefits of the overall emissions being reduced.

(e) The executive director shall waive the requirements of subsection (b)(1) of this section on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances.

§114.654. Usage and Disposition.

(a) Not less than 75% of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the executive director, must occur in Texas.

(b) A vehicle or engine replaced under this program must be rendered permanently inoperable by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the executive director that permanently removes the vehicle from operation in this state [~~in accordance with criteria established by the executive director~~]. The executive director shall provide a means for an applicant to propose an alternative method for complying with the requirements of this subsection.

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 21, 2011.

TRD-201104482
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 239-0779

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DIVISION 6. ALTERNATIVE FUELING FACILITIES PROGRAM

30 TAC §§114.660 - 114.662

The Texas Commission on Environmental Quality (commission or agency) proposes new §§114.660 - 114.662.

If adopted, the new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rules

Senate Bill (SB) 385, 82nd Legislature, 2011, amended the Texas Health and Safety Code (THSC), by adding Chapter 393, Alternative Fueling Facilities Program (program). This program is designed to provide funding for eligible entities to construct, reconstruct, or acquire a facility to store, compress, or dispense alternative fuels in a nonattainment area, as designated under Federal Clean Air Act, §107(d) (42 United States Code, §7407). Under the program, alternative fuels are defined as a fuel, other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 80% methanol by volume. These rules are proposed to comply with THSC, §393.004(a), which requires the commission to adopt rules to establish criteria for prioritizing facilities eligible to receive grants under the program.

SB 20, 82nd Legislature, 2011, also established the program under a different chapter number in the THSC. However, because SB 385 was enacted last, it is the operative legislation for this rulemaking.

Section by Section Discussion

§114.660, Purpose

Proposed §114.660 would define the purpose of the proposed rules as the criteria that the executive director may use when establishing priorities for funding projects under the program, as required by THSC, §393.004.

§114.661, Criteria for Prioritizing Facilities Eligible to Receive a Grant

Proposed §114.661 outlines the criteria to be used for prioritizing facilities to receive grants under this program, as required by THSC, §393.004.

Proposed subsection (a) lists criteria that may be used by the executive director to establish priorities for funding. Prior to each grant application period, the executive director would establish specific priorities for funding projects under that application period.

Under proposed subsection (a)(1), the need for reductions in nitrogen oxides or other pollutants of concern in the area where the facility would be located could be considered in prioritizing the funding, in order to meet or maintain federal air quality standards.

Under proposed subsection (a)(2), the type of alternative fuel and the vehicles or equipment that would use the fuel could be considered by the executive director in establishing the funding priorities. This proposed subsection would allow the executive director to determine that certain types of alternative fuels or vehicles and equipment should receive greater priority in funding decisions in order to best implement the program.

Proposed subsection (a)(3) would allow consideration of the potential for the project to increase the use of the alternative fuel in nonattainment areas and the state in general. Under this proposed subsection, the likelihood that a project would provide broader benefits in increasing the use of the alternative fuel could be considered in determining the priorities for funding.

Proposed subsection (a)(4), would allow the executive director to consider the potential for the project to increase the use of alternative fuels and alternative fuel technologies produced, manufactured, or otherwise based in Texas could be considered. This proposed provision would allow the executive director to put a priority on the use of Texas-based fuels and technologies.

Proposed subsection (a)(5) would allow the executive director to consider the current and projected need for the facility. Use of this provision would help to ensure that facilities with the greatest need or potential for use would receive higher priority over facilities where the need for the facility is less.

Proposed subsection (a)(6) would allow the executive director to consider the expected use of the facility for fueling vehicles funded under local, state, or federal incentive programs, including programs implemented under the Texas Emissions Reduction Plan (TERP). If this provision were used, the executive director could help support implementation of other funding programs for alternative fuel vehicles through prioritizing funding for facilities that would be used by those vehicles.

Proposed subsection (a)(7) would allow the executive director to consider the location of the proposed facility in relation to major highways and transportation routes and the ease of access to the facility for use by the public. The ease of access to the facility could be a factor in the success of the grant-funded project, and this provision would allow the executive director to consider that factor in setting funding priorities.

Proposed subsection (a)(8) would allow the executive director to consider the location of the proposed facility in relation to an area where increased truck traffic would not be expected to negatively impact the region's air quality or sensitive receptors. This provision would allow the executive director to consider potential negative impacts of increased truck traffic to a proposed facility on regional air quality and on sensitive receptors.

Proposed subsection (a)(9) would allow the executive director to consider the percentage of costs of the facility to be paid by the applicant and from other sources of funding. This provision would take into account that the financial stake that an applicant has in a project could be a factor in the potential success of the facility.

Proposed subsection (a)(10) would allow the executive director to consider the commitment by the applicant to operating the facility over a period of time. This provision would allow the executive director to set priorities for how long a facility would be operated and to place a priority on projects where an applicant intends to operate the facility for a longer period,

Proposed subsection (b) would authorize the executive director to establish additional criteria for the award of a grant, including establishing certain operational, maintenance, and reporting requirements.

Proposed subsection (c) would authorize the executive director to limit grants under a grant application period according to the priorities established for that grant application period. Under this provision, the priorities established for a particular grant application period could be used not only for ranking projects submitted by applicants, but also to limit projects that may be funded to those meeting priorities.

§114.662, Implementation Schedule

Proposed §114.662 identifies the expiration date of the program, as stated in THSC, §393.007. Under this section, the program would expire on August 31, 2018.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement

of the proposed rules. The proposed rules are administrative in nature and establish the criteria for prioritizing alternative fueling facilities eligible to receive grants under the program funded by Account 5071 - TERP. The agency will implement the program using currently available resources, and funds allocated to funding fueling facilities in the program are approximately $2.2 million.

SB 385 authorizes the agency to create the program using a portion of the funds appropriated in Account 5071 - TERP. The proposed rules, as required by SB 385, would add a new division to Chapter 114 to outline the criteria that will be used to prioritize facilities eligible to receive a grant under the voluntary program. The rules are administrative in nature, and detailed program criteria and procedures will be developed separate from these rules and enforced through a grant contract. A separate, but related rulemaking establishes the criteria for prioritizing vehicles eligible to receive grant funding.

The proposed rules are not expected to have a significant fiscal impact on state agencies or units of local government since they are administrative in nature. However, these government entities could choose to apply for and receive a grant under the program. The grant could not be used for administrative expenses, and grant awards would be limited to the lesser of 50% of eligible costs or $500,000. The program is voluntary, and it is not known at this time how many governmental entities would apply for this type of grant.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be an increase in available alternative fueling facilities for alternative fuel vehicles or engines, providing more choices to the public for use of alternative fuels.

The proposed rules are not expected to have a direct significant fiscal impact on individuals since they are administrative in nature and establish the criteria that will be used to prioritize facilities eligible to receive a grant under the voluntary program. However, if an individual becomes eligible to apply for and receive a grant to pay the costs of an alternative fueling facility, that individual could experience the same cost savings as a governmental entity or business that qualifies for a grant award.

The proposed rules are not expected to have a significant fiscal impact on large businesses since the rules are administrative in nature. However, large businesses could choose to apply for and receive a grant under the program to offset the cost of providing such a facility. The grant could not be used for administrative expenses, and grant awards would be limited to the lesser of 50% of eligible costs or $500,000. The program is voluntary, and it is not known at this time how many large businesses would apply for this type of grant.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules since the rules are administrative in nature. If a small business voluntarily applies for a grant and receives a grant award under the program, the small business could expect to receive the same type of benefit as a large business.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The new Chapter 114 rules are proposed in accordance with SB 385, which added THSC, Chapter 393. The proposed rules are part of the implementation of a new voluntary incentive program to increase the availability of alternative fueling facilities in nonattainment areas of this state. The program offers financial incentives for the voluntary construction, reconstruction, or acquisition of alternative fueling facilities. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Also, none of the proposed rules place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to

the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with SB 385. The new rules establish criteria for prioritizing facilities eligible to receive a grant as part of the implementation of a voluntary program. The promulgation and enforcement of the proposed rules is neither a statutory nor a constitutional taking because participation in the program is voluntary and the program does not involve restrictions or controls on real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it is part of implementing a voluntary incentive grant program and does not govern air pollution emissions.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on November 29, 2011, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-052-114-EN. The comment period closes December 5, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact Stephen Dayton, Implementation Grants Section, (512) 239-6824.

Statutory Authority

These new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new rules are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these proposed new rules are proposed under THSC, §393.004, requiring the commission to establish by rule the criteria for prioritizing facilities eligible to receive a grant.

The proposed rules implement THSC, §393.004.

§114.660. Purpose.

(a) These rules establish the criteria that the executive director may use for prioritizing facilities eligible to receive grants under the Alternative Fueling Facilities Program, established under Texas Health and Safety Code, Chapter 393.

(b) The requirements of Texas Health and Safety Code, Chapter 393, apply to grants awarded under this program.

§114.661. Criteria for Prioritizing Facilities Eligible to Receive a Grant.

(a) Prior to each grant application period, the executive director will establish specific priorities for funding projects under that application period. Criteria that may be considered in establishing the funding priorities include, but are not limited to:

(1) the need for reductions in nitrogen oxides or other pollutants of concern in the area where the facility will be located in order to meet or maintain federal air quality standards;

(2) the type of alternative fuel and the vehicles or equipment that will use the fuel;

(3) the potential for the project to increase the use of the alternative fuel in nonattainment areas and Texas in general;

(4) the potential for the project to increase the use of alternative fuels and alternative fuel technologies produced, manufactured, or otherwise based in Texas;

(5) the need for the facility, based on the current and expected number of vehicles and equipment that would be served by the facility or the fuel made available as a result of the facility, and the availability of other sources of the alternative fuel in the area;

(6) the expected use of the facility for fueling vehicles funded under local, state, or federal incentive programs, including the programs implemented under the Texas Emissions Reduction Plan;

(7) the location of the proposed facility in relation to major highways and transportation routes and the ease of access to the facility for use by the public;

(8) the location of the proposed facility in relation to an area where increased truck traffic would not be expected to negatively impact the region's air quality or sensitive receptors;

(9) the percentage of costs of the facility to be paid by the applicant and other sources of funding;

(10) the commitment by the applicant to operating the facility over a period of time, and

(11) consideration of technical and economic factors associated with a project.

(b) The executive director may establish additional criteria for the award of a grant, including establishing certain operational, maintenance, and reporting requirements.

(c) The executive director may limit the grants under a grant application period according to the priorities established for that grant application period.

§114.662. Implementation Schedule.

This division expires on August 31, 2018.

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 21, 2011.

TRD-201104488
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 239-2141

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DIVISION 7. NATURAL GAS VEHICLE GRANT PROGRAM

30 TAC §§114.670 - 114.672

The Texas Commission on Environmental Quality (commission) proposes new §§114.670 - 114.672.

If adopted, the new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rules

Senate Bill (SB) 385, 82nd Legislature, 2011, amended the Texas Health and Safety Code (THSC), by adding Chapter 394, Texas Natural Gas Vehicle Grant Program (program). This program is designed to encourage eligible entities to replace on-road heavy-duty and medium-duty vehicles with natural gas vehicles and to replace on-road heavy-duty and medium-duty vehicle engines with natural gas engines. The program also includes incentives to fund a portion of the costs to install natural gas dispensing equipment at fueling stations along a Clean Transportation Triangle consisting of the interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth. These rules are proposed to comply with THSC, §394.005(a), which requires the commission to adopt rules to establish criteria for prioritizing qualifying vehicles eligible to receive grants under the new program.

SB 20, 82nd Legislature, 2011, also established the program under a different chapter number in the THSC. However, because SB 385 was enacted last, it is the operative legislation for this rulemaking.

Section by Section Discussion

§114.670, Purpose

Proposed §114.670 would define the purpose of the proposed rules as the criteria the executive director may use when establishing priorities for funding projects under the program, as required by THSC, §394.005.

§114.671, Criteria for Prioritizing Vehicles Eligible to Receive a Grant

Proposed §114.671 outlines the criteria to be used for prioritizing qualifying vehicles to receive grants under this program, as required by THSC, §394.005.

Proposed subsection (a) lists the criteria that may be used by the executive director to establish priorities for funding. Prior to each grant application period, the executive director would establish specific priorities for funding projects under that application period.

Under proposed subsection (a)(1), the executive director could consider the potential for different types of projects to achieve reductions in nitrogen oxides (NO_x) and/or other pollutants of concern, including consideration of the vehicle types, weight categories, and types of use with the greatest potential to achieve emissions reductions.

Under proposed subsection (a)(2), the cost-effectiveness of a project, as determined by the cost per ton of expected reductions in NO_x and/or other pollutants of concern could be considered by the executive director.

Under proposed subsection (a)(3), the potential for different types of projects to help increase the use of natural gas for transportation in Texas could be considered by the executive director.

Under proposed subsection (a)(4), the areas of use of the grant-funded vehicles could be considered by the executive director, including consideration of the availability of fuel and fueling infrastructure and the need for emissions reductions in those areas in order to meet federal air quality standards.

Under proposed subsection (a)(5), the executive director could consider how a project may support the conversion of large regional vehicle fleets moving goods and materials along interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth from gasoline or diesel fuel to natural gas.

Under proposed subsection (a)(6), the executive director may assign a priority to projects that will help reduce exposure of vulnerable populations to pollutants of concern, including the conversion of school bus fleets and other fleets transporting children or the elderly from gasoline or diesel fuel to natural gas.

Under proposed subsection (a)(7), the executive director may assign a priority to projects that would result in the conversion of public transportation fleets, such as school buses, transit buses, airport shuttle buses, and similar vehicle fleets from gasoline or diesel fuel to natural gas.

Under proposed subsection (a)(8), the executive director may assign a priority to projects that would result in the conversion of public utility and service fleets, such as refuse vehicles, maintenance and utility vehicles, and similar fleets from gasoline or diesel fuel to natural gas.

Under proposed subsection (a)(9), the executive director may assign a priority to projects that would support the use of natural gas and natural gas vehicles, engines, and associated technologies produced, manufactured, or otherwise based in Texas.

Under proposed subsection (a)(10), the executive director may assign a priority to projects that would support the implementation of new and innovative natural gas vehicle and engine technologies.

Proposed subsection (b) would authorize the executive director to limit grants under a grant application period according to the priorities established for that application period.

Proposed subsection (c) would require that not less than 60% of the total amount of grants awarded in a fiscal biennium must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. The proposed subsection would also provide that this restriction would not apply if the commission does not receive enough grant applications to satisfy the percentage of funding requirement. These provisions are required by THSC, §394.007(b).

§114.672, Implementation Schedule

Proposed §114.672 would identify the expiration date of the program, as stated in THSC, §394.012. Under this section, the program would expire on August 31, 2017.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will utilize available funding appropriated out of the Texas Emissions Reduction Plan (TERP) - Account 5071 to implement the proposed rules. Other state agencies and local governments may experience cost savings as a result of the proposed rules if they are eligible to use the grant funds to replace vehicles or engines in their fleets with natural gas vehicles or engines.

SB 385 requires the agency to adopt rules to create the program using a portion of the funds appropriated in Account 5071 - TERP. The proposed rules would add a new division to Chapter 114 to outline the criteria that will be used to prioritize qualifying vehicles eligible to receive a grant under this voluntary program. The program would be a new type of incentive grant in the overall TERP incentive grant program. To be eligible for this type of grant funding, an entity would be required to replace or repower an existing on-road heavy-duty or medium-duty motor vehicle with a natural gas vehicle or engine. The project must result in a reduction in emissions of NO_x of at least 25%. The grant recipient must also agree to operate the grant funded vehicle for at least 75% of the annual mileage over a period of four years or 400,000 miles along a Clean Transportation Triangle (consisting of the interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth) and in nonattainment counties. Funds appropriated for the program in Account 5071 - TERP total $9,146,408 in each year of the 2012 - 2013 biennium.

State agencies or local governments with vehicles that meet the criteria of the grant program may experience cost benefits if they qualify to receive grant funds to purchase natural gas vehicles or engines to replace existing vehicles or engines. Applying for a grant from the program would be voluntary and it is not known at this time how many state agencies or local governments would do so. Vehicle replacement and repower grant amounts may range between 60% and 90% of the incremental cost of the project. Incremental costs are estimated to range from $15,000 to over $80,000 per vehicle replacement or repower project.

Public Benefits and Costs

Nina Chamness also determined that, for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved air quality in the area defined by the interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth and in non-attainment counties. The proposed rules will provide grant funding to replace older existing vehicles and engines with new natural gas models that have fewer emissions in these areas.

Under the proposed rules, individuals in certain areas of the state may find it more affordable and easier to purchase natural gas vehicles or replacement engines if they meet qualifying criteria.

Businesses that purchase vehicles or engines that meet the criteria of the program may experience lower costs when making those purchases. Businesses that are sellers of qualifying vehicles and replacement engines and agree to enter into a dealer contract with the commission should experience increased revenue since the program is expected to make the purchase of natural gas vehicles more attractive to potential buyers. The administrative requirements of the grants have not been finalized at this time, but applying for a grant from the program would be voluntary, and a business is not expected to submit an application for grant funds unless it has determined that the grant would be economically beneficial. It is not known at this time how many businesses would apply for a grant or how many businesses would purchase a replacement vehicle or engine under the program. Grant amounts will range from 60% to 90% of the incremental cost of the replacement or repower project, and incremental costs are estimated to range from $15,000 to over $80,000 per vehicle replacement or repower project.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small or micro-businesses in qualifying areas of the state are expected to experience the same benefits as a large business either when buying a natural gas vehicle or replacement engine or when acting as an authorized dealer natural gas vehicles or engines.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that

may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The new Chapter 114 rules are proposed in accordance with SB 385, which added THSC, Chapter 394. The proposed rules are part of the implementation of a new voluntary incentive program with the goal of encouraging the use of natural gas in on-road heavy-duty and medium-duty vehicles and reducing emissions through the replacement or repower of older existing vehicles and engines with new cleaner models powered by natural gas. The program offers financial incentives for the voluntary replacement of vehicles and engines. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Also, none of the proposed rule place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with SB 385. The new rules establish criteria for prioritizing vehicles eligible to receive a grant as part of the implementation of a voluntary program and only affect motor vehicles which are not considered to be private real property. The promulgation and enforcement of the proposed rules is neither a statutory nor a constitutional taking because it does not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it is part of implementing a voluntary incentive grant program and does not govern air pollution emissions.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on November 29, 2011, at 10:00 a.m. in Building E, Room 201A, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-053-114-EN. The comment period closes December 5, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Stephen Dayton, Implementation Grants Section, (512) 239-6824.

Statutory Authority

These new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new rules are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these proposed new rules are proposed under THSC, §394.005(a), as added by Senate Bill 385, directing the commission to establish by rule the criteria for prioritizing qualifying vehicles eligible to receive a grant.

The proposed rules implement THSC, §394.005.

§114.670. Purpose.

(a) These rules establish the criteria that the executive director may use for prioritizing qualifying vehicles eligible to receive grants under the Texas Natural Gas Vehicle Grant Program, established under Texas Health and Safety Code, Chapter 394.

(b) The requirements of Texas Health and Safety Code, Chapter 394, apply to grants awarded under this program.

§114.671. Criteria for Prioritizing Vehicles Eligible to Receive a Grant.

(a) Prior to each grant application period, the executive director will establish priorities for funding projects under that application period. Criteria that may be considered in establishing the funding priorities include, but are not limited to:

(1) the potential for different types of projects to achieve reductions in nitrogen oxides (NO_x) and/or other pollutants of concern over the required period of use of the grant-funded vehicles, including consideration of the vehicle types, weight categories, and types of use with the greatest potential to achieve emissions reductions;

(2) the cost-effectiveness of potential projects, as determined by the cost per ton of expected reductions in NO_x and/or other pollutants of concern;

(3) the potential for different types of projects to help increase the use of natural gas for transportation in Texas;

(4) the areas of use of the grant-funded vehicles, including consideration of the availability of fuel and fueling infrastructure and the need for emissions reductions in those areas in order to meet federal air quality standards;

(5) support for conversion of large regional vehicle fleets moving goods and materials along interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth from gasoline or diesel fuel to natural gas;

(6) support for projects to reduce exposure of vulnerable populations to pollutants of concern, including conversion of school bus fleets and other fleets transporting children or the elderly from gasoline or diesel fuel to natural gas;

(7) support for conversion of public transportation fleets, such as school buses, transit buses, airport shuttle buses, and similar vehicle fleets from gasoline or diesel fuel to natural gas;

(8) support for conversion of public utility and service fleets, such as refuse vehicles, maintenance and utility vehicles, and similar fleets from gasoline or diesel fuel to natural gas;

(9) support for the use of natural gas and natural gas vehicles, engines, and associated technologies produced, manufactured, or otherwise based in Texas; and

(10) support for implementation of new and innovative natural gas vehicle and engine technologies.

(b) The executive director may limit the grants under a grant application period according to the priorities established for that grant application period.

(c) Not less than 60% of the total amount of grants awarded in a fiscal biennium must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. However, this restriction does not apply if the commission does not receive enough grant applications to satisfy the percentage of funding requirement.

§114.672. Implementation Schedule.

This division expires on August 31, 2017.

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 21, 2011.

TRD-201104489
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 239-2141

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) proposes amendments to Chapter 371, Drinking Water State Revolving Fund: Subchapter B, Financial Assistance, §371.14, regarding Lending Rates; Subchapter C, Intended Use Plan, §371.21, regarding Rating Process; and Subchapter E, Environmental Reviews and Determinations, §371.40, regarding Definitions, §371.41, regarding Environmental Review Process, §371.42, regarding Types of Environmental Determinations: Categorical Exclusions, §371.50, regarding Use of Environmental Determinations Prepared by Other Entities, and adding new §371.51, regarding Emergency Relief Project Procedures.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE AMENDMENTS.

The Drinking Water State Revolving Fund (DWSRF) is used by the TWDB to offer loans and loan forgiveness to political subdivisions for improvements to water systems. Loans from DWSRF are provided through annual federal capitalization grants, in coordination with the U.S. Environmental Protection Agency (EPA) Region 6 and the Texas Commission on Environmental Quality (TCEQ). Implementation of the financing program is through the Intended Use Plan (IUP).

Staff has determined that amendments to certain sections of Chapter 371, Subchapter C and Subchapter E, are needed to authorize expedited environmental review procedures required for entities seeking DWSRF funding in emergency situations. These rules were adopted on an emergency basis at a meeting of the TWDB on September 20, 2011, pursuant to §2001.034, Government Code. This rulemaking will continue these duties in effect following the expiration of the rules adopted on an emergency basis. In addition, a minor amendment in Subchapter B is needed to clarify the procedure for setting fixed interest rates within the DWSRF loan program.

SECTION BY SECTION DISCUSSION OF AMENDMENTS.

Section 371.14(b).

The amendment to §371.14(b) adds the sentence, "The interest rates will be determined by this section and as described in an IUP."

Section 371.21.

The amendment to §371.21 describes the rating process for those entities seeking DWSRF funding for an approved emergency relief project.

Section 371.40.

The amendment to §371.40 adds subparagraph (7) and defines an "emergency relief project" in order to determine those entities experiencing an emergency condition or incident that causes an imminent peril to public health, safety, environment, or welfare.

Section 371.41(a).

The amendment to §371.41(a) clarifies that the environmental review process, in compliance with the National Environmental Policy Act (NEPA), will be applied to projects funded in whole or in part by the DWSRF to the maximum extent legally and practicably feasible. The amendment allows the environmental review process to be modified if an emergency condition as described in §371.40(7) exist.

Section 371.42(g).

The amendment to §371.42(g) describes the public notice criteria for a Categorical Exclusion (CE) environmental determination made by the executive administrator. The amendment allows the required public notice to be published either in a newspaper of general circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice that is published in a newspaper of general circulation in the county or counties of the affected community.

Section 371.50(a).

This amendment corrects the acronym for the National Environmental Policy Act (NEPA).

Section 371.51.

The proposal adds §371.51 to Subchapter E to provide that if an applicant requests funding for an emergency relief project, the executive administrator shall review all relevant information needed by the Board to find that an emergency condition as described under amended §371.40(7) is present. If the Board determines that an emergency condition is present, the Board may authorize funding for the designated emergency relief project, subject to the availability of funds. If the Board finds that full compliance with NEPA will unreasonably delay the resolution of the emergency condition, the NEPA notification requirements will be modified to the extent necessary to proceed with the project provided the Board also finds that the modified notification will not adversely impact any natural resources falling within NEPA protections. The notification will be documented by the executive administrator.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Ms. Melanie Callahan, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration. This rulemaking affects only those entities that voluntarily apply for financial assistance under the DWSRF program.

These rules are not expected to result in reductions in costs to either state or local governments. The rulemaking will clarify the uses of the DWSRF and the criteria under which the TWDB may offer financial assistance for projects financed through the DWSRF program. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

PUBLIC BENEFITS AND COSTS.

Ms. Callahan also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it continues rules for expedited consideration of emergency projects and clarifies rules by which financing is available for water projects at a cost generally below the market rate at which the entity would be able to finance the project. There will be no economic cost to persons required to comply with these rules because the requirements of these rules apply only to those persons who voluntarily seek assistance from the DWSRF program.

LOCAL EMPLOYMENT IMPACT STATEMENT.

The Board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The Board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking because the rules are not regulatory and are not directed at private small or micro-businesses. The Board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY ANALYSIS.

The Board has determined that the proposed rulemaking is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT.

The Board has determined that the promulgation and enforcement of this proposed rule will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed rule does not burden or restrict or limit the owner's right to or use of property. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

SUBMITTAL OF COMMENTS.

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax at (512) 475-2053.

SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §371.14

STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and Water Code, Chapter 15, Subchapter J, §15.605 relating to rules necessary to carry out Subchapter J. This rulemaking affects Water Code, Chapter 15, Subchapter J.

§371.14. Lending Rates.

(a) (No change.)

(b) Procedure for setting fixed interest rates. The interest rates will be determined by this section and as described in an IUP.

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

(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.

Filed with the Office of the Secretary of State on October 24, 2011.

TRD-201104582
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 463-8061

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SUBCHAPTER C. INTENDED USE PLAN

31 TAC §371.21

STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and Water Code, Chapter 15, Subchapter J, §15.605 relating to rules necessary to carry out Subchapter J. This rulemaking affects Water Code, Chapter 15, Subchapter J.

§371.21. Rating Process.

(a) (No change.)

(b) Projects will be rated based on the following factors:

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

(3) Emergency relief. Projects which are affected by events of natural disaster.

(A) The Applicant must demonstrate that a need for emergency relief from an imminent threat to public health, safety, environment, or welfare exists. The applicant must describe the nature of the threat and provide a complete description of the proposed emergency relief project as defined in §371.40 of this title (relating to Definitions).

(B) The Board may authorize funding for the emergency relief project as detailed in §371.51 of this title (relating to Emergency Relief Project Procedures) or as described in an IUP.

(4) (No change.)

(c) - (f) (No change.)

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

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Kenneth L. Petersen
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-8061

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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

31 TAC §§371.40 - 371.42, 371.50, 371.51

STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and Water Code, Chapter 15, Subchapter J, §15.605 relating to rules necessary to carry out Subchapter J. This rulemaking affects Water Code, Chapter 15, Subchapter J.

§371.40. Definitions.

Unless specifically defined differently within this subchapter, the following terms and acronyms, used in this subchapter, mean:

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

(7) Emergency Relief Project--Infrastructure construction project which provides relief to an entity experiencing an emergency condition or incident that causes an imminent peril to public health, safety, environment, or welfare, such as:

(A) the failure or destruction of public water supply pipelines, transmission or distribution systems;

(B) the threat of or actual contamination of a public water supply;

(C) sustained or permanent service disruption of a source water or water treatment system;

(D) the reduction of public water supplies to critical levels by drought or other natural cause(s); or

(E) any other emergency condition as described in an IUP.

§371.41. Environmental Review Process.

(a) Policy and purpose. This subchapter governs the environmental review of projects funded in whole or in part by the DWSRF. Environmental review of all proposed infrastructure projects is a condition of the use of federal DWSRF funds. This subchapter follows the procedures established by EPA for implementing the NEPA set forth at 40 CFR Part 6. The environmental review process described in this subchapter applies to the maximum extent legally and practicably feasible. However, the environmental review process may be modified due to an emergency condition as described in §371.40(7) of this title (relating to Definitions). The environmental review must be completed prior to the release of federal funds for design and construction and

the review is subject to public comment. The Applicant, at all times throughout the design, construction, and operation of the project, shall comply with the determinations resulting from the environmental review.

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

§371.42. Types of Environmental Determinations: Categorical Exclusions.

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

(g) Public notice. The executive administrator's determination relating to a CE shall be subject to public notice which shall be published either in a newspaper of general [~~wide~~] circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice in a newspaper of general circulation in the county or counties of the affected community.

§371.50. Use of Environmental Determinations Prepared by Other Entities.

(a) Adoption of previous determination. The executive administrator may adopt previous environmental determinations issued by the EPA and other federal agencies whose determinations were produced through procedures in compliance with the NEPA. The executive administrator must re-evaluate the proposed financial assistance application as well as environmental conditions and public comment to determine whether to conduct a supplemental environmental review of the action and complete an appropriate document in compliance with the NEPA [~~NPEA~~], or to reaffirm the original determination.

(b) - (e) (No change.)

§371.51. Emergency Relief Project Procedures.

(a) If an applicant requests funding for an emergency relief project, the executive administrator shall review all information relevant to the emergency, proposed project, status of environmental review of the proposed project, known issues with the natural or cultural environment of the project area, and availability of funding. The executive administrator shall forward this information and the executive administrator's recommendation to the Board for the Board's determination whether an emergency condition is present.

(b) If an emergency condition described in §371.40(7) of this title (relating to Definitions) is present, the Board may authorize funding for the emergency relief project, subject to availability of funds, without full preparation or public review of NEPA review documentation (including a CE determination, EA, or EIS) if the Board determines that:

(1) delaying commencement of project construction during the period it would take to prepare, review, and circulate NEPA documentation, would increase the imminent peril to public health, safety, environment, or welfare; and

(2) consultations required by the Endangered Species Act and National Historic Preservation Act have been completed.

(c) The Board may require any special conditions appropriate to minimize any potential for adverse impact due to abbreviated or expedited review.

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 24, 2011.

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Kenneth L. Petersen
General Counsel
Texas Water Development Board
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 463-8061

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) proposes amendments to Chapter 375, Clean Water State Revolving Fund: Subchapter A, General Program Requirements, §375.2 regarding Entities and Activities Eligible for Assistance; Subchapter B, Financial Assistance, §375.15 regarding Lending Rates; Subchapter E, Environmental Reviews and Determinations, Division 1, State Projects, §375.52 regarding Types of Environmental Determinations: Categorical Exclusions; Division 2, Federal Projects, §375.62 regarding Types of Environmental Determinations: Categorical Exclusions and §375.70 regarding Use of Environmental Determinations Prepared by Other Entities; and Subchapter I, Nonpoint Source Pollution Linked Deposits Program, §375.204 regarding Project Certifications.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE AMENDMENTS.

The Clean Water State Revolving Fund (CWSRF) is authorized pursuant to Title VI of the Clean Water Act, 33 U.S.C. §1381 et seq. and Water Code, Chapter 15, Subchapter J. The CWSRF is used by the TWDB to offer loans and loan forgiveness to political subdivisions for improvements to wastewater systems. Loans from CWSRF are provided through annual federal capitalization grants, state matches, repayments and revenue bonds, in coordination with the U.S. Environmental Protection Agency (EPA) Region 6. Implementation of the financing program is through the Intended Use Plan (IUP).

The proposed rulemaking includes minor, nonsubstantive modifications in Subchapter A, Subchapter B, Subchapter E, and Subchapter I.

SECTION BY SECTION DISCUSSION OF AMENDMENTS.

Section 375.2.

The amendment to §375.2 clarifies project eligibility and consistency with State planning efforts for the Texas Nonpoint Source Management Program and the National Estuary Program for the State.

Section 375.15(b).

The amendment to §375.15(b) replaces "or" with "and" to clarify that interest rates will be determined by both this section and as described in the respective IUP for entities receiving loans through the CWSRF program.

Section 375.52(g).

The amendment to §375.52(g) (State projects) describes the public notice criteria for a Categorical Exclusion (CE) environmental determination made by the executive administrator. The amendment allows the required public notice to be published either in a newspaper of general circulation in the county or counties of the affected community or on the agency's website and

referenced in a public notice that is published in a newspaper of general circulation in the county or counties of the affected community.

Section 375.62(g).

The amendment to §375.62(g) (Federal projects) describes the public notice criteria for a Categorical Exclusion (CE) environmental determination made by the executive administrator. The amendment allows the required public notice to be published either in a newspaper of general circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice that is published in a newspaper of general circulation in the county or counties of the affected community. The amendment also provides minor modifications to the descriptions of those projects which are eligible and which are ineligible for a CE.

Section 375.70(a).

The amendment to §375.70(a) corrects the acronym for the National Environmental Policy Act (NEPA).

Section 375.204(b).

The amendment to §375.204(b) corrects the title of the Nonpoint Source Management Program (NPS Management Program).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Ms. Melanie Callahan, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration. This rulemaking affects only those entities that voluntarily apply for financial assistance under the CWSRF program.

These rules are not expected to result in reductions in costs to either state or local governments. The rulemaking will clarify the uses of the CWSRF and the criteria under which the TWDB may offer financial assistance for projects financed through the CWSRF program. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

PUBLIC BENEFITS AND COSTS.

Ms. Callahan also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies rules by which financing is available for wastewater projects at a cost generally below the market rate at which the entity would be able to finance the project. There will be no economic cost to persons required to comply with these rules because the requirements of these rules apply only to those persons who voluntarily seek assistance from the CWSRF program.

LOCAL EMPLOYMENT IMPACT STATEMENT.

The Board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The Board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking because the rules are not regulatory and are not directed at private small or micro-businesses. The Board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY ANALYSIS.

The Board has determined that the proposed rulemaking is not subject to Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT.

The Board has determined that the promulgation and enforcement of this proposed rule will constitute neither a statutory nor a constitutional taking of private real property. The proposed rule does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed rule does not burden or restrict or limit the owner's right to or use of property. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

SUBMITTAL OF COMMENTS.

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, rulescomments@twdb.state.tx.us, or by fax at (512) 475-2053.

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §375.2

STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and Water Code, Chapter 15, Subchapter J, §15.605 relating to the rules necessary to carry out Subchapter J. This rulemaking affects Water Code Chapter 15, Subchapter J.

§375.2. Entities and Activities Eligible for Assistance.

(a) (No change.)

(b) Financial assistance from the CWSRF is available for nonpoint source pollution projects consistent with the following definitions:

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

(4) NPS Management Program [~~Report~~]--The most recent Texas Nonpoint Source [~~Pollution Assessment Report and~~] Management Program adopted by the commission.

(c) (No change.)

(d) Financial assistance from the CWSRF is available for nonpoint source pollution control or estuary management projects consistent with the following conditions:

(1) an identified practice within a Water Quality Management Plan;

[~~(2) a nonpoint source management activity that has been identified in the Texas Comprehensive Groundwater Protection Program; or~~]

(2) [~~(3)~~] a BMP listed in the NPS Management Program; or [~~Report and the EPA approved Nonpoint Source Management Plan and or the National Estuary Program efforts for the State of Texas.~~]

(3) the National Estuary Program efforts for the State.

[~~(c) Financial Assistance from the CWSRF is available for national estuary program projects consistent with the EPA approved National Estuary Program efforts for the State of Texas.~~]

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 24, 2011.

TRD-201104567
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 463-8061

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SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §375.15

STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and Water Code, Chapter 15, Subchapter J, §15.605 relating to the rules necessary to carry out Subchapter J. This rulemaking affects Water Code Chapter 15, Subchapter J.

§375.15. Lending Rates.

(a) (No change.)

(b) Procedure for setting fixed interest rates. The interest rates will be determined by this section and [~~or~~] as described in an IUP.

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

(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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Kenneth L. Petersen
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-8061

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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS
DIVISION 1. STATE PROJECTS

31 TAC §375.52

STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and Water Code, Chapter 15, Subchapter J, §15.605 relating to the rules necessary to carry out Subchapter J. This rulemaking affects Water Code Chapter 15, Subchapter J.

§375.52. Types of Environmental Determinations: Categorical Exclusions (CE).

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

(g) Public notice. The executive administrator's determination relating to a CE shall be subject to public notice which shall be published either in a newspaper of general [~~wide~~] circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice in a newspaper of general circulation in the county or counties of the affected community.

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

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Kenneth L. Petersen
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-8061

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DIVISION 2. FEDERAL PROJECTS

31 TAC §375.62, §375.70

STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and Water Code, Chapter 15, Subchapter J, §15.605 relating to the rules necessary to carry out Subchapter J. This rulemaking affects Water Code Chapter 15, Subchapter J.

§375.62. Types of Environmental Determinations: Categorical Exclusions.

(a) Projects eligible for categorical exclusions. Categorical Exclusions are generally available for projects that will not result in significant impacts on the quality of the human environment and that do not involve extraordinary circumstances. Projects that may be eligible for a categorical exclusion (CE) include the following:

(1) (No change.)

(2) the rehabilitation or functional replacement of existing system and system components such as collection, interceptor, or pressure [~~distribution~~] lines located within existing right-of-ways and easements;

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

(b) Projects not eligible for CE are:

(1) (No change.)

(2) the construction of new collection, interceptor, or pressure [~~distribution~~] lines;

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

(c) - (f) (No change.)

(g) Public notice. The executive administrator's determination relating to a CE shall be subject to public notice which shall be published either in a newspaper of general [~~wide~~] circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice in a newspaper of general circulation in the county or counties of the affected community.

§375.70. Use of Environmental Determinations Prepared by Other Entities.

(a) Adoption of previous determination. The executive administrator may adopt previous environmental determinations issued by the EPA and other federal agencies whose determinations were produced through procedures in compliance with the NEPA. The executive administrator must re-evaluate the proposed financial assistance application as well as environmental conditions and public comment to determine whether to conduct a supplemental environmental review of the action and complete an appropriate document in compliance with the NEPA [~~NPEA~~], or to reaffirm the original determination.

(b) - (e) (No change.)

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

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Kenneth L. Petersen
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-8061

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SUBCHAPTER I. NONPOINT SOURCE POLLUTION LINKED DEPOSITS PROGRAM

31 TAC §375.204

STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board, and Water Code, Chapter 15, Subchapter J, §15.605 relating to the rules necessary to carry out Subchapter J. This rulemaking affects Water Code Chapter 15, Subchapter J.

§375.204. Project Certifications.

(a) (No change.)

(b) For all projects that are not an agricultural or silvicultural nonpoint source pollution control project, in order to be eligible to receive a linked deposit the executive director must certify that the loan recipient's proposed project implements the NPS Management Program [~~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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Kenneth L. Petersen
General Counsel
Texas Water Development Board
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §425.1

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 425, Fire Service Instructors, concerning §425.1, Minimum Standards for Fire Service Instructor Certification.

The purpose of the proposed amendment is to make a grammatical correction and to identify another option for individuals who seek to obtain Fire Service Instructor Certification.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the amendment is that it will allow another option for individuals who do not hold a bachelor's degree or a teaching certificate to obtain Fire Service Instructor Certification. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to John Soteriou, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future Commission meeting.

The amendment is proposed under Texas Government Code, Chapter 419, §419.008, which provides the Commission the authority to propose rules for the administration of its powers and duties; §419.022, which provides the Commission the authority to establish minimum training standards for admission to employment as fire protection personnel; and §419.032, which provides the Commission the authority to propose rules to establish qualifications for fire protection personnel.

The proposed amendment implements Texas Government Code §§419.008, 419.022, and 419.032.

§425.1. Minimum Standards for Fire Service Instructor Certification.

(a) Training programs that are intended to satisfy the requirements for fire service instructor certification must meet the curriculum

and competencies based upon NFPA 1041. All applicants for certification must meet the examination requirements of this section.

(b) Prior to being appointed to fire service instructor duties, all personnel must complete a Commission approved fire service instructor program and successfully pass the Commission examination pertaining to that curriculum.

(c) Personnel who receive probationary or temporary appointment to fire service instructor duties must be certified by the Commission within one year from the date of appointment to such position.

(d) An out-of-state, military, or federal instructor training program may be accepted by the Commission as meeting the training requirements for certification as a fire service instructor if the training has been submitted to the Commission for evaluation and found to be equivalent to or to exceed the Commission-approved instructor course for that particular level of fire service instructor certification.

(e) An individual who holds a bachelor's [~~bachelors~~] degree or higher in education from a regionally accredited educational institution or a teaching certificate issued by the Texas State Board of Education or an associate's degree with twelve semester hours of education instructional courses is considered to have training equivalent to the Commission's curriculum requirements for Instructor I, II and III training.

(f) Personnel holding any level of fire service instructor certification must comply with the continuing education requirements specified in §441.21 of this title.

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

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John Soteriou
Interim Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3813

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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §§429.201, 429.203, 429.205, 429.207, 429.209, 429.211

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 429, Minimum Standards for Fire Inspectors, concerning §429.201, Minimum Standards for Fire Inspector Personnel--New Track, §429.203, Minimum Standards for Basic Fire Inspector Certification--New Track, §429.205, Minimum Standards for Intermediate Fire Inspector Certification--New Track, §429.207, Minimum Standards for Advanced Fire Inspector Certification--New Track, §429.209, Minimum Standards for Master Fire Inspector Certification--New Track, and §429.211, International Fire Service Accreditation Congress (IFSAC) Seal--New Track.

The purpose of the proposed amendments is to provide individuals an obtainable avenue to Fire Inspector Certification by eliminating a required course that is not available in all areas of the state as well as redefining the minimum requirements for obtaining higher levels of certification as a Fire Inspector. Also with the adopted repeal of Subchapter A as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5383) and of which subject matter is reflected herein, the Commission is proposing the amendments contained in Subchapter B become Chapter 429, Minimum Standards for Fire Inspectors.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the amendment is that it will allow the Commission to maintain a clear and concise set of rules regarding Fire Inspector Certification. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to John Soteriou, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78758 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future Commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the Commission the authority to propose rules for the administration of its powers and duties; §419.022, which provides the Commission the authority to establish minimum training standards for admission to employment as fire protection personnel; and §419.032, which provides the Commission the authority to propose rules to establish qualifications for fire protection personnel.

The proposed amendments implement Texas Government Code §§419.008, 419.022, and 419.032.

§429.201. Minimum Standards for Fire Inspector Personnel[~~--New Track~~].

(a) Fire protection personnel of a governmental entity who are appointed to fire code enforcement duties must be certified, as a minimum, as a basic fire inspector as specified in §429.203 of this title (relating to Minimum Standards for Basic Fire Inspector Certification[~~--New Track~~]) within one year of initial appointment to such position.

(b) Prior to being appointed to fire code enforcement duties, all personnel must complete a Commission-approved basic fire inspection training program and successfully pass the Commission examination pertaining to that curriculum.

(c) Individuals holding any level of fire inspector certification shall be required to comply with the continuing education requirements in §441.13 of this title (relating to Continuing Education for Fire Inspection Personnel).

(d) Code enforcement is defined as the enforcement of laws, codes, and ordinances of the authority having jurisdiction pertaining to fire prevention.

§429.203. Minimum Standards for Basic Fire Inspector Certification[~~--New Track~~].

In order to be certified as a basic fire inspector, an individual must:

(1) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as an Inspector I, Inspector II, and Plans Examiner I; or

(2) complete a Commission-approved Basic Fire Inspector program and successfully pass the Commission examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire inspection training program shall consist of one or any combination of the following:

(A) completion of the Commission-approved Basic Fire Inspector Curriculum, as specified in Chapter 4 of the Commission's Certification Curriculum Manual; or

(B) successful completion of an out-of-state, NFA, and/or military training program which has been submitted to the Commission for evaluation and found to meet the minimum requirements as listed in the Commission-approved Basic Fire Inspector Curriculum as specified in Chapter 4 of the Commission's Certification Curriculum Manual; or

(C) successful completion of the following college courses:

(i) Fire Protection Systems, three semester hours;

(ii) [~~Fire Prevention, three semester hours; or~~] Fire Prevention Codes and Inspections, three semester hours;

(iii) Building Construction in the Fire Service or Building Codes and Construction [~~Building Code~~], three semester hours;

~~*[(iv)* Building Construction, three semester hours;]~~

(iv) [~~(v)~~] Hazardous Materials I, II, or III, three semester hours. (Total semester hours, 12). [~~15*. NOTE: Building Code and Building Construction may be combined into a single three-semester hour class. If this is the case, the total semester hours may be reduced to 12. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous Material).~~]

§429.205. Minimum Standards for Intermediate Fire Inspector Certification[~~--New Track~~].

(a) Applicants for Intermediate Fire Inspector Certification must meet the following requirements:

(1) hold as a prerequisite Basic Fire Inspector Certification as defined in §429.203 of this title (relating to Minimum Standards for Basic Fire Inspector Certification); and

(2) acquire a minimum of four years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses. (See the exception outlined in subsection (c) of this section.)

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the Commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Fire Inspector Certification. Repeating a course or a course of similar content cannot be used towards this level of certification. [~~Applicants for Intermediate Fire Inspector certification holding a prerequisite Basic Fire Inspector certification as defined in §429.203 of this title (relating to Minimum Standards for Basic Fire Inspector Certification--New Track) must have acquired four (4) years experience appointed as a fire inspector.~~]

§429.207. Minimum Standards for Advanced Fire Inspector Certification[~~--New Track~~].

(a) Applicants for Advanced Fire Inspector Certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Fire Inspector Certification as defined in §429.205 of this title (relating to Minimum Standards for Intermediate Fire Inspector Certification); and

(2) acquire a minimum of eight years of fire protection experience and complete the training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses. (See the exception outlined in subsection (c) of this section.)

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the Commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level of Fire Inspector Certification. Repeating a course or a course of similar content cannot be used towards this level of certification. [~~Applicants for Advanced Fire Inspector Certification must complete the following requirements:~~]

~~[(1) hold as a prerequisite an Intermediate Fire Inspector certification as defined in §429.205 of this title (relating to Minimum Standards for Intermediate Fire Inspector Certification--New Track);]~~

~~[(2) acquire as a minimum eight (8) years experience appointed as a fire inspector; and]~~

~~[(3) show successful completion of Fire Inspector III and Plans Examiner II courses meeting the applicable job performance re-~~

~~quirements as identified in NFPA 1031, Professional Qualifications for Fire Inspector and Plan Examiner.]~~

§429.209. Minimum Standards for Master Fire Inspector Certification[~~--New Track~~].

(a) Applicants for Master Fire Inspector Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Fire Inspector Certification [~~certification~~] as defined in §429.207 of this title (relating to Minimum Standards for Advanced Fire Inspector Certification[~~--New Track~~)]; and

(2) acquire a minimum of 12 years of fire protection experience [~~appointed as a fire inspector~~], and 60 college semester hours or an associate's [~~associate~~] degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Fire Inspector Certification.

§429.211. International Fire Service Accreditation Congress (IFSAC) Seal[~~--New Track~~].

(a) Individuals who hold commission Fire Inspector certification prior to January 1, 2005, may be granted International Fire Service Accreditation Congress (IFSAC) seals for Inspector I and Inspector II by making application to the commission for the IFSAC seals and paying applicable fees.

(b) Individuals who hold commission Fire Inspector certification prior to January 1, 2005, may apply to test for Plan Examiner I. Upon successful completion of the examination an IFSAC seal for Plan Examiner I may be granted by making application to the commission for the IFSAC seal and paying the applicable fee.

~~[(c) Individuals who pass the applicable state examination prior to January 1, 2005, may be granted IFSAC seals for Inspector I and Inspector II by making application to the commission for the IFSAC seals and paying applicable fees.]~~

~~[(d) Individuals who pass the applicable state examination prior to January 1, 2005, may apply to test for Plan Examiner I. Upon successful completion of the examination an IFSAC seal for Plan Examiner I may be granted by making application to the commission for the IFSAC seal and paying the applicable fee.]~~

(c) [~~(e)~~] Individuals who pass the applicable section of the state examination on or after January 1, 2005, may be granted IFSAC seal(s) for Inspector I, Inspector II, and/or Plan Examiner I by making application to the commission for the IFSAC seal(s) and paying the applicable fees, provided they meet the following provisions:

(1) To receive the IFSAC Inspector I seal, the individual must:

(A) complete the Inspector I section of a commission-approved course; and

(B) pass the Inspector I section of a commission examination.

(2) To receive the IFSAC Inspector II seal, the individual must:

(A) complete the Inspector II section of a commission-approved course;

(B) document possession of an IFSAC Inspector I seal; and

(C) pass the Inspector II section of a commission examination.

(3) To receive the IFSAC Plan Examiner I seal, the individual must:

(A) complete the Plan Examiner I section of a commission-approved course; and

(B) pass the Plan Examiner I section of a commission examination.

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

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John Soteriou
Interim Executive Director
Texas Commission on Fire Protection
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CHAPTER 431. FIRE INVESTIGATION
SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §431.3

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 431, Fire Investigation, Subchapter A, Minimum Standards for Arson Investigator Certification, concerning §431.3, Minimum Standards for Basic Arson Investigator Certification.

The purpose of the proposed amendment is to identify college courses that were changed by the Workforce Education Course Manual (WECM). WECM sets the standards for workforce educational courses. This will ensure individuals complete the correct course needed to obtain certification.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the amendment is that it will assist an individual who chooses to take the college route when seeking certification as a basic arson investigator by properly identifying the necessary college courses an individual must successfully complete. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to John Soteriou, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future Commission meeting.

The amendment is proposed under Texas Government Code, Chapter 419, §419.008, which provides the Commission the authority to propose rules for the administration of its powers and duties; §419.022, which provides the Commission the authority to establish minimum training standards for admission to employment as fire protection personnel; and §419.032, which provides the Commission the authority to propose rules to establish qualifications for fire protection personnel.

The proposed amendment implements Texas Government Code §§419.008, 419.022, and 419.032.

§431.3. Minimum Standards for Basic Arson Investigator Certification.

In order to be certified by the Commission as a Basic Arson Investigator an individual must:

(1) possess a current basic peace officer's license from the Texas Commission on Law Enforcement Officer Standards and Education or documentation that the individual is a federal law enforcement officer;

(2) hold a current license as a peace officer and notify the Commission on the prescribed form regarding the law enforcement agency currently holding the individual's peace officer license; and

(3) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Investigator; or

(4) complete a Commission-approved basic fire investigation training program and successfully pass the Commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved fire investigation training program shall consist of one of the following:

(A) completion of the Commission-approved Fire Investigator Curriculum, as specified in Chapter 5 of the Commission's Certification Curriculum Manual;

(B) successful completion of an out-of-state, NFA, or military training program which has been submitted to the Commission for evaluation and found to meet the minimum requirements as listed in the Commission-approved Fire Investigator Curriculum as specified in Chapter 5 of the Commission's Certification Curriculum Manual; or

(C) successful completion of the following college courses: Fire and Arson Investigation I or II [~~Arson Investigator~~], 3 semester hours; Hazardous Materials I, II, or III, 3 semester hours; Building Construction in the Fire Service or Building Codes and Construction, 3 semester hours; Fire Protection Systems, 3 semester hours. Total semester hours, 12. [~~The three semester hour course "Building Codes and Construction" may be substituted for Building Construction. Arson Investigator I or II may be used to satisfy the requirements of Arson Investigation. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous 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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TRD-201104467

John Soteriou
Interim Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3813

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CHAPTER 451. FIRE OFFICER
SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §451.3

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 451, Fire Officer, Subchapter A, Minimum Standards for Fire Officer I, concerning §451.3, Minimum Standards for Fire Officer I Certification.

The purpose of the amendment is to comply with changes made in the Workforce Education Course Manual (WECM) involving the material required for completion of the Fire Officer program. WECM sets the standards for workforce educational courses. It will reduce the required semester hours from 15 to 12.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendment is in effect, there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit from the amendment is that it will allow individuals seeking certification as Fire Officer I not to have to complete a course that is required for a higher level of certification. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to John Soteriou, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future Commission meeting.

The amendment is proposed under Texas Government Code, Chapter 419, §419.008, which provides the Commission the authority to propose rules for the administration of its powers and duties; §419.022, which provides the Commission the authority to establish minimum training standards for admission to employment as fire protection personnel; and §419.032, which provides the Commission the authority to propose rules to establish qualifications for fire protection personnel.

The proposed amendment implements Texas Government Code §§419.008, 419.022, and 419.032.

§451.3. Minimum Standards for Fire Officer I Certification.

(a) In order to be certified as a Fire Officer I an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and

(2) hold Fire Service Instructor I certification through the Commission; and

(A) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as Fire Fighter II and Fire Officer I; or

(B) complete a Commission-approved Fire Officer I program and successfully pass the Commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer I program must consist of one of the following:

(i) completion of a Commission-approved Fire Officer I Curriculum as specified in Chapter 9 of the Commission's Certification Curriculum Manual;

(ii) completion of an out-of-state and/or military training program that has been submitted to the Commission for evaluation and found to be equivalent to or exceed the Commission approved Fire Officer I Curriculum; or

(iii) successful completion of 12 [~~15~~] college semester hours consisting of the following courses or their equivalent:

(I) Fire Prevention Codes and Inspections, 3 semester hours;

(II) Fire and Arson Investigation I or II, 3 semester hours;

(III) Fire Administration I, 3 semester hours; and

(IV) Firefighting Strategies and Tactics I or II, 3 semester hours.[~~; and~~]

~~*[(V)* Company Fire Officer, 3 semester hours.]~~

(b) Out-of-state or military training programs which are submitted to the Commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer I) of the Commission's Certification Curriculum Manual are met.

(c) College courses will be considered equivalent if the course description is substantially similar to the course description contained in the Workforce Education Course Manual (WECM) from the Texas Higher Education Coordinating Board.

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

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104468
John Soteriou
Interim Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 936-3813

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.203

The Texas Commission on Fire Protection (the Commission) proposes an amendment to Chapter 451, Fire Officer, Subchapter B, Minimum Standards for Fire Officer II, concerning §451.203, Minimum Standards for Fire Officer II Certification.

The purpose of the amendment is to comply with changes made in the Workforce Education Course Manual (WECM) involving the material required for completion of the Fire Officer program. WECM sets the standards for workforce educational courses. It will reduce the required semester hours from 18 to 15.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendment is in effect, there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit from the amendment is that it will allow individuals seeking certification as Fire Officer II an option between the Fire Administration II course or the Company Fire Officer course which has been deemed equivalent. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to John Soteriou, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future Commission meeting.

The amendment is proposed under Texas Government Code, Chapter 419, §419.008, which provides the Commission the authority to propose rules for the administration of its powers and duties; §419.022, which provides the Commission the authority to establish minimum training standards for admission to employment as fire protection personnel; and §419.032, which provides the Commission the authority to propose rules to establish qualifications for fire protection personnel.

The proposed amendment implements Texas Government Code §§419.008, 419.022, and 419.032.

§451.203. Minimum Standards for Fire Officer II Certification.

(a) In order to be certified as a Fire Officer II an individual must:

(1) hold certification as Structural Fire Protection Personnel, Aircraft Rescue Fire Fighting Personnel, or Marine Fire Protection Personnel; and[~~;~~]

(2) hold Fire Officer I certification through the Commission; and

(3) hold, as a minimum, Fire Service Instructor I certification through the Commission; and

(A) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as Fire Officer II; or

(B) complete a Commission-approved Fire Officer II program and successfully pass the Commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Fire Officer II program must consist of one of the following:

(i) completion of a Commission-approved Fire Officer II Curriculum as specified in Chapter 9 of the Commission's Certification Curriculum Manual;

(ii) completion of an out-of-state and/or military training program that has been submitted to the Commission for

evaluation and found to be equivalent to or exceed the Commission-approved Fire Officer II Curriculum; or

(iii) successful completion of 15 [~~18~~] college semester hours consisting of the following courses or their equivalent:

(I) Fire Prevention Codes and Inspections, 3 semester hours;

(II) Fire and Arson Investigation I or II, 3 semester hours;

(III) Fire Administration I, 3 semester hours;

(IV) Fire Administration II or Company Fire Officer, 3 semester hours; and

(V) Firefighting Strategies and Tactics I or II, 3 semester hours.[~~; and~~]

~~*[(VI)* Company Fire Officer, 3 semester hours.]~~

(b) Out-of-state or military training programs which are submitted to the Commission for the purpose of determining equivalency will be considered equivalent if all competencies set forth in Chapter 9 (pertaining to Fire Officer) of the Commission's Certification Curriculum Manual are met.

(c) College courses will be considered equivalent if the course description is substantially similar to the course description contained in the Workforce Education Course Manual (WECM) from the Texas Higher Education Coordinating Board.

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

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104469
John Soteriou
Interim Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 936-3813

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. ADMINISTRATIVE RESPONSIBILITIES OF STATE FACILITIES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §3.101, concerning definitions; and new §3.401, concerning training for new employees; §3.402, concerning additional training for direct support professionals; §3.403, concerning refresher training; and §3.404, concerning specialized training for a forensic facility employee, in Chapter 3, Administrative Responsibilities of State Facilities.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment and new sections, in part, is to implement Senate Bill (SB) 643, 81st Legislature, Regular Session, 2009. SB 643 requires HHSC, on behalf of DADS, to promulgate rules concerning annual refresher training for state supported living center (SSLC) direct care staff. SB 643 also details specific requirements for orientation training of SSLC staff. The proposal consolidates, in Chapter 3, rules pertaining to SSLC staff training requirements that are currently in Chapters 4 and 5. The proposed amendments to Chapter 4 and repeal in Chapter 5 are published elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

The proposed amendment to §3.101 provides definitions of terms used in Chapter 3.

Proposed new §3.401 describes what content must be included in training for new employees before employment duties are performed without direct supervision.

Proposed new §3.402 describes additional training for direct support professionals in SSLCs.

Proposed new §3.403 specifies requirements for the annual refresher training for SSLC staff.

Proposed new §3.404 explains that forensic facility employees must receive training in the service delivery system for high-risk alleged offenders.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed sections are in effect, enforcing or administering the proposed sections does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed sections will not have an adverse economic effect on small businesses or micro-businesses, because the rules apply only to state supported living centers, which are not small or micro-businesses.

PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Assistant Commissioner for State Supported Living Centers, has determined that, for each year of the first five years the proposed sections are in effect, the public benefit expected as a result of enforcing the sections is having a clear, consistent, and detailed set of training requirements to prepare staff to handle their job responsibilities, thus promoting individuals' health, safety, and well being.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the proposed sections. The proposed sections will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Diana Williams at (512) 438-3169 in DADS State Supported Living Centers Division. Written comments on the proposal may

be submitted to Texas Register Liaison, Legal Services-11R01, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R01" in the subject line.

SUBCHAPTER A. DEFINITIONS

40 TAC §3.101

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §555.024, which provides that the HHSC executive commissioner shall adopt rules requiring a state supported living center to provide refresher courses to direct care employees on a regular basis.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code §555.024.

§3.101. Definitions.

The following words and terms, when used in this chapter (relating to Administrative Responsibilities of State Facilities), have the following meanings, unless the context clearly indicates otherwise:

(1) Alleged offender--An individual who was committed or transferred to a facility:

(A) under Code of Criminal Procedure, Chapters 46B or 46C, as a result of being charged with or convicted of a criminal offense; or

(B) under Family Code, Chapter 55, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(2) [~~(1)~~] Allegation--A report by a person suspecting or having knowledge that an individual has been or is in a state of abuse, neglect, or exploitation as defined in this chapter.

(3) [~~(2)~~] Applicant--A person who has applied to be an employee, volunteer, or unpaid professional intern.

(4) [~~(3)~~] CANRS--The client abuse and neglect reporting system maintained by DADS Consumer Rights and Services.

(5) [~~(4)~~] Child--An individual less than 18 years of age who is not and has not been married and who has not had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.

(6) [~~(5)~~] Clinical practice--The demonstration of professional competence in nursing, dental, pharmacy, or medical practice as described in the relevant chapter of the Texas Occupations Code.

(7) [~~(6)~~] Confirmed--Term used to describe an allegation that DFPS determines is supported by a preponderance of the evidence.

(8) [~~(7)~~] Contractor--A person who contracts with a facility to provide services to an individual, including an independent school district that provides educational services at the facility.

(9) [~~(8)~~] Conviction--The adjudication of guilt for a criminal offense.

(10) [~~(9)~~] DADS--Department of Aging and Disability Services.

(11) Direct support professional--An unlicensed employee who directly provides services to an individual.

(12) [~~(10)~~] Deferred adjudication--Has the meaning given to "community supervision" in Texas Code of Criminal Procedure, §42.12, Section 2.

(13) [~~(11)~~] DFPS--Department of Family and Protective Services.

(14) [~~(12)~~] Director--The director of a facility or the director's designee.

(15) [~~(13)~~] Employee--A person employed by DADS whose assigned duty station is at a facility.

(16) [~~(14)~~] Facility--A state supported living center or the ICF/MR component of the Rio Grande State Center.

(17) Forensic facility--A facility designated under Health and Safety Code, §555.002(a) for the care of high-risk alleged offenders.

(18) [~~(15)~~] Guardian--An individual appointed and qualified as a guardian of the person under the Texas Probate Code, Chapter XII.

(19) High-risk alleged offender--An alleged offender who has been determined by the offender's personal support team to be at risk of inflicting substantial physical harm to another person.

(20) [~~(16)~~] Inconclusive--Term used to describe an allegation leading to no conclusion or definite result by DFPS due to lack of witnesses or other relevant evidence.

(21) [~~(17)~~] Individual--A person with a developmental disability receiving services from a facility.

(22) [~~(18)~~] Mental health services provider--Has the meaning assigned in the Texas Civil Practice and Remedies Code, Chapter 81.

(23) [~~(19)~~] Peer review--A review of clinical or professional practice of a doctor, pharmacist, licensed vocational nurse, or registered nurse conducted by his or her professional peers.

(24) Perpetrator--A person who has committed an act of abuse, neglect, or exploitation.

(25) [~~(20)~~] Person--Includes a corporation, organization, governmental subdivision or agency, or any other legal entity.

(26) Personal support plan--An integrated, coherent plan that reflects an individual's preferences, strengths, needs, and personal vision, as well as the protections, supports, and services the individual will receive to accomplish identified goals and objectives.

(27) Personal support team--An interdisciplinary team of employees, individuals, and other persons who assess an individual's treatment, training, and habilitation needs and make recommendations for services, including recommendations on whether the individual is best served in a facility or community setting.

(28) Positive behavior support plan--A comprehensive, individualized plan that contains intervention strategies designed to modify the environment, teach or increase adaptive skills, and reduce or prevent the occurrence of target behaviors through interventions that build on an individual's strengths and preferences, without using aversive or punishment contingencies.

[~~(21) Perpetrator--A person who has committed an act of abuse, neglect, or exploitation.~~]

(29) [~~(22)~~] Preponderance of the evidence--The greater weight of evidence, or evidence that is more credible and convincing to the mind.

(30) [~~(23)~~] Primary contact--The person designated as the primary contact of an alleged victim of abuse, neglect, or exploitation, if the alleged victim is an adult with an intellectual disability who is unable to authorize the disclosure of protected health information and does not have a guardian.

(31) [~~(24)~~] Registries--

(A) the Nurse Aide Registry maintained by DADS in accordance with 40 Texas Administrative Code (TAC) §94.10 (relating to Registry, Findings, and Inquiries); and

(B) the Employee Misconduct Registry maintained by DADS in accordance with 40 TAC Chapter 93 (relating to Employee Misconduct Registry (EMR)).

(32) [~~(25)~~] Reporter--A person who reports an allegation of abuse, neglect, or exploitation.

(33) [~~(26)~~] Retaliation--An action intended to inflict emotional or physical harm or inconvenience on a person that is taken because the person has reported abuse, neglect, or exploitation, including harassment, disciplinary action, discrimination, reprimand, threat, and criticism.

(34) [~~(27)~~] SSLC--A state supported living center.

(35) [~~(28)~~] Unconfirmed--Term used to describe an allegation that DFPS determines is not supported by the preponderance of evidence.

(36) [~~(29)~~] Unfounded--Term used to describe an allegation that DFPS determines is spurious or patently without factual basis.

(37) Unusual incident--An event or situation that seriously threatens the health, safety, or life of an individual.

(38) [~~(30)~~] Volunteer--A person who is not part of a visiting group, who has active, direct contact with an individual, and who does not receive compensation from DADS other than reimbursement for actual expenses.

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 21, 2011.

TRD-201104529

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 438-3734

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SUBCHAPTER D. TRAINING

40 TAC §§3.401 - 3.404

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §555.024, which provides that the HHSC executive commissioner shall adopt rules requiring a state supported living center to provide refresher courses to direct care employees on a regular basis.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code §555.024.

§3.401. Training for New Employees.

(a) Before an employee performs employment duties without direct supervision, a facility must provide the employee with basic orientation.

(b) The focus of the basic orientation must be on:

(1) the uniqueness of the individuals with which the employee will work;

(2) techniques for improving the quality of life and promoting the health and safety of individuals; and

(3) the conduct expected of employees.

(c) The basic orientation must include instruction and information on the following topics:

(1) the general operation and layout of the facility, including armed intruder lockdown procedures;

(2) an introduction to intellectual disabilities;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals as specified in 40 Texas Administrative Code (TAC), Part 1, Chapter 4, Subchapter C, regarding Rights of Individuals with Mental Retardation;

(6) respecting personal choices made by individuals;

(7) the safe and proper use of restraints;

(8) abuse, neglect, and exploitation of individuals;

(9) unusual incidents;

(10) illegal drug use in the workplace;

(11) workplace violence;

(12) sexual harassment in the workplace;

(13) preventing and treating infection;

(14) responding to emergencies, including information about first aid and cardiopulmonary resuscitation procedures;

(15) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(16) the rights of facility employees.

§3.402. Additional Training for Direct Support Professionals.

(a) Before a direct support professional performs employment duties without direct supervision, a facility must provide relevant training that covers at least the following topics to the direct support professional:

(1) implementation of the personal support plan for each individual with whom the direct support professional will work;

(2) prevention and management of aggressive or violent behavior;

(3) observing and reporting changes in behavior, appearance, or health of individuals;

(4) positive behavior support;

(5) emergency response;

(6) personal support plans;

(7) self-determination;

(8) seizure safety;

(9) working with aging individuals;

(10) assisting individuals with personal hygiene;

(11) physical and nutritional management plans;

(12) home and community-based services, including the principles of community inclusion and participation in the community living options information process; and

(13) procedures for securing evidence following an incident of suspected abuse, neglect, or exploitation.

(b) If training on any of the following topics is relevant to working with a particular individual, a facility must provide that training to the direct support professional before performing duties related to that individual without direct supervision:

(1) using techniques for lifting, positioning, moving and increasing mobility;

(2) assisting individuals with visual, hearing, or communication impairments or who require adaptive devices and specialized equipment;

(3) recognizing appropriate food textures; and

(4) using proper feeding techniques to assist individuals with meals.

§3.403. Refresher Training.

(a) A facility must provide training on abuse, neglect, and exploitation to an employee annually.

(b) A facility must provide training on unusual incidents to an employee every two years.

(c) A facility must provide training on the rights of individuals as specified in 40 TAC, Part 1, Chapter 4, Subchapter C, regarding Rights of Individuals with Mental Retardation to a direct care professional annually and to an employee who is not a direct care professional every two years.

(d) A facility must provide training on restraints to a direct support professional annually.

§3.404. Specialized Training for of a Forensic Facility Employee.

Before a direct support professional performs employment duties at a forensic facility without direct supervision, the forensic facility must provide training regarding the service delivery system for high-risk alleged offenders to the direct support professional.

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 21, 2011.

TRD-201104530
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 438-3734

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CHAPTER 4. RIGHTS AND PROTECTION OF INDIVIDUALS RECEIVING MENTAL RETARDATION SERVICES

SUBCHAPTER C. RIGHTS OF INDIVIDUALS WITH MENTAL RETARDATION

40 TAC §4.121

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §4.121, concerning staff training in rights, in Chapter 4, Rights and Protection of Individuals Receiving Mental Retardation Services.

BACKGROUND AND PURPOSE

The purpose of the amendment is to remove the State Supported Living Center (SSLC) training requirements from the Chapter 4 rules. New rules in Chapter 3, published elsewhere in this issue of the *Texas Register,* incorporate the same requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §4.121 deletes training requirements for SSLC staff.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-

businesses, because the rule applies only to SSLCs, which are not small or micro-businesses.

PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Assistant Commissioner for State Supported Living Centers, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is having a clear, consistent, and detailed set of training requirements to prepare staff to handle their job responsibilities, thus promoting individuals' health, safety, and well being.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Diana Williams at (512) 438-3169 in DADS State Supported Living Centers Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R01, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R01" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The amendment implements Texas Government Code, §531.0055 and Texas Human Resources Code, §161.021.

§4.121. Staff Training in Rights.

An [~~A state MR facility and an~~] MRA must ensure that:

(1) an employee of the [~~state MR facility or~~] MRA who will provide direct services and supports to an individual or will routinely perform job duties in proximity to an individual, and the supervisor of such an employee, receive instruction on the contents of this subchapter before starting job duties and annually thereafter; and

(2) an employee of the [~~state MR facility or~~] MRA who will not provide direct services and supports to an individual and will not routinely perform job duties in proximity to an individual, and the supervisor of such an employee, receive instruction on the contents of this subchapter within two months after starting job duties and every two years thereafter.

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 21, 2011.

TRD-201104531
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 438-3734

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CHAPTER 5. PROVIDER CLINICAL RESPONSIBILITIES--MENTAL RETARDATION SERVICES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §5.363, concerning staff training in use of restraints and §5.410, staff training in behavior therapy, in Chapter 5, Provider Clinical Responsibilities--Mental Retardation Facilities.

BACKGROUND AND PURPOSE

The purpose of the repeal is to delete training requirements for State Supported Living Center (SSLC) staff currently in Chapter 5. New rules in Chapter 3, published elsewhere in this issue of the *Texas Register,* incorporate the same requirements.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §5.363 removes rules regarding staff training in the use of restraint.

The proposed repeal of §5.410 removes rules regarding staff training in behavior therapy.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will not have an adverse economic effect on small businesses or micro-businesses, because the rules apply only to SSLCs, which are not small or micro-businesses.

PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Assistant Commissioner for State Supported Living Centers, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is having a clear, consistent, and detailed set of training requirements to

prepare staff to handle their job responsibilities, thus promoting individuals' health, safety, and well being.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Diana Williams at (512) 438-3169 in DADS State Supported Living Centers Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R01, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R01" in the subject line.

SUBCHAPTER H. USE OF RESTRAINT IN STATE MENTAL RETARDATION FACILITIES

40 TAC §5.363

(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 Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§5.363. Staff Training in the Use of Restraint.

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 21, 2011.

TRD-201104532

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 438-3734

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SUBCHAPTER I. BEHAVIOR THERAPY IN STATE MENTAL RETARDATION FACILITIES

40 TAC §5.410

(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 Department of Aging and Disability Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§5.410. Staff Training in Behavior Therapy.

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 21, 2011.

TRD-201104533
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 438-3734

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §57.48

The Automobile Burglary and Theft Prevention Authority (ABTPA) proposes an amendment to 43 TAC §57.48, concerning guidelines for insurers in calculating the statutory fee required by Texas Civil Statutes, Article 4413(37). The proposed

amendment will change the address of the Texas Comptroller of Public Accounts.

Charles Caldwell, Director, has determined that for each year of the first five years that the section, as amended, will be in effect, there may be fiscal implications to state government, but not local governments, as a result of enforcing or administering the section. It is anticipated that for the first five years the fiscal impact of the proposed amendment is estimated to be $1,251,000 between 2012 and 2016, according to information provided by the Comptroller of Public Accounts. The amendment would increase the Automobile Burglary and Theft Prevention Authority fee paid by insurers from $1 to $2 per motor vehicle year of insurance. This fee increase is required pursuant to House Bill (HB) 1541, 82nd Regular Legislative Session. It is assumed that the fee increase would have no effect on the number of motor vehicle policies issued, delivered, or renewed. Estimates of revenue generated from the increased fee are based on the Comptroller of Public Accounts.

Mr. Caldwell has also determined that the public will benefit by the amendment further ensuring that the fee is applied and collected.

Comments on the proposal may be submitted to Charles Caldwell, Director, Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731, for a period of 30 days following publication in this issue of the *Texas Register.*

The amendments are proposed under Texas Civil Statutes, Article 4413(37), §6(a), which the ABTPA interprets as authorizing it to adopt rules implementing its statutory powers and duties, and Government Code §2110.008, which authorizes the ABTPA to change the amount of the assessment fee.

The following are the statutes, articles, or codes affected by the amendment of §57.48: Texas Civil Statutes, Article 4413(37), §6(a), and Government Code §2110.008.

§57.48. Motor Vehicle Years of Insurance Calculations.

(a) Each insurer, in calculating the fees established by Texas Civil Statutes, Article 4413(37), §10, shall comply with the following guidelines:

(1) The single statutory fee of $2.00 [~~$1.00~~] is payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals; and

(2) When more than one insurer provides coverage for a motor vehicle during the calendar year, each insurer shall pay the statutory fee for that vehicle.

(3) "Motor vehicle" as referred to in Texas Civil Statutes, Article 4413(37), §10(2), means motor vehicle as defined by the Insurance Code, Article 5.01(e). This definition shall be used when calculating the fees under this section.

(4) All motor vehicle or automobile insurance policies as defined by Insurance Code, Article 5.01(e), covering a motor vehicle shall be assessed the $2.00 [~~$1.00~~] fee except mechanical breakdown policies, garage liability policies, nonresident policies and policies providing only non-ownership or hired auto coverages.

(b) The Texas Automobile Burglary and Theft Prevention Authority Assessment Report form and Instructions for the Computation of the Automobile Burglary and Theft Prevention Authority Assessment of the Comptroller of Public Accounts are adopted by reference. The form and instructions are available from the Comptroller of Public Accounts, Tax Administration, P.O. Box 149356 [~~111 East Seventeenth Street~~], Austin, Texas 78714-9356 [~~78774~~]. Each insurer shall use this form and follow these instructions when reporting assessment information to the Comptroller.

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, 2011.

TRD-201104430
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Earliest possible date of adoption: December 4, 2011
For further information, please call: (512) 374-5101

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER H. INVESTMENTS

7 TAC §91.801

The Credit Union Department withdraws the proposed amendment to §91.801 which appeared in the July 1, 2011, issue of the *Texas Register* (36 TexReg 4062).

Filed with the Office of the Secretary of State on October 24, 2011.

TRD-201104537
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: October 24, 2011
For further information, please call: (512) 837-9236

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §25.17 and §25.19, concerning the prepaid funeral contract guaranty fund, §25.24, concerning examination fees, and §25.41, concerning consumer complaints. The department also adopts the repeal of §§25.51 - 25.59, concerning investment of prepaid funeral contract trust funds. The amendments and repeal are adopted without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5535).

House Bill 3004 (HB 3004), 82nd Texas Legislature, 2011, amended Subchapter H of Chapter 154 of the Finance Code regarding the Prepaid Funeral Guaranty Fund (Guaranty Fund). The amendments to Chapter 154 extend guaranty fund coverage to the performance of third party funeral providers under prepaid funeral benefit contracts purchased after the effective date of HB 3004. The amendments to §25.17 and §25.19 revise the language to reflect this statutory change.

Section 25.17(a) is amended to note the statutory change that broadened coverage of the Guaranty Fund to third party funeral providers. In addition, language is added to subsection (a) to clarify that the Guaranty Fund is composed of two separate accounts--one for trust-funded contracts and one for insurance-funded contracts. Section 25.17(e) is amended to delete the requirement that the Guaranty Fund Advisory Council (Council) meet at least annually. The purpose of the Council is to supervise the operation and maintenance of the Guaranty Fund. When there are no claims or other business to be addressed by the Council, there is no need for the group to meet. This requirement, which was imposed by rule, is deleted to avoid unnecessary costs. Meetings of the Council will be scheduled as needed and may be held less than annually.

Section 25.19(a)(4) describes claims that are not eligible for payment from the Guaranty Fund and is revised to reflect the expanded coverage of third party funeral provider obligations. The amendment to §25.19(b)(5) adds the requirement that a permit holder provide to the Council the information required by Finance Code §154.3595(c) when the permit holder is unable to locate a substitute funeral provider. This information will assist the Council in finding a funeral provider to provide contract services.

The amendments to §25.24 conform the method of calculating examination fees for prepaid funeral contract permit holders to those of other businesses regulated by the department's Special Audits Division and establish parameters for permittees to respond to consumer complaints.

Prepaid funeral benefits sellers pay for regular examinations through an annual assessment based on the number of outstanding contracts as reflected on their most recent annual report. Examinations that are in addition to the annual examination are addressed in §25.24(b)(2) and (3), which currently provide for a fee of $600 per day for each examiner, plus related travel expenses. These additional examinations may be required when a permit holder has received a less than satisfactory risk rating or is subject to a formal enforcement proceeding or order. The Commissioner may also require an additional examination to safeguard the interests of purchasers and beneficiaries and to efficiently enforce applicable law.

Previously, fees for additional and new examinations were calculated using the $600 per day for each examiner formula and then prorated when less than a full day is spent on an examination. These types of examinations typically take 8 hours or less to complete. The amendments to §25.24 change the fees for these examinations from $600 per day for each examiner to $75 per hour for each examiner. Related travel expenses will continue to be charged in addition to this per hour rate. This reimbursement method more closely describes the current practice. The fee of $75 per hour for each examiner is equivalent to the previous fee of $600 per day for each examiner.

Similar changes have been adopted to the rules that set examination fees for perpetual care cemeteries and money services businesses. This will allow for consistent examination fees for all industries that the department's Special Audits Division examines.

A change is adopted in Figure: 7 TAC §25.24(b)(1) to correct a typographical error.

The amendment to §25.24(c)(1) clarifies the department's current practice of decreasing the annual assessment if the commissioner determines a lesser amount is adequate to administer Finance Code Chapter 154.

The amendment to §25.41 requires prepaid funeral benefit permittees to respond to consumer complaints in the same manner that §26.12 of this title requires holders of certificates to operate a perpetual care cemetery to respond. Prepaid funeral permit holders are in fact responding to complainants in writing, but the department cannot enforce such a requirement because there is no rule requiring written responses or setting deadlines. The amendment adds definitions of the terms "consumer complaint" and "department" and requires the permittee to respond within 30 days of receiving the complaint. The amendment states what must be included in the response and reiterates that the permittee must keep records of the complaints. If the complaint was

forwarded to the permittee from the department, the amendment requires the permittee to send the department a copy of its response.

House Bill 2393, 80th Texas Legislature, 2007 amended Subchapter F of Chapter 154 to apply the standards set out in the Uniform Prudent Investor Act, Texas Property Code Chapter 117 to investment of trust funds related to prepaid funeral benefits. As a result of this statutory change, Subchapter C of Chapter 25 (§§25.51 - 25.59), which addresses the investment of prepaid funeral trust funds, is no longer needed and these sections have been deleted.

The department received no comments regarding the proposed amendments and repeals.

SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §§25.17, 25.19, 25.24, 25.41

The amendments are adopted pursuant to Finance Code, Subchapter H, Chapter 154, which requires the commission by rule to establish and the department to maintain a guaranty fund to guarantee the performance of prepaid funeral benefits contracts by sellers and funeral providers; Finance Code, §154.051(b)(1), which provides that the finance commission may adopt reasonable rules concerning fees to defray the cost of administering this chapter; Finance Code, §154.051(b)(2), which provides that the commission may adopt reasonable rules concerning the keeping of records relating to the sale of prepaid funeral benefits; Finance Code, §154.051(b)(5), which provides that the finance commission may adopt reasonable rules concerning any other matter relating to the enforcement and administration of this chapter; Finance Code §154.051(c), which prohibits the department from maintaining unnecessary fund balances and requires fee amounts to be set accordingly; Finance Code, §154.053(a), which requires permit holders to maintain records as required by rule of the commission; and Finance Code, §154.054(a), which requires the commissioner to impose an examination fee in an amount set by the commission under §154.051 and based on the seller's total outstanding 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.

Filed with the Office of the Secretary of State on October 21, 2011.

TRD-201104494
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 10, 2011
Proposal publication date: September 2, 2011
For further information, please call: (512) 475-1300

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SUBCHAPTER C. INVESTMENT OF TRUST FUNDS

7 TAC §§25.51 - 25.59

The repeal is adopted pursuant to Finance Code, §154.256, which requires the trustee of a prepaid funeral benefits trust to be held to the standard of duty of a trustee under the Texas Trust Code and §154.258, which requires the trustee of a prepaid funeral benefits trust to invest and manage trust assets in accordance with the Uniform Prudent Investor Act (Chapter 117, Texas Property Code).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2011.

TRD-201104495
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 10, 2011
Proposal publication date: September 2, 2011
For further information, please call: (512) 475-1300

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CHAPTER 26. PERPETUAL CARE CEMETERIES

7 TAC §§26.1, 26.2, 26.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §26.1, concerning fees required to operate a perpetual care cemetery, §26.2, concerning what records are required to be maintained, and §26.4, concerning when a burial marker or monument must be ordered and set, without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5538).

House Bill 2495, 82nd Texas Legislature, 2011 (HB 2495), amended Chapters 711 and 712 of the Health and Safety Code. The adopted amendments to §§26.1, 26.2 and 26.4 conform the rules to these statutory changes. Additional amendments to §26.1 change the method of calculating examination fees.

Section 26.1 sets out the fees that must be paid to operate a perpetual care cemetery. Amendments to §26.1(b)(1) and (2) are made to reflect changed terminology and changed citations to Chapter 712 of the Health and Safety Code. Section 26.1(b)(3) is a new provision that establishes a late fee, which was authorized by Health and Safety Code §712.0039(b)(2). The remaining paragraphs of §26.1(b) were accordingly renumbered as was the related figure.

Section 26.1(b)(5) and (d)(1) change the formula for calculating the fee for examinations of new perpetual care cemetery certificate holders and the fee for extra examinations of perpetual care cemeteries. Until May 5, 2011, these examination fees had been set by §26.1 at $600 per day per examiner. The rule was amended to tie these perpetual care cemetery examination fees to the fee charged for specialty examinations of other entities under §3.36(h) of this title (currently also set at $600 per day per examiner). This change was based on the premise that the resources necessary for all examinations performed by department examiners are similar and when one changed the other should change also. However, as the department continued to evaluate the examination fee for other entities under §3.36(h), it determined that although similar, the cost to examine these other entities is not the same as the cost to examine perpetual

care cemeteries. Therefore, the department has determined that the rates should be set separately.

Previously, the fee for new and additional perpetual care cemetery examinations was $600 per day for each examiner. It has been the department's practice to prorate the fee when less than a full day is spent on a perpetual care cemetery examination. These types of examinations typically take 8 hours or less to complete. The amendments change the fee for these perpetual care cemetery examinations from $600 per day for each examiner to $75 per hour for each examiner. Related travel expenses will continue to be charged in addition to this hourly rate. This reimbursement method more closely describes the current practice. The adopted examination fee of $75 per hour for each examiner is equivalent to the previous fee of $600 per day for each examiner.

The amendment to §26.1(c)(1) clarifies the department's current practice of decreasing the annual assessment if the commissioner determines a lesser amount is needed to administer Health and Safety Code Chapter 712.

Similar changes were adopted to the rules that set examination fees for money services businesses and prepaid funeral contract sellers. This will allow for consistent examination fees for all industries examined by the department's Special Audits Division.

The amendment to §26.2(b)(1)(A) clarifies what financial information a certificate holder must maintain. HB 2495 included new Health and Safety Code §712.0037, which requires a certificate holder to renew its certificate of authority annually. Previously there was no renewal requirement. Section 712.0037(a)(2) requires the certificate holder to demonstrate that it meets the qualifications for holding a certificate. Those qualifications are set out in §712.0034(b). One of those qualifications is that the certificate holder has a financial condition that warrants the public's confidence. The department has determined that it must review a current balance sheet and income statement to ensure that the certificate holder's financial condition is sound.

The amendment to §26.2(b)(1)(K) reflects the addition of new requirements regarding lawn crypts to Chapter 711 of the Health and Safety Code. The amendment to §26.2(c)(2) adds citations to new statutory sections of Chapter 712 of the Health and Safety Code that broaden the department's enforcement powers.

The amendment to §26.4 changes the statutory citations in subsection (a)(2) to reflect changes made to Health and Safety Code §711.002.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Health and Safety Code §711.012(a), which authorizes the Finance Commission to adopt rules to enforce and administer §711.061 of the Health and Safety Code; Health and Safety Code §712.0037(a)(1), which authorizes the Finance Commission to adopt a rule establishing an annual renewal fee; Health and Safety Code §712.0037(b)(2), which authorizes the Finance Commission to adopt a late fee for renewing certificate holders; Health and Safety Code §712.008(a), which authorizes the Finance Commission to adopt rules to enforce and administer Chapter 712, including rules establishing fees to defray the costs; Health and Safety Code §712.042, which authorizes the Finance Commission to adopt a rule setting an annual assessment fee to defray the cost of administering Chapter 712; and Health and Safety Code §712.044(b), which authorizes the Finance Commission to adopt a rule setting a fee for examinations under Chapter 712.

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 21, 2011.

TRD-201104496
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 10, 2011
Proposal publication date: September 2, 2011
For further information, please call: (512) 475-1300

CHAPTER 27. APPLICATIONS

7 TAC §27.1

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §27.1, concerning notices to applicants; application processing times; and appeals related to prepaid funeral benefits contracts and perpetual care cemeteries, without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5540).

The amended rule allows the department more time to review applications to determine whether they are complete and, if necessary, to specify additional information needed. The amendments also delete excess verbiage.

Previously, §27.1 required the department to give notice to applicants for prepaid funeral sellers permits and certificates of authority to operate perpetual care cemeteries within ten calendar days of whether their applications are complete or deficient. If the application is deficient, the department must specify what additional information is required. Over the years, applications in these areas have become more complex and require more comprehensive review. Ten calendar days does not give the department adequate time to review and specify what additional information is required.

Amended §27.1(a) increases from ten calendar days to ten business days the department's time to review and either accept an application for filing or notify the applicant of additional information required. Amended §27.1(a) also deletes excess verbiage.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code §154.051(b), which authorizes the commission to adopt reasonable rules relating to the enforcement and administration of Finance Code Chapter 154, Prepaid Funeral Services; Finance Code §154.101, which requires a person to hold a permit to sell prepaid funeral benefits; Health and Safety Code §712.0032, which requires a corporation to hold a certificate of authority issued under Chapter 712 to operate a perpetual care cemetery; Health and Safety Code §712.0033, which requires a corporation to apply to the department for a certificate of authority; and Health and Safety Code §712.008, which authorizes the

commission to adopt rules to enforce and administer Chapter 712.

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 21, 2011.

TRD-201104497
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 10, 2011
Proposal publication date: September 2, 2011
For further information, please call: (512) 475-1300

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CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.27

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §33.27, concerning Money Services Businesses (MSB) licensing fees, without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5541).

The amended rule changes the way the fee for certain MSB examinations are calculated.

MSB licensees pay for regular examinations through an annual assessment based on the amount of the MSB's total transactions for a year. Examinations that are in addition to the annual examination are addressed in §33.27(h)(2), (3), and (5) which provide for a fee of $600 per day for each examiner plus related travel expenses. These additional examinations are required when a violation of the Finance Code or a Commissioner directive has occurred, for new license holders that have not yet filed their first annual renewal report, and when the Commissioner determines it is necessary to conduct an on-site examination of an authorized delegate. When an investigation is necessary during the license application process, a similar fee is charged as set out in §33.27(d)(1)(A).

Previously, fees for additional examinations and investigations were calculated using the $600 per day for each examiner formula and then prorated when less than a full day is spent on an examination. These types of examinations and investigations typically take 8 hours or less to complete. The amendments change the fees for these examinations and investigations from $600 per day for each examiner to $75 per hour for each examiner. Related travel expenses will continue to be charged in addition to this per hour rate. This reimbursement method more closely describes the current practice. The adopted fee of $75 per hour for each examiner is equivalent to the previous fee of $600 per day for each examiner.

Similar changes have been adopted to the rules that set examination fees for perpetual care cemeteries and prepaid funeral contract sellers. This allows for consistent examination fees for all industries that the department's Special Audits division examines.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code §151.102, which authorizes the commission to adopt rules to administer and enforce Finance Code Chapter 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.

Filed with the Office of the Secretary of State on October 21, 2011.

TRD-201104498
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 10, 2011
Proposal publication date: September 2, 2011
For further information, please call: (512) 475-1300

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PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN ORIGINATOR REGULATIONS

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Savings and Mortgage Lending (the Department), adopts the repeal of 7 TAC Chapter 80, §§80.1 - 80.7; and amendments to §§80.9, 80.13 - 80.15, 80.20 - 80.23, 80.301 - 80.305, and 80.307, concerning Texas Residential Mortgage Loan Originator Regulations. The amendments to §§80.20, 80.303 - 80.305, and 80.307 are adopted with changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5542). The repeal of §§80.1 - 80.7; and amendments to §§80.9, 80.13 - 80.15, 80.21 - 80.23, 80.301, and 80.302 are adopted without changes and will not be republished.

In general the purpose of the repeal and amendments is to implement the provisions of Senate Bill 1124 as passed by the 82nd Legislature. Additional purposes of the repeal and amendments is to conform the rules to the Department's current practices, to reconcile language in the rules to statutory language, and to add clarification when needed.

The 30-day comment period ended October 2, 2011, and no comments were received on the proposal.

SUBCHAPTER A. LICENSING

7 TAC §§80.1 - 80.7

The repeal is adopted pursuant to Texas Finance Code §11.306, which authorizes the Finance Commission of Texas to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Texas Finance Code §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission of Texas, to adopt and enforce

rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the repeal are contained in Texas Finance Code Chapter 156.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2011.

TRD-201104559
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: November 13, 2011
Proposal publication date: September 2, 2011
For further information, please call: (512) 475-1352

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SUBCHAPTER B. PROFESSIONAL CONDUCT

7 TAC §80.9

The amendments are adopted pursuant to Texas Finance Code §11.306, which authorizes the Finance Commission of Texas to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Texas Finance Code §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission of Texas, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the amendments are contained in Texas Finance Code Chapter 156.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2011.

TRD-201104560
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: November 13, 2011
Proposal publication date: September 2, 2011
For further information, please call: (512) 475-1352

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SUBCHAPTER C. ADMINISTRATION AND RECORDS

7 TAC §80.13, §80.14

The amendments are adopted pursuant to Texas Finance Code §11.306, which authorizes the Finance Commission of Texas to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Texas Finance Code §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission of Texas, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the amendments are contained in Texas Finance Code Chapter 156.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2011.

TRD-201104561
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: November 13, 2011
Proposal publication date: September 2, 2011
For further information, please call: (512) 475-1352

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SUBCHAPTER D. COMPLAINTS AND INVESTIGATIONS

7 TAC §80.15

The amendments are adopted pursuant to Texas Finance Code §11.306, which authorizes the Finance Commission of Texas to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Texas Finance Code §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission of Texas, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapter 156.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Caroline C. Jones
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For further information, please call: (512) 475-1352

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SUBCHAPTER I. INSPECTIONS AND INVESTIGATIONS

7 TAC §80.20, §80.21

The amendments are adopted pursuant to Texas Finance Code §11.306, which authorizes the Finance Commission of Texas to

adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Texas Finance Code §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission of Texas, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the amendments are contained in Texas Finance Code Chapter 156.

§80.20. Examinations.

(a) The Commissioner, operating through the Department staff and such others as the Commissioner may from time to time designate, will conduct periodic examinations of Residential Mortgage Loan Originators as the Commissioner deems necessary.

(b) Except when the Department determines that giving advance notice would impair the examination, the Department will give the qualified individual of the mortgage company advance notice of each examination. Such notice will be sent to the qualified individual's address of record or e-mail address on file with the Department and will specify the date on which the Department's examiners are scheduled to begin the examination. Failure of the qualified individual to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records the qualified individual should have available for the examiner to review.

(c) Examinations will be conducted to determine compliance with the Act and will specifically address whether:

(1) All persons conducting residential mortgage loan origination activities are properly licensed;

(2) All locations at which such activities are conducted are properly licensed;

(3) All required books and records are being maintained in accordance with §80.13 of this chapter (relating to Books and Records);

(4) Legal and regulatory requirements applicable to licensees are being properly followed; and

(5) Such other matters as the Commissioner may deem necessary or advisable to carry out the purposes of the Act.

(d) The Commissioner may require reimbursement in an amount not to exceed $325 for each examiner a day for on-site examination or investigation of a Residential Mortgage Loan Originator if records are located out of state or if the review is considered necessary beyond the routine examination process.

(e) The examiner will review a sample of Residential Mortgage Loan Files identified by the examiner and randomly selected from the mortgage company's residential mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(f) The examiner may require a residential mortgage loan originator or mortgage company at their own cost, to make copies of loan files or such other books and records as the examiner deems appropriate for the preparation of or inclusion in the examination report.

(g) The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, shall be maintained as confidential except as required or expressly permitted by law.

(h) Failure of a residential mortgage loan originator or mortgage company to cooperate with an examination or failure to grant the examiner access to books, records, documents, operations, and facilities of the residential mortgage loan originator or mortgage company will subject the residential mortgage loan originator or mortgage company to enforcement actions by the Commissioner, including, but not limited to, administrative penalties.

(i) Whenever the Department must travel out-of-state to conduct an examination of a residential mortgage loan originator or mortgage company because that mortgage company maintains required records at a location outside of the state, the mortgage company will be required to reimburse the Department for the actual cost the Department incurs in connection with such out-of-state travel including, but not limited to, transportation, lodging, meals, employee travel time, telephone and FAX communication, courier service and any other reasonably related costs.

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. FORMS

7 TAC §80.22

The amendments are adopted pursuant to Texas Finance Code §11.306, which authorizes the Finance Commission of Texas to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Texas Finance Code §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission of Texas, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the amendments are contained in Texas Finance Code Chapter 156.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. MORTGAGE CALL REPORTS

7 TAC §80.23

The amendments are adopted pursuant to Texas Finance Code §11.306, which authorizes the Finance Commission of Texas to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Texas Finance Code §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission of Texas, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the amendments are contained in Texas Finance Code Chapter 156.

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SUBCHAPTER L. LICENSING

7 TAC §§80.301 - 80.305, 80.307

The amendments are adopted pursuant to Texas Finance Code §11.306, which authorizes the Finance Commission of Texas to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under Texas Finance Code §156.102 which authorizes the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission of Texas, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the amendments are contained in Texas Finance Code Chapter 156.

§80.303. Licensing - General.

(a) Applications for Residential Mortgage Loan Originator licenses must be submitted through the Nationwide Mortgage Licensing System and Registry and must be on the prescribed application forms.

(b) Applications for company or organization licensure must be submitted through the Nationwide Mortgage Licensing System and Registry and must be on the prescribed application forms.

(c) 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.

(d) All licenses issued shall be valid for a term of not more than one year from the date of issuance and shall expire on December 31st of the year issued.

(e) 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 subsection:

(1) may contain such limitations and restrictions as the Commissioner determines are reasonably necessary or appropriate to further the purposes of the Act;

(2) is subject to revocation for any of the grounds set forth in §156.303 of the Act;

(3) is subject to revocation if the Commissioner determines that any facts or circumstances exist which would have constituted grounds for denial of the application; and

(4) may be revoked 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.

(f) A license or registration applicant may be issued an inactive license if the applicant completes the promulgated application form and complies with all requirements of the license with the exception of having an active sponsoring entity. The license can be converted to an active license within the license period following the submission and processing of information regarding an active sponsor. If the inactive license is not renewed within the statutory timeframes, the license will expire.

(g) A licensee or registrant may renew his/her license while inactive. An individual may either provide sponsorship information to convert the license to an active license or may continue to be licensed as "inactive."

(h) The fees for the application or for the renewal of a licensee or registrant 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.

(i) The Department is limited to those specific license and registration status codes available through the Nationwide Mortgage Licensing System and Registry (NMLS). The NMLS maintains a website that contains the specific status codes available and their definitions. The available status codes changed by the Department are reflected in the person's license or registration record on the NMLS and on the NMLS Consumer Access website and are used in place of a Department-issued paper license.

§80.304. Qualifications for Obtaining Licenses.

(a) Mortgage Company Licenses. In order to be issued a Mortgage Company License, the applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate a control person(s) for the company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed by the Department as a Residential Mortgage Loan Originator as its qualifying individual;

(4) submit a completed branch application through the Nationwide Mortgage Licensing System and Registry for each branch office that engages in residential mortgage loan activity on residential real estate located in Texas;

(5) not be in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner;

(6) have the company name or assumed name properly filed with either the Texas Secretary of State or with the appropriate County Clerk's office;

(7) maintain a physical office in the state of Texas; and

(8) provide other information required by the Commissioner which may include financial statements.

(b) Mortgage Company Residential Mortgage Loan Originator Licenses. In order to be issued a license as a Mortgage Company Residential Mortgage Loan Originator, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the payment of applicable fees and must establish to the satisfaction of the Commissioner that:

(1) the applicant has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) the applicant is not in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner;

(3) the applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, the applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) the applicant demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as a Residential Mortgage Loan Originator under the Act;

(6) the applicant has successfully completed at least 20 hours pre-licensing education courses approved by the Nationwide Mortgage Licensing System and Registry;

(7) the applicant has passed both the state component and the national component of a written test that meets the requirements of Finance Code §180.057;

(8) the applicant has paid a Recovery Fund fee as required by Finance Code §156.502(a); and

(9) the applicant is a citizen of the United States or a lawfully admitted alien.

(c) Credit Union Subsidiary Organization Licenses. In order to be issued a Credit Union Subsidiary Organization License under the Act, an applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate a control person(s) for the organization through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed by the Department as a Residential Mortgage Loan Originator under the Act as its qualifying individual;

(4) submit a completed branch application through the Nationwide Mortgage Licensing System and Registry for each branch office that engages in residential mortgage loan activity on residential real estate located in Texas; and

(5) not be in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner.

(d) Credit Union Subsidiary Organization Residential Mortgage Loan Originator Licenses. In order to be issued a license as a Credit Union Subsidiary Organization Residential Mortgage Loan Originator, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the payment of applicable fees and must establish to the satisfaction of the Commissioner that:

(1) the applicant has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) the applicant is not in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner;

(3) the applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, the applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) the applicant demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as a Residential Mortgage Loan Originator under the Act;

(6) the applicant has successfully completed at least 20 hours pre-licensing education courses approved by the Nationwide Mortgage Licensing System and Registry;

(7) the applicant has passed both the state component and the national component of a written test that meets the requirements of Finance Code §180.057;

(8) the applicant has paid a Recovery Fund fee as required by Finance Code §156.502(a); and

(9) the applicant is a citizen of the United States or a lawfully admitted alien.

(e) Auxiliary Mortgage Loan Activity Company License. In order to be issued an Auxiliary Mortgage Loan Activity Company License under the Act, the applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate a control person(s) for the company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed by the Department as a Residential Mortgage Loan Originator under the Act as its qualifying individual; and

(4) not be in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner.

(f) Auxiliary Mortgage Loan Activity Residential Mortgage Loan Originator License. In order to be issued a license as an Auxiliary Mortgage Loan Activity Residential Mortgage Loan Originator, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the payment of applicable fees and must establish to the satisfaction of the Commissioner that:

(1) the applicant has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) the applicant is not in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner;

(3) the applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, the applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) the applicant demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as a Residential Mortgage Loan Originator under the Act;

(6) the applicant has successfully completed at least 20 hours pre-licensing education courses approved by the Nationwide Mortgage Licensing System and Registry;

(7) the applicant has passed both the state component and the national component of a written test that meets the requirements of Finance Code §180.057;

(8) the applicant has paid a Recovery Fund fee as required by Finance Code §156.502(a); and

(9) the applicant is a citizen of the United States or a lawfully admitted alien.

(g) Independent Contractor Loan Processor/Underwriter Company License. In order to be issued an Independent Contractor Loan Processor/Underwriter Company License under the Act, the applicant must:

(1) submit a completed application together with the payment of applicable fees through the Nationwide Mortgage Licensing System and Registry;

(2) designate a control person(s) for the company through the Nationwide Mortgage Licensing System and Registry;

(3) designate an individual licensed by the Department as a Residential Mortgage Loan Originator under the Act as its qualifying individual; and

(4) not be in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner.

(h) Independent Contractor Loan Processor/Underwriter License. In order to be issued a license as an Independent Contractor Loan Processor/Underwriter Residential Mortgage Loan Originator, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the payment of applicable fees and must establish to the satisfaction of the Commissioner that:

(1) the applicant has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) the applicant is not in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner;

(3) the applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, the applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) the applicant demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as a Residential Mortgage Loan Originator under the Act;

(6) the applicant has successfully completed at least 20 hours pre-licensing education courses approved by the Nationwide Mortgage Licensing System and Registry;

(7) the applicant has passed both the state component and the national component of a written test that meets the requirements of Finance Code §180.057;

(8) the applicant has paid a Recovery Fund fee as required by Finance Code §156.502(a); and

(9) the applicant is a citizen of the United States or a lawfully admitted alien.

(i) Registered Financial Services Companies. In order to be issued a Financial Services Company registration under the Act, the applicant must:

(1) obtain pre-approval from the Commissioner that the company meets the eligibility requirements for the registration as a Financial Services Company under Finance Code §156.214(b);

(2) submit a completed application through the Nationwide Mortgage Licensing System and Registry together with applicable fees required by Finance Code §156.214(b)(4);

(3) provide evidence to the Commissioner that the company has obtained surety bond coverage in an amount equal to $1,000,000;

(4) designate an officer of the company to be responsible for the activities of the company's exclusive agents; and

(5) not be in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner.

(j) Financial Services Company Exclusive Agents. In order to be issued a license as a Financial Services Company Exclusive Agent, an individual must submit a completed application through the Nationwide Mortgage Licensing System and Registry together with the payment of applicable fees and must establish to the satisfaction of the Commissioner that:

(1) the applicant has not had a residential mortgage loan originator license revoked in any governmental jurisdiction;

(2) the applicant is not in violation of the Act, a rule adopted under this chapter, or any order previously issued to the applicant by the Commissioner;

(3) the applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application;

(4) at any time preceding the date of the application, the applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court involving fraud, dishonesty, breach of trust, or money laundering;

(5) the applicant demonstrates the financial responsibility, good moral character, and general fitness necessary to operate in an honest, trustworthy, fair, and efficient manner as a Residential Mortgage Loan Originator under the Act;

(6) the applicant has successfully completed at least 20 hours pre-licensing education courses approved by the Nationwide Mortgage Licensing System and Registry;

(7) the applicant has passed both the state component and the national component of a written test that meets the requirements of Finance Code §180.057; and

(8) the applicant is a citizen of the United States or a lawfully admitted alien.

(k) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance of any license pursuant to the Act as is deemed necessary or advisable to determine that the requirements of the Act have been met.

(l) The fees for the application of a license or registration 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.

§80.305. Renewals.

(a) A license may be renewed upon:

(1) the submission of a completed application for renewal through the Nationwide Mortgage Licensing System and Registry together with the payment of the applicable renewal application fee;

(2) determination that the applicant continues to meet the minimum requirements for license issuance; and

(3) providing satisfactory evidence to the Commissioner that the license holder has completed the continuing education requirements of Finance Code §180.060.

(b) A renewal of a license may be denied if:

(1) the license holder has been convicted of, pled guilty or no contest to, a felony in a domestic, foreign, or military court during the term of the license;

(2) the license holder is in violation of the Act, a rule adopted under this chapter, or any order previously issued to the licensee by of the Commissioner;

(3) the license holder is in default in the payment of any administrative penalty, fee, charge, or other indebtedness owed under the Act;

(4) during the current term of the license, the Commissioner becomes aware of any fact that would have been grounds for denial of an original license if the fact had been known by the Commissioner on the date the license was granted; or

(5) the Residential Mortgage Loan Originator is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation, pursuant to Education Code §57.491.

(c) A licensed individual on active duty in the United States armed forces serving outside of this state shall be exempt from any late filing penalty fee imposed for renewing after the expiration date of the license pursuant to §55.001, et seq, Occupations Code.

(d) A licensed individual who is a member of the state military forces or a reserve component of the armed forces of the United States, and is ordered to active duty by the proper authority is entitled to an additional amount of time, equal to the total number of years or parts of years that the individual serves on activity duty, to complete any continuing education requirements and other requirements related to the renewal of the license, pursuant to §55.001, et seq, Occupations Code.

(e) The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the 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.

(f) The fees for the application of a license or registration 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.

§80.307. Background Checks.

(a) In connection with each application for a Residential Mortgage Loan Originator license under the Act, the applicant shall provide authorization and fingerprints as prescribed by the Nationwide Mortgage Licensing System and Registry necessary to conduct a criminal background history check through the Federal Bureau of Investigation.

(b) In connection with each application for a Residential Mortgage Loan Originator license under the Act, the Commissioner may conduct a criminal background history check through the Department of Public Safety.

(c) In connection with each application for the issuance of a Residential Mortgage Loan Originator license under the Act, the applicant shall provide authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain an independent credit report from a consumer reporting agency.

(d) Each applicant for licensure under the Act shall provide to the Commissioner and the Nationwide Mortgage Licensing System and Registry information related to any administrative, civil, or criminal findings by a governmental jurisdiction.

(e) The Commissioner shall keep confidential any background information obtained under this section and §156.206 of the Act and may not release or disclose the information unless:

(1) the information is a public record at the time the Commissioner obtains the information; or

(2) the Commissioner releases the information:

(A) under order from a court;

(B) with the permission of the applicant;

(C) to a person through whom the applicant is conducting or will conduct business; or

(D) to a governmental agency.

(f) Notwithstanding subsection (d) of this section, criminal history record information obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity

or as authorized by federal statute, federal rule, or federal executive order.

(g) An individual considering applying for a license may request a criminal history evaluation letter regarding the person's eligibility for a license as defined in Chapter 53, Subchapter D, Occupations Code. The request must be made on a form promulgated by the Department and include all pertinent court documentation including certified copies of all court indictments and/or judgments, and orders, and an explanation of the circumstances and events of the criminal action that led to the conviction or sentence, and the basis for the person's potential ineligibility. The fee for this process is $75 per request. Upon receipt of the request, the Department will:

(1) investigate the information provided by the individual to determine if there are grounds for ineligibility; and

(2) notify the individual as to the Department's determination within 90 days of receipt of the individual's request.

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CHAPTER 81. MORTGAGE BANKER REGISTRATION AND RESIDENTIAL MORTGAGE LOAN OFFICER LICENSING

The Finance Commission of Texas (the Commission) adopts amendments to 7 TAC Chapter 81, §§81.1 - 81.5, 81.7, 81.8, 81.10 - 81.12, and 81.15; and new §81.20, concerning Mortgage Banker Registration and Residential Mortgage Loan Officer Licensing. The amendments to §§81.5, 81.10, 81.12, and 81.15 are adopted with changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5558). The amendments to §§81.1 - 81.4, 81.7, 81.8, and 81.11; and new §81.20, are adopted without change to the proposed text and will not be republished.

The purpose of the amendments and new section is to implement the provisions of Senate Bill 1124 as passed by the 82nd Legislature. Additionally, the adopted amendments and new section conform the rules to the Department's current practices, reconcile language in the rules to statutory language, and add clarification when needed.

The 30 day comment period ended October 2, 2011, and no comments were received on the proposal.

SUBCHAPTER A. LICENSING

7 TAC §§81.1 - 81.5

The amendments are adopted under Texas Finance Code §157.011 which authorizes the Finance Commission of Texas to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the amendments are contained in Texas Finance Code Chapter 157.

§81.5. Renewals.

(a) A licensed individual on active duty in the United States armed forces serving outside of this state shall be exempt from any late filing penalty fee imposed for renewing after the expiration date of the license pursuant to §55.001 et seq, Occupations Code.

(b) A licensed individual on active military duty serving outside of Texas shall be exempt from any reinstatement fee imposed for renewing after the expiration date of the license, and is entitled to an additional amount of time, equal to the total number of years or parts of years that the individual serves on active duty, to complete any continuing education requirements and other requirements related to the renewal of the license, pursuant to §55.001 et seq, Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. PROFESSIONAL CONDUCT

7 TAC §81.7, §81.8

The amendments are adopted under Texas Finance Code §157.011 which authorizes the Finance Commission of Texas to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

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SUBCHAPTER C. ADMINISTRATION AND RECORDS

7 TAC §81.10

The amendments are adopted under Texas Finance Code §157.011 which authorizes the Finance Commission of Texas to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the amendments are contained in Texas Finance Code Chapter 157.

§81.10. Books and Records.

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under the Act and this chapter, each residential mortgage loan originator shall maintain records as set forth in subsection (b) of this section. The particular format of records to be maintained is not specified. However, they must be complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) Residential Mortgage Application Records. Each residential mortgage loan originator is required to maintain, at the location specified in his or her application, the following books and records:

(1) A residential mortgage loan file for each mortgage loan application received; each such file shall contain at least the following:

(A) a copy of the signed and dated mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement or documentation of the timely denial or other disposition of the application for a mortgage loan;

(C) a copy of the disclosure statement required by §157.007 of the Act;

(D) a copy of each item of correspondence, each evidence of any contractual arrangement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any residential mortgage loan applicant or any other party in connection with that mortgage loan application or its ultimate disposition; and

(E) a copy of the notice to applicants required by Finance Code, §343.105.

(2) Mortgage Transaction Log. A residential mortgage transaction log, maintained on a current basis (which means that all entries must be made within no more than seven days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name of each residential mortgage loan applicant and how to contact them;

(B) the date of the mortgage loan application;

(C) a description of the disposition of the application for a mortgage loan;

(D) the identity of the person or entity who initially funded and/or acquired the residential mortgage loan and information as to how to contact them; and

(E) the name of the residential mortgage loan originator and NMLS ID.

(3) General Business Records. The following general business records:

(A) all checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies thereof) relating to the residential mortgage business of such person;

(B) complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of a residential mortgage loan applicant, including a record of the date and amount of all such payments actually made by each applicant;

(C) copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees, independent contractors and others compensated by such residential mortgage loan originator in connection with the conduct of residential mortgage lending business;

(D) copies of all written complaints or inquiries (or summaries of any verbal complaints or inquiries) along with any and all correspondence, notes, responses, and documentation relating thereto and the disposition thereof;

(E) copies of all contractual arrangements or understandings with third parties in any way relating to the providing of residential mortgage lending services (including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, any investor contracts, any employment agreements, and any non-compete agreements);

(F) copies of all reports of audits, examinations, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities; and

(G) copies of all advertisements in the format (recorded sound, video, print, etc.) in which they were published or distributed.

(4) Each residential mortgage loan originator shall maintain such other books and records as may be required to evidence compliance with applicable state and federal laws and regulations including, but not limited to, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Truth in Lending Act.

(5) Each residential mortgage loan originator shall maintain such other books and records as the Commissioner or the Commissioner's designee may from time to time specify in writing.

(6) Each and all of the foregoing books and records must be maintained in good order and shall be produced for the Commissioner or the Commissioner's designee upon request. Failure to produce such books and records upon request, after a reasonable time for compliance, may be grounds for suspension or revocation of a license.

(7) The foregoing books and records shall be maintained for three years or such longer period(s) as may be required by applicable state and/or federal laws and regulations.

(8) A residential mortgage loan originator may meet applicable recordkeeping requirements if his or her mortgage banker maintains the required records. Upon termination of a mortgage banker's employment of a residential mortgage loan originator, that originator's records shall remain with the mortgage banker or transferred to the new mortgage banker employer. The Commissioner shall be advised in writing within ten days of any transfer of such records. Upon written request from a former residential mortgage loan originator employee, a former mortgage banker employer may release to his or her former residential mortgage loan originator employee copies of records relating to residential mortgage loans handled by such former employee.

(9) Upon the termination of operations as a mortgage banker or residential mortgage loan originator, the mortgage banker or residential mortgage loan originator shall notify the department where the required records will be maintained for the prescribed periods. If

such records are transferred to another mortgage banker, the transferee mortgage banker shall, within ten days of accepting responsibility for maintaining such records, advise the Commissioner in writing of that fact.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1352

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SUBCHAPTER D. COMPLAINTS AND INVESTIGATIONS

7 TAC §81.11

The amendments are adopted under Texas Finance Code §157.011 which authorizes the Finance Commission of Texas to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the amendments are contained in Texas Finance Code Chapter 157.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. EXAMINATIONS AND INVESTIGATIONS

7 TAC §81.12

The amendments are adopted under Texas Finance Code §157.011 which authorizes the Finance Commission of Texas to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the amendments are contained in Texas Finance Code Chapter 157.

§81.12. Examinations.

(a) The Commissioner, operating through the department staff and such others as the Commissioner may, from time to time, designate will conduct periodic examinations of residential mortgage loan originator licensees sponsored by mortgage bankers as the Commissioner deems necessary.

(b) Except when the department determines that giving advance notice would impair the examination, the Department will give the mortgage banker advance notice of each examination. Such notice will be sent to the contact person's address of record or e-mail address on file with the department and will specify the date on which the department's examiners will commence the examination. Failure of the mortgage banker to actually receive the notice will not be grounds for delay or postponement of the examination. The notice will include a list of the documents and records the mortgage banker should have available for the examiner to review.

(c) Examinations will be conducted to determine compliance with the Act and will specifically address whether:

(1) All persons conducting residential mortgage loan activity are properly licensed;

(2) All locations at which such activities are conducted are properly licensed;

(3) All required books and records are being maintained in accordance with §81.10 of this chapter (relating to Books and Records);

(4) Legal and regulatory requirements applicable to licensees or the licensee's residential mortgage business are being properly followed; and

(5) Such other matters as the Commissioner may deem necessary or advisable to carry out the purposes of the Act.

(d) The examiner will review a sample of residential mortgage loan files identified by the examiner and randomly selected from the licensee's residential mortgage transaction log. The examiner may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(e) The examiner may require a licensee, at his or her own cost, to make copies of loan files or such other books and records as the examiner deems appropriate for the preparation of or inclusion in the examination report.

(f) The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an examination conducted under this section, shall be maintained as confidential except as required or expressly permitted by law.

(g) Failure of a licensee to cooperate with the examination or failure to grant the examiner access to books, records, documents, operations, and facilities of the licensee will subject the licensee and any mortgage banker employer to enforcement actions by the Commissioner, including, but not limited to, administrative penalties.

(h) Whenever the department must travel out-of-state to conduct an examination of a licensee, because that licensee maintains required records at a location outside of the state, the licensee will be required to reimburse the department for the actual cost the department incurs in connection with such out-of-state travel including, but not limited to, transportation, lodging, meals, employee travel time, telephone and FAX communication, courier service and any other reasonably related costs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. MORTGAGE CALL REPORTS

7 TAC §81.15

The amendments are adopted under Texas Finance Code §157.011 which authorizes the Finance Commission of Texas to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the amendments are contained in Texas Finance Code Chapter 157.

§81.15. Mortgage Call Reports.

(a) A mortgage banker who held a registration anytime during the reporting year shall submit to the Nationwide Mortgage Licensing System and Registry a quarterly report of condition and a yearly financial statement that is in the form and contains the information required by the Nationwide Mortgage Licensing System and Registry.

(b) The Commissioner may prepare and make public a report summarizing the mortgage call reports provided by the registrants but shall treat each individual report and the information contained therein as confidential, the proprietary and confidential information regarding the business activity of the registrants set forth therein.

(c) The Nationwide Mortgage Licensing System and Registry sets the quarterly filing deadlines. Failure to file a mortgage call report can result in an administrative penalty for each missed or late filing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. SPONSORSHIP AND TERMINATION THEREOF

7 TAC §81.20

The new section is adopted under Texas Finance Code §157.011 which authorizes the Finance Commission of Texas to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The statutory provisions affected by the new section are contained in Texas Finance Code Chapter 157.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) adopts new §§83.1001, 83.1002, 83.2001 - 83.2003, 83.3001 - 83.3011, 83.4001 - 83.4007, 83.5001 and 83.5002 in Subchapter B of 7 TAC Chapter 83, concerning the licensing and reporting requirements of credit access businesses. Sections 83.1001, 83.2002, 83.3001 - 83.3004, 83.3007 - 83.3010 and 83.4001 are adopted with changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5565) and will be republished. Sections 83.1002, 83.2001, 83.2003, 83.3005, 83.3006, 83.3011, 83.4002 - 83.4007, 83.5001 and 83.5002 are adopted without changes and will not be republished.

The purpose of the rules is to implement House Bill (HB) 2594, as enacted by the 82nd Texas Legislature. HB 2594 requires credit access businesses that provide payday or title loans to obtain a license with the Office of Consumer Credit Commissioner. It also requires quarterly reporting of certain data relating to the transactions of credit access businesses. The adopted rules provide additional detail on the requirements for licensure and the submission of the quarterly reports.

The commission received five written comments on the proposal, one from each of the following: the Texas Catholic Conference, Texas Faith for Fair Lending, Senator Wendy Davis, the Consumer Service Alliance of Texas, and a joint comment submitted on behalf of these organizations: AARP, Anti-Poverty Coalition of Greater Dallas, City Square, Family Services of Greater Houston, Foundation Communities, LISC Greater Houston, Literacy Advance of Houston, National Council of Jewish Women, Neighborhood Centers, Inc., RAISE Texas, Texans Care for Children, Texas Appleseed, Texas NAACP, Team Manager of Consumer Protection Team - Texas RioGrande Legal Aid, and United Way of Greater Houston.

Overall, the comments offer recommendations to improve the proposed rules, with several specific suggestions on amended language. The latter two comments provide the majority of the issues, as one is from an industry trade association, and the other is a joint comment on behalf of several consumer groups. The first two comments simply echo concerns raised by the joint comment. The comment from Senator Davis's office focuses solely on issues related to the quarterly reporting section, §83.5002. The commission's responses to the comments received are addressed following the purpose paragraph for the provisions receiving comments.

As a note of background regarding these rules, credit access businesses will be 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 rule action for the commission. Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and received written comments from interested stakeholders. Subsequently, the agency held a stakeholders meeting where stakeholders provided verbal testimony and elaborated on their written comments to the ANPR.

Upon review of all the commentary provided, the agency also distributed a rule draft to the growing list of stakeholders for specific early or precomment prior to the presentation of the rules to commission. Since the proposal, the agency has continued to work with stakeholders on various issues. The agency believes that this participation of stakeholders in the rulemaking process has greatly benefited the resulting adoption.

In order to accommodate the addition of these rules, the agency is conducting a minor reorganization of 7 TAC Chapter 83. At the present time, the agency's space limitations within 7 TAC Part 5 necessitate the sharing of chapters. As the transactions conducted by regulated lenders and credit access businesses have some similarities, the agency believes the most logical location for these rules is Chapter 83. The chapter will be renamed as follows: "Regulated Lenders and Credit Access Businesses." The existing rules contained in the chapter relating to consumer loans will be relocated to Subchapter A, "Rules for Regulated Lenders." The groupings of rules and corresponding titles formerly listed as subchapters for regulated lenders will continue, but they will be redesignated as Subchapter A, Divisions 1 - 11, as opposed to Subchapters A - K. The section numbers of the existing rules for consumer loans and the text of those rules will not change. As a result, the adopted new rules will be contained in Subchapter B, "Rules for Credit Access Businesses."

Section 83.1001 outlines the purpose and scope of the chapter. One commenter suggests specific changes to the purpose sentence in subsection (a) and a change in the verb used in the scope sentence in subsection (b). The revised wording focuses on use of the term "regulation" and removes the proposed wording of "assist in the administration and enforcement." The commission has incorporated the commenter's suggested language for this adoption and agrees that it provides clarification and better reflects the intent of the legislature. Thus, §83.1001(a) as revised will be adopted as follows: "The purpose of this subchapter is to provide for the regulation of credit access businesses as authorized by Texas Finance Code, Chapter 393." In subsection (b), the verb "applies to" has been replaced by "governs," as recommended by the commenter.

Section 83.1002 provides general definitions to be used throughout the chapter.

Section 83.2001 provides for the responsibility of licensees for the acts of their agents.

Section 83.2002 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.

Since the proposal, a clarifying phrase has been added to §83.2002 due to an informal comment received. The revision properly narrows the knowledge of laws and regulations to persons "engaged in or responsible for licensed activity" and has been inserted after the word "licensee" for this adoption.

Section 83.2003 outlines transactions that are considered to constitute a "device, subterfuge, or pretense" under Texas Finance Code, §393.602, and attempted evasion of the applicability of these rules.

One commenter suggests that the second sentence from the statutory provision cited be added to the rule. It has been the agency's practice not to repeat statutory provisions within rule language, but rather to provide statutory citations where appropriate. Proposed §83.2003 cites the very provision quoted by the commenter and provides clarification without unnecessary repetition of the statutory language. The commission believes that any court or administrative body reviewing a case of subterfuge will read the statute and rule together in the context of the case presented. Therefore, the commission will maintain the proposed wording of §83.2003 for this adoption.

New 7 TAC §§83.3001 - 83.3011 set out detailed procedures related to applications for licenses under Texas Finance Code, Chapter 393.

Section 83.3001 defines the terms "net assets" and "principal party" in relation to the licensing process. The rule provides that the credit access business's debts may be subordinated to the $25,000 net asset requirement in HB 2594, pursuant to an agreement of the parties providing that the creditor forfeits its security priority and any rights it may have to current assets in the amount of $25,000. These agreements can provide leveraged credit access businesses with a way to meet the net assets requirement if the business's creditors agree to subordinate the business's debts. The terms of these subordination agreements must comply with Texas Attorney General Opinion No. DM-332 (1995), which first authorized the agreements in order to allow pawnshops to meet the Texas Pawnshop Act's net assets requirement.

Regarding "net assets," one commenter states: "The proposed language in 7 TAC [§83.3001(1)] could be modified to allow more flexibility on acceptable assets or other means to establish readily available assets or security." As this rule evolved prior to the proposal and in response to informal comments received, the agency added language allowing a credit access business to obtain an agreement with its creditors to subordinate the business's debt in order for a business to meet the net assets requirement (see preceding paragraph). The commenter quoted here does not provide a specific suggestion or language modification for the net assets definition. Based on the comment received, the commission is unable to determine another method of adding further flexibility to the treatment of net assets. Thus, the net assets definition proposed in §83.3001(1) will be maintained for this adoption.

In reference to "principal party," one commenter cites the phrase "principal parties in interest" as used in §393.604(3) of HB 2594. The commenter "recommends that the concept of a 'principal

party in interest' be reflected in the proposed regulations to define the 'substantial relationship' between a third party and a CAB [credit access business]. A principal party 'in interest' is one that either owns a threshold interest in a CAB or exerts control over a CAB's policies or operations." The commission agrees with the commenter and has incorporated the recommended concept into this adoption. As a result, the first sentence of the definition of "principal party" has been revised for the adoption as follows: "An adult individual with a substantial relationship to the applicant by ownership of more than 10% of the applicant, or having control of the proposed credit access business of the applicant."

Section 83.3002 describes the procedure for filing a new application for a credit access business license, including instructions regarding what information is necessary on the application and what information must be filed with the application.

Since the proposal, §83.3002 has been revised and reorganized to increase the efficiency of the licensing process and to better align the rules with the streamlined application forms prepared by the agency. First, the provisions that have been relocated to provide proper alignment with the revised licensing forms are as follows: proposed §83.3002(1)(D) concerning statutory or registered agent has been relocated to adopted paragraph (1)(A)(iii), proposed paragraph (1)(B) concerning owners and principal parties has been relocated to adopted (1)(A)(iv), proposed paragraph (2)(B)(vii)(II) concerning statement of records has been relocated to adopted paragraph (1)(D)(iii), proposed paragraph (1)(A)(iii) concerning authorized signatures has been renamed "Consent form" and relocated to adopted paragraph (1)(E), proposed paragraph (1)(J) concerning financial statements has been relocated to adopted paragraph (2)(C), proposed paragraph (1)(K) concerning assumed names has been relocated to adopted paragraph (2)(D), and proposed paragraph (1)(I)(v) concerning third-party lender organizations has been relocated to adopted paragraph (2)(E).

In particular, two of the relocated provisions relate to the creation of two new separate licensing forms: the consent form and the form for third-party lender organizations. These two provisions involve some minor wording changes in addition to their relocation. In adopted §83.3002(1)(E) concerning the consent form, the following new language relating to the term "authorized individual" has been added: "Each applicant must submit a consent form signed by an authorized individual. . . . The following are authorized individuals . . . ." In adopted §83.3002(2)(E) concerning third-party lender organizations, a reference to the statutory provision, Texas Finance Code, §393.604(4), requiring this information has been added.

Second, the wording and format of several taglines or form titles have been revised to correspond with the new licensing forms. These title changes are found in the following adopted provisions: §83.3002(1)(A), (1)(A)(i), (1)(A)(iii) - (iv), (1)(B), (1)(C), (1)(C)(i) - (iii), (1)(D), (1)(D)(i) - (iii), (1)(E), (2)(C), (2)(D), and (2)(E). Other changes relating to form titles may be found in §83.3008(a) and §83.3009(a) and (b). Additionally, any surrounding provisions affected by the relocations have been renumbered or relettered as appropriate, along with other technical corrections.

Along with the reorganization of §83.3002, certain provisions have experienced revised language to improve clarity and flexibility. In adopted §83.3002(1)(A)(iii), the term "statutory agent" has been replaced with "registered agent" throughout this clause. Parallel changes have also been made to §83.3002(2)(B)(ii) and (iv). In reference to agents who are natural persons, a "physical residential address" is no longer required and has been replaced with a requirement for "a different address than the licensed location address." In addition, for registered agents not matching those on file with the Texas Secretary of State, an applicant must only submit "a certification from the secretary of the company identifying the registered agent" as opposed to the proposed language requiring certified minutes of the appointment.

A revision reflected throughout §83.3002 relates to the percentage of ownership that must be disclosed by various entities. In the proposal, some of these percentages were 5% whereas others were 10%. In evaluating the appropriate level of disclosure necessary for the agency to properly assess principal parties, the agency determined that 10% would achieve the needed information and provide more consistency for licensees. Consequently, 5% has been replaced with 10% in the following adopted provisions: §83.3002(1)(A)(iv)(III)(-b-), (1)(A)(iv)(IV) and (1)(A)(iv)(V). A parallel change has also been made to §83.3004, Change in Form or Proportionate Ownership, as found in subsection (c)(1).

Section 83.3002(1)(C)(iii) concerning employment history has been revised for this adoption by removing the phrase "with no gaps." As the rule still requires "a continuous 10-year [employment] history," the deleted language is not necessary.

Section 83.3002(2)(A)(iv) relates to the fingerprints of individuals who have previously been licensed by the agency and who are principal parties of currently licensed entities. In response to an audit finding, the agency has clarified that while fingerprints are not generally required for these individuals, they may be required under certain circumstances. Fingerprints are not required if "fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation." Fingerprints may be requested in order to complete the agency's records.

Regarding the entity documents under §83.3002(2)(B), several changes have been made for this adoption in order to increase the efficiency of the licensing process. The provisions under proposed paragraphs (2)(B)(ii)(II) and (III) and (2)(B)(iv)(II) and (III) had required that applicants provide copies of the relevant portions of bylaws, operating agreements, and minutes addressing the number and election of officers and directors. The agency recognizes that these documents are only necessary in limited situations. Thus, these provisions have been shifted to the end of each respective provision and language has been added to reflect that such documents should only be provided upon request. The revisions are adopted in §83.3002(2)(B)(ii)(IV) and (V) and (2)(B)(iv)(IV) and (V).

To further streamline the licensing process, the proposed requirements in §83.3002(2)(B)(ii)(IV)(-a-) and (V) and (2)(B)(iv)(IV)(-a-) and (V) have been deleted for this adoption. The proposed provisions required applicants to provide minutes electing the statutory agent and a certificate of good standing from the Texas Comptroller of Public Accounts. Upon review of the licensing process, the agency can streamline the process for verification of registered agent by certification from the secretary of the company. Additionally, the verification of good standing may be obtained directly from the Texas Comptroller of Public Accounts.

In response to informal comments concerning the required financial statements in adopted §83.3002(2)(C), the number of days

has been changed from 60 to 90, resulting in the first sentence reading as follows: "The financial statement must be dated no earlier than 90 days prior to the date of application." This revision better aligns with the quarterly reports that many applicants have readily available.

Now turning to the written comments received regarding §83.3002, in reference to the term "responsible person" used in paragraph (1)(A)(ii), one commenter recommends changes to focus this term "on individuals with responsibility for the development, management and oversight of company of [sic] policies and procedures." The commission agrees with the commenter's suggested focus of this provision and has accepted the concept related to one of the commenter's suggested options on changed language. Therefore, the commission has revised §83.3002(1)(A)(ii) for this adoption as follows: "For each of the applicant's proposed offices, the person with substantial responsibility for operations must be named."

In adopted §83.3002(1)(A)(iv)(III) concerning disclosure of partners for limited partnerships, one commenter observes that the first sentence is inconsistent with the requirements outlined in the related items. Accordingly, to clarify and resolve this issue, the first sentence has been revised for this adoption as per *Texas Register* guidelines: "Each partner, general and limited, fulfilling the requirements of items (-a-) - (-c-) of this subclause must be listed and the percentage of ownership stated."

Concerning adopted §83.3002(1)(A)(iv)(IV), one commenter states: "[I]t would be helpful to limit the disclosure of officers in large corporations to those who have responsibility related to the operation of the CAB." Under §83.3001(2)(E)(ii), publicly held corporations already have the option to self-select principal parties "with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 393." The agency believes that simply requiring the full disclosure of the names of all officers does not present a burden on the applicant. The identity of corporate officers is a common element and standard operating practice in numerous licensing models. Having the knowledge of a corporation's full list of officers is beneficial to the licensing process and in the event legal notice may be required. Hence, the commission will maintain the language under §83.3002(1)(A)(iv)(IV) for this adoption (aside from the internal changes previously discussed).

Three commenters support the following statement: "We urge the Texas Finance Commission to exercise the authority, under §393.607(1)(B) and [§393.622(b)] of the Texas Finance Code, to review the relevant contracts between the credit access business and the third-party lender." Additionally, the three commenters also agree with the following position: "Under proposed rule §83.3002(2)(B), we urge the Texas Finance Commission to reinstate, from the preliminary rule proposal, a requirement that contract forms be submitted and approved as part of the licensing process." One commenter continues by stating: "Compliance with these requirements only can be assured if, as part of the licensing process, the contracts are submitted and reviewed by the regulator. In the absence of such a requirement, newly licensed CABs may continue to use old contracts which do not satisfy the [new statutory] provisions."

The statutory provision concerning contract review in Texas Finance Code, §393.622(b) states: "The finance commission may adopt rules under this section to allow the commissioner to review, *as part of a periodic examination,* any relevant contracts between the credit access business and the third-party lender organizations with which the credit access business contracts to provide services described by Section 393.602(a) or from which the business arranges extensions of consumer credit described by Section 393.602(a)." (emphasis added). With respect to contracts between credit access businesses and third-party lenders, the statute is specific regarding the review to be conducted "as part of a periodic examination." At this time, the agency is uncertain as to whether rulemaking is needed in this area, and if so, what issues the rules would address. The agency will certainly take note of the issue of contract review under §393.622(b) as an area for potential future rule promulgation. Thus, the commission reserves for possible future rulemaking the review of contracts between credit access businesses and third-party lenders.

In reference to the commenters' concern relating to contracts with the consumers, while §393.622(b) refers to contracts between credit access businesses and third-party lenders, some of these contracts may be three-party contracts including consumers. The bill does not specifically address review of two-party contracts between credit access businesses and consumers. Based on the plain language of §393.622(b), the legislature intended any contract review to be conducted "as part of a periodic examination," and not during the licensing process.

Furthermore, it has been represented to the agency that approximately 70% of the industry is controlled by a small number of corporate entities. The agency believes that each of these companies will use substantially similar contract forms for each of the company's locations. For example, a large corporation such as XYZ Instant Cash will not have a variety of different contracts for its hundreds of locations; rather, it is anticipated that XYZ Instant Cash would have one model contract for all of its credit access business locations. With the large company groups comprising a majority of the market, the agency anticipates that about 70% of the contracts used throughout the industry will be reviewed by the end of calendar year 2012, as initial examinations should cover some segment of these company groups. Therefore, the commission declines to amend §83.3002 with respect to the submission of contract forms during the licensing process.

Three commenters agree with the following statement: "Under proposed rules §83.3002 . . . we urge the Texas Finance Commission to adopt provisions requiring a business applying for . . . a CAB license to disclose any legal action against the business or its parent company in Texas or in other locations, an extension of the requirement already set out in §393.101(a)(2) of the Texas Finance Code." One commenter continues by stating: "Information regarding litigation or unresolved complaints against a CAB license applicant or licensee, or other business affiliated with the same parent company, filed in Texas or other jurisdictions, is necessary in order to assist examiners in their core function, to ensure businesses are operating lawfully and consumers are protected, as intended by the law."

The agency agrees with the commenters' emphasis on the importance of gathering this information and has included several questions on the licensing forms covering these issues. The category "disclosure questions" as referenced by adopted §83.3002(1)(B) includes this detailed area of the licensing forms. While it would be too cumbersome for the rule text to list the questions related to pending or past criminal, administrative, or civil actions against the applicant or its parent entity, the licensing forms thoroughly cover this area, as has been the agency's practice for all licensees. Thus, although the commission declines to amend §83.3002(1)(B), the commenters'

request has been incorporated into the licensing forms to be used by the agency.

Three commenters support the following statement: "We urge the Texas Finance Commission to extend [proposed] §83.3002(1)(I) Business Operation Plan, to include information regarding the type and terms of services that a business plans to offer under the CAB license." The commission agrees with the commenters and has incorporated a modified version of one commenter's suggested language into the rule. Therefore, adopted §83.3002(1)(D)(ii) regarding business operating plan includes the following additional subclauses: "(V) the types of consumer credit products to be extended to consumers, as advertised by the business; and (VI) the contractual loan term, in days, of each consumer credit product to be offered to consumers."

Two commenters state: "Licensed lenders under Chapter 342 of the Texas Finance Code that engage in lending activities similar to the loans arranged by the new CAB licensees must comply with fair lending standards. CAB licensees should be required to comply with the same standards." One commenter continues by stating: "[A] CAB should have the same obligation as licensed lenders to assess the borrower's ability to repay the entire loan principal amount in addition to the associated CAB fees and the lender charges for the designated loan period." The agency believes that the issue of fair lending standards is one to be evaluated through the complaint and examination process. For the agency's regulated lenders under Chapter 342, fair lending practices are reviewed through complaints and exams, with some proceeding to enforcement actions. The agency believes that the same procedure should be followed for credit access businesses under Chapter 393. Consequently, the commission declines to amend the proposed rules regarding fair lending practices.

Section 83.3003 describes the procedure for filing an application for transfer of a credit access business license, including the filing requirements.

One commenter states that it would be helpful to amend §83.3003(c)(2)(B) to include broader language applying to all entities and not just corporations. The commission agrees and has replaced the proposed language with the commenter's suggestion for this adoption: "a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired." In addition, technical corrections have been made to §83.3003(c)(1)(B) to parallel the reorganization of §83.3002.

Section 83.3004 describes the 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.

Since the proposal, changes have been made to §83.3004 to minimize unnecessary transfer applications. In cases involving changes in organizational form and mergers resulting in different parent entities, previous language in subsections (a) and (b) requiring a transfer has been revised to instead only require a license amendment and payment of the accompanying fee under §83.3010. Similarly, a license amendment and fee requirement have been added to §83.3004(c) when a change in proportionate ownership results in the exact same owners still owning the business (absent an owner crossing the 10% ownership threshold).

Section 83.3005 requires each applicant to supplement its application upon request by the agency.

Section 83.3006 requires each applicant, upon discovery of new or changed information, to supplement its application within 10 days of discovery of the new or changed information.

Section 83.3007 describes how an application for a credit access business 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.

Since the proposal, the word "incomplete" has been inserted before the first use of "application" to clarify when a response will be provided by the agency.

One commenter requests that the following sentence be added to the end of §83.3007(c) regarding the denial of applications for failure to complete: "Upon request, the Commissioner may grant any extension." The rule as proposed includes discretionary language stating that such applications "may be denied." The commission declines to add the suggested language as it is unnecessary.

In §83.3007(d) and (f)(2), one commenter "recommends a time limit [of 30 days] be added for the Commissioner's decision after receipt of a proposal for decision from the administrative law judge." The commission disagrees with the commenter's recommendation because accepting the comment would unnecessarily restrict the commissioner. The commissioner is responsible for reviewing and ruling on all proposals for decision issued by the administrative law judge for all licensees and registrants under the commissioner's regulatory authority. No other regulated area of the commissioner contains this type of restriction. A restriction of this nature could force the commissioner to favor this license over other licenses or registrations. This type of restriction also does not take into account the number or complexity of the administrative records that could be before the commissioner at any given point in time. Finally, there is no statutory basis for the suggested time limit of 30 days for the commissioner to issue her ruling on a proposal for decision. Therefore, the commission declines the recommended changes and maintains §83.3007(d) and (f)(2) as proposed.

Section 83.3008 describes the procedures for relocating a licensed office, including deadlines for notification. As an alternative to notification by mail, a licensee may provide notice to a consumer by reasonable signage, electronic means (e.g., email, text message), or by any other means approved by the commissioner.

One commenter states: "The portion of Subsection (c) from 'and provide' to the end should be deleted because it requires transaction specific information and is unnecessary." The commission disagrees with the commenter as this information is critical to the agency's ability to respond to consumer complaints when accounts are sold to multiple entities. As stated in the proposed rule, this information is only required if transactions are "transferred to more than one location." Hence, the commission maintains the proposed language of §83.3008(c) for this adoption.

Section 83.3009 describes how a licensee may change its license status, including changing a license from active to inactive status and activating an inactive license.

Section 83.3010 sets out the fees for new licenses, license transfers, fingerprint processing, license amendments, license duplication, and costs of hearings.

Since the proposal, changes have been made to other sections requiring that a license amendment be filed in certain situations. Accordingly, these situations have been added to the fee provision concerning license amendments. Thus, §83.3010(d) has been amended with the following phrases added before "or relocating an office": "changing the organizational form or proportionate ownership, providing notification of a new parent entity."

One commenter "recommends that any transaction volume-based fees be evaluated, and potentially adjusted, over time. The volume and types of transactions under Chapter 393G may be substantially different than those under Chapter 342." The agency recognizes the commenter's concern and has added language to §83.3010(g)(1)(B) to allow for future adjustments, as follows: "a volume fee based upon the volume of business that consists of an amount not to exceed $0.03 per each $1,000 advanced . . . ." Similarly, the phrase "not to exceed" has been added to subsection (g)(1)(A) related to the fixed fee.

Section 83.3011 states that, upon filing with the Office of Consumer Credit Commissioner, an application for a credit access business license or a notice submitted by an applicant or licensee becomes a state record and public information subject to the Texas Public Information Act.

One commenter also recommends a rule regarding temporary licenses for substantially complete applications. As a temporary license provision is not within the scope of the proposed rules, the commission must technically decline this comment. However, a proposal concerning a new rule for provisional licenses is being presented separately in this issue of the *Texas Register.*

Section 83.4001 explains the requirement for displaying licenses. In response to informal comments received, §83.4001 has been revised to include clarifying provisions related to in-person sales and Internet sales. The in-person sales provision in adopted subsection (a) maintains the proposed language. For business conducted through the Internet, the credit access business has two options concerning license display in new subsection (b): (1) include a complete copy of the license in a prominent and conspicuous location; or (2) include information specified by the rule related to the license in a prominent and conspicuous location. Additionally, the Internet requirements must be fulfilled "on any website maintained by the business and on any website where the business advertises to or transacts with the public."

Section 83.4002 describes the agency's procedure for providing delinquent notices to licensees who have failed to pay an annual assessment fee.

Section 83.4003 describes the effect of criminal history information on applicants and licensees. Subsection (a) explains the collection and consideration of criminal history information. Subsection (b) outlines the information that 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 credit access business. Subsection (d) provides the effects of criminal convictions on applicants and licensees, including a list of crimes involving moral character.

Section 83.4004 is a companion rule to §83.4003. Section 83.4004 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 83.4005 details the effect of a license revocation, suspension, or surrender upon the authority to collect on existing contracts.

Section 83.4006 prescribes the process for a new application after a former licensee has surrendered its license or had a license revoked.

Section 83.4007 provides the procedure for returning license certificates upon the reissuance of a license.

Section 83.5001 sets the required dates and states the requirement for filing quarterly reports. Two commenters raise concerns about the content of quarterly reports. In particular, the commenters request definitions of terms like "refinance" and "renewal." One commenter states that the requirements should apply to individual store locations and not be aggregated by parent organizations. As discussed publicly in relation to the proposal, the agency has organized a work group to study the content of the quarterly reports. The agency believes that it would be premature to propose content regulations at this time. The content of the quarterly reports will be developed as part of the reporting process. Although the commission declines to amend the procedural quarterly reporting rule as part of this adoption, the agency will take note of the issues commented upon for potential future rulemaking.

Section 83.5002 provides for a fee in addition to the assessment fee that may be charged to licensees who require an expedited follow-up examination due to noncompliance issues. The rule is necessary to permit the agency to recover the direct and indirect costs associated with conducting follow-up examinations.

DIVISION 1. GENERAL PROVISIONS

7 TAC §83.1001, §83.1002

These new sections are adopted under Texas Finance Code, §393.622, which authorizes the Finance Commission to adopt rules necessary to enforce and administer Subchapter G, Licensing and Regulation of Certain Credit Services Organizations, under Chapter 393.

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

§83.1001. Purpose and Scope.

(a) Purpose. The purpose of this subchapter is to provide for the regulation of credit access businesses as authorized by Texas Finance Code, Chapter 393.

(b) Scope. This subchapter governs credit access businesses as defined by Texas Finance Code, §393.601(2) that obtain for a consumer or assist a consumer in obtaining an extension of consumer credit in the form of:

(1) a deferred presentment transaction; or

(2) a motor vehicle title 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.

Filed with the Office of the Secretary of State on October 21, 2011.

TRD-201104517
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: November 10, 2011
Proposal publication date: September 2, 2011
For further information, please call: (512) 936-7621

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DIVISION 2. AUTHORIZED ACTIVITIES

7 TAC §§83.2001 - 83.2003

These new sections are adopted under Texas Finance Code, §393.622, which authorizes the Finance Commission to adopt rules necessary to enforce and administer Subchapter G, Licensing and Regulation of Certain Credit Services Organizations, under Chapter 393.

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

§83.2002. Knowledge of Laws and Regulations Required.

Each officer, director, employee, and agent of a licensee engaged in or responsible for licensed activity must have a working knowledge of Texas Finance Code, Chapter 393, its implementing regulations, and other pertinent state and federal statutes and regulations that apply to the licensee's business.

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 21, 2011.

TRD-201104518
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: November 10, 2011
Proposal publication date: September 2, 2011
For further information, please call: (512) 936-7621

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DIVISION 3. APPLICATION PROCEDURES

7 TAC §§83.3001 - 83.3011

These new sections are adopted under Texas Finance Code, §393.622, which authorizes the Finance Commission to adopt rules necessary to enforce and administer Subchapter G, Licensing and Regulation of Certain Credit Services Organizations, under Chapter 393.

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

§83.3001. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393, have the same meanings as defined in Chapter 393. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) Net assets--The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally, assets are available for use if they are readily convertible to cash within 10 business days. Debt that is either unsecured or secured by current assets may be subordinated to the net asset requirement pursuant to an agreement of the parties providing that the creditor forfeits its security priority and any rights it may have to current assets in the amount of $25,000. Debt subject to such a subordination agreement would not be an applicable liability for purposes of calculating net assets.

(2) Principal party--An adult individual with a substantial relationship to the applicant by ownership of more than 10% of the applicant, or having control of the proposed credit access business of the applicant. The following individuals are principal parties:

(A) proprietors, including spouses with community property interest;

(B) general partners;

(C) officers of privately held corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial management responsibility for credit access operations or compliance with Texas Finance Code, Chapter 393;

(D) directors of privately held corporations;

(E) individuals associated with publicly held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation were privately held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 393. One of the persons designated must be responsible for assembling and providing the information required on behalf of the applicant and must sign the application for the applicant;

(F) managers or voting members of a limited liability company;

(G) trustees and executors; and

(H) individuals designated as principal parties where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§83.3002. Filing of New Application.

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

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) Location information. A physical street address must be listed for the applicant's proposed address, or if the applicant

will have no such location, a statement to that effect must be provided. For applicants with a proposed location in Texas, a post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) Responsible person. For each of the applicant's proposed offices, the person with substantial management responsibility for operations must be named.

(iii) Registered agent. The registered agent must be provided by each applicant. The registered agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered agent is a natural person, the address must be a different address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered agent should be the one on file with the Office of the Texas Secretary of State. If the registered agent is not the same as the agent filed with the Office of the Texas Secretary of State, then the applicant must submit a certification from the secretary of the company identifying the registered agent.

(iv) Owners and principal parties.

(I) Proprietorships. The applicant must disclose who owns and who is responsible for operating the business. All community property interests must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.

(II) General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(III) Limited partnerships. Each partner, general and limited, fulfilling the requirements of items (-a-) - (-c-) of this subclause must be listed and the percentage of ownership stated.

(-a-) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

(-b-) Limited partners. The applicant should provide a complete list of all limited partners owning 10% or more of the partnership.

(-c-) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(IV) Corporations. Each officer and director must be named. Each shareholder holding 10% or more of the voting stock must be named if the corporation is privately held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 10% or greater.

(V) Limited liability companies. Each "manager," "officer," and "member" owning 10% or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 10% or greater.

(VI) Trusts or estates. Each trustee or executor, as appropriate, must be listed.

(B) Disclosure questions. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(C) Personal information.

(i) Personal affidavit. Each individual meeting the definition of "principal party" as defined in §83.3001 of this title (relating to Definitions) or who is a person responsible for day-to-day operations must provide a personal affidavit. All requested information must be provided.

(ii) Personal questionnaire. Each individual meeting the definition of "principal party" as defined in §83.3001 of this title or who is a person responsible for day-to-day operations must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(iii) Employment history. Each individual meeting the definition of "principal party" as defined in §83.3001 of this title or who is a person responsible for day-to-day operations must provide an employment history. Each principal party should provide a continuous 10-year history, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(D) Additional requirements.

(i) Statement of experience. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the credit access business. If the applicant or its principal parties do not have significant experience in the same type of credit access business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(ii) Business operating plan. Each applicant must provide a brief narrative to the application explaining the type of operation that is planned. This narrative should discuss each of the following topics:

(I) the source of customers;

(II) the purpose(s) of the extensions of consumer credit;

(III) the size of the extensions of consumer credit;

(IV) the source of working capital for planned operations;

(V) the types of consumer credit products to be extended to consumers, as advertised by the business; and

(VI) the contractual loan term, in days, of each consumer credit product to be offered to consumers.

(iii) Statement of records. Each applicant must provide a statement of where records of Texas transactions will be maintained. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel cost associated with examinations in addition to the assessment fees or agree to make all records available for examination in Texas.

(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:

(i) If the applicant is a proprietor, each owner must sign.

(ii) If the applicant is a partnership, each general partner must sign.

(iii) If the applicant is a corporation, an authorized officer must sign.

(iv) If the applicant is a limited liability company, an authorized member or manager must sign.

(v) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

(2) Other required filings.

(A) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §83.3001 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the owners and principal parties under paragraph (1)(A)(iv)(III)(-a-) of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The OCCC may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and are principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to submit a new set of fingerprints in order to complete the OCCC's records.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

(B) Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Office of the Texas Secretary of State.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the certificate of formation or articles of incorporation, with any amendments;

(II) a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application for license form;

(III) if the registered agent is not the same as the agent on file with the Office of the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent;

(IV) if requested, a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(V) if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form.

(iii) Publicly held corporations. In addition to the items required for corporations, a publicly held corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

(II) a certification from the secretary of the company identifying the current officers and directors as listed in the owners and principal parties section of the application for license form;

(III) if the registered agent is not the same as the agent on file with the Office of the Texas Secretary of State, a certification from the secretary of the company identifying the registered agent;

(IV) if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;

(V) if requested, a copy of the minutes of company meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form.

(v) Trusts. A copy of the relevant portions of the instrument that created the trust addressing management of the trust and operations of the applicant must be filed with the application.

(vi) Estates. A copy of the instrument establishing the estate must be filed with the application.

(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide a certificate of authority to do business in Texas, if applicable.

(C) Financial statement and supporting financial information.

(i) All entity types. The financial statement must be dated no earlier than 90 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the Supporting Financial Information. All financial statements must be certified as true, correct, and complete, and must comply with generally accepted accounting principles (GAAP).

(ii) Sole proprietorships. Sole proprietors must complete all sections of the Personal Financial Statement and the Supporting Financial Information, or provide a personal financial statement that contains all of the same information requested by the Personal Financial Statement and the Supporting Financial Information. The Personal Financial Statement and Supporting Financial Information must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the Supporting Financial Information must be submitted for the partnership itself and each general partner. All of the balance sheets and Supporting Financial Information documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet. The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the corporate or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet. The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(D) Assumed name certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business and Commerce Code, §71.002, an Assumed Name Certificate must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business and Commerce Code, Chapter 71. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business and Commerce Code, Chapter 71. Evidence of the filing bearing the filing stamp of the Office of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(E) Third-party lender organizations. As required by Texas Finance Code, §393.604(4), each applicant must provide the names, physical addresses, and telephone numbers of the third-party lender organizations with which the business contracts to provide services or from which the business arranges extensions of consumer credit.

(F) Bond. The commissioner may require a bond under Texas Finance Code, §393.605, if the commissioner finds that this would serve the public interest. If a bond is required, the commissioner will give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.

§83.3003. Transfer of License.

(a) Definition. As used in this subchapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §83.3004 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(1) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(2) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(3) any change in ownership of a licensed limited partnership interest in which:

(A) a limited partner owning 10% or more relinquishes that owner's entire interest;

(B) a new limited partner obtains an ownership interest of 10% or more;

(C) a general partner relinquishes that owner's entire interest; or

(D) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(4) any change in ownership of a licensed corporation in which:

(A) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(B) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(C) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(D) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(5) any change in the membership interest of a licensed limited liability company:

(A) in which a new member obtains an ownership interest of 10% or more;

(B) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(C) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(6) any acquisition of a license by gift, devise, or descent occurs; and

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of paragraphs (1) - (6) of this subsection, and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) Approval of transfer. No credit access business license may be sold, transferred, or assigned without written approval of the commissioner.

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

(1) Required application information.

(A) New licensees filing transfers. The information required for new license applications under §83.3002 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §83.3002 of this title are applicable to these filings. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection must also be submitted.

(B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the application for license, disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.3002 of this title. The instructions in §83.3002 of this title are applicable to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.3002 of this title need not be filed if the information on file with the OCCC is current and valid. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection must also be submitted.

(2) Evidence of transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application and should include one of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(d) Permission to operate. No business under the license may be conducted by any transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. Additionally, the transferor must grant the transferee the authority to operate under the transferor's license pending approval of the transferee's new license application. The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the transferee in connection with the operation of the business. The permission to operate must be submitted before the transferee takes control of the licensed operation. The agreement must set a definite period of time for the transferee to operate under the transferor's license. A request for permission to operate may be denied even if it contains all of the required information. Two companies may not simultaneously operate under a single license. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) Application filing deadline. Applications filed in connection with transfers of ownership may be filed in advance but must be filed no later than 10 calendar days following the actual transfer.

§83.3004. Change in Form or Proportionate Ownership.

(a) Organizational form. When any licensee or parent of a licensee changes the organizational form of its business (e.g., from corporation to limited partnership), the licensee must advise the commissioner of the change in writing within 10 calendar days after the change, by filing a license amendment and paying the required fees as provided in §83.3010 of this title (relating to Fees). In addition, the licensee must submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of conversion and partnership agreement) addressing the ownership and management of the new entity.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to §83.3003 of this title (relating to Transfer of License). If the merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 10 calendar days after the change, by filing a license amendment and paying the required fees as provided in §83.3010 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 10 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §83.3010 of this title. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a transfer application may be required under §83.3003 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a transfer under §83.3003 of this title.

§83.3007. Processing of Application.

(a) Initial review. A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when:

(1) it conforms to the rules and published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(c) Failure to complete application. If a complete application has not been filed within 30 calendar days after notice of deficiency has been sent to the applicant, the application may be denied.

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. If an application has been denied, the assessment fee will be refunded to the applicant. The investigation fee and the fingerprint processing fee in §83.3010 of this title (relating to Fees) will be forfeited.

(f) Processing time.

(1) A license application will ordinarily be approved or denied within a maximum of 30 calendar days after the date of filing of a completed application.

(2) When a hearing is requested following an initial license application denial, the hearing will be held within 30 calendar days after a request for a hearing is made unless the parties agree to an extension of time. A final decision approving or denying the license application will be made after receipt of the proposal for decision from the administrative law judge.

(3) Exceptions. More time may be taken where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time periods in paragraphs (1) and (2) of this subsection.

§83.3008. Relocation of Licensed Offices.

(a) Filing requirements. A licensee may move the licensed office from the licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy of the notice to consumers, and the applicable fee as outlined in §83.3010 of this title (relating to Fees).

(b) Notice to consumers. Written notice of a relocation of an office, or of transactions as outlined in subsection (c) of this section, must be mailed to all consumers with active accounts at least five calendar days prior to the date of relocation. Notices must identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to consumers can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. In lieu of notification by mail, a licensee may provide notice to a consumer by reasonable signage, electronic mail, text messaging, or other electronic means if a consumer has approved electronic notices, or by any other means the commissioner may approve.

(c) Relocation of transactions. If the licensee is only relocating or transferring transactions from one licensed location to another licensed location, the licensee must comply with subsection (b) of this section and provide, if transferred to more than one location, a list of transactions relocated or transferred. This list of relocated or transferred transactions must include the contract number and the full name of the consumer.

§83.3009. License Status.

(a) Inactivation of active license. A licensee may cease operating under a credit access business license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the commissioner. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §83.3010 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §83.3010 of this title.

(c) Voluntary surrender of license. Subject to §83.4005(b) of this title (relating to Effect of Revocation, Suspension, or Surrender of License), a licensee may voluntarily surrender a license by providing written notice of the cessation of operations, a request to surrender the license, and by submitting the license certificate. A voluntary surrender will result in cancellation of the license.

(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.

§83.3010. Fees.

(a) New licenses.

(1) Investigation fees. A $200 non-refundable investigation fee is assessed on the filing of one or more license applications owned or controlled by the same person. A separate investigation fee may be imposed for multiple license applications for good cause in accordance with Texas Finance Code, §393.604(b).

(2) Assessment fees. An assessment fee of $600 per active license and $250 per inactive license is assessed each time an application for a new license is filed. This assessment fee will be refunded if the application is not approved.

(3) Fee for Texas Financial Education Endowment. A fee not to exceed $200 is assessed each time an application for a new license is filed, in order to contribute to the Texas Financial Education Endowment. The finance commission may reduce the amount of the fee if it determines that the endowment is of a sufficient size to accomplish its purpose. This fee will be refunded if the application is not approved.

(b) License transfers. An applicant must pay a $200 non-refundable investigation fee for each license transfer.

(c) Fingerprint processing. A nonrefundable fee as prescribed by the commissioner will be charged to recover the costs of investigating each principal party's fingerprint record.

(d) License amendments. A fee of $25 must be paid each time a licensee amends a license by inactivating a license, activating an in-

active license, changing the assumed name of the licensee, changing the organizational form or proportionate ownership, providing notification of a new parent entity, or relocating an office.

(e) License duplicates. The fee for a license duplicate is $10.

(f) Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §83.3007(d) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each license consisting of:

(A) a fixed fee not to exceed $600; and

(B) a volume fee based upon the volume of business that consists of an amount not to exceed $0.03 per each $1,000 advanced for license holders whose operations occur within Texas Finance Code, Chapter 393 in accordance with the most recent quarterly report filing required by Texas Finance Code, §393.627.

(2) The annual assessment fee for an inactive license is $250.

(3) The maximum annual assessment fee for each licensed entity will not average more than $1,200 per active licensed location.

(4) In addition to the annual assessment fee, a fee not to exceed $200 is required for each annual renewal of a licensed entity, in order to contribute to the Texas Financial Education Endowment. The finance commission may reduce the amount of the fee if it determines that the endowment is of a sufficient size to accomplish its purpose.

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 21, 2011.

TRD-201104519
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: November 10, 2011
Proposal publication date: September 2, 2011
For further information, please call: (512) 936-7621

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DIVISION 4. LICENSE

7 TAC §§83.4001 - 83.4007

These new sections are adopted under Texas Finance Code, §393.622, which authorizes the Finance Commission to adopt rules necessary to enforce and administer Subchapter G, Licensing and Regulation of Certain Credit Services Organizations, under Chapter 393.

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

§83.4001. License Display.

(a) In-person sales. Licenses must be prominently displayed in a licensee's office in a conspicuous location visible to the general public.

(b) Internet sales. For business conducted through the Internet, a credit access business must fulfill one of the following two options on any website maintained by the business and on any website where the business advertises to or transacts with the public:

(1) include a complete copy of its license in a prominent and conspicuous location which may be accessible via a direct link; or

(2) include the following information in a prominent and conspicuous location:

(A) name of the licensed business followed by the phrase "credit access business";

(B) license number of the business;

(C) address of the licensed location of the business; and

(D) a statement that the licensed business is regulated by the Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

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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DIVISION 5. OPERATIONAL REQUIREMENTS

7 TAC §83.5001, §83.5002

These new sections are adopted under Texas Finance Code, §393.622, which authorizes the Finance Commission to adopt rules necessary to enforce and administer Subchapter G, Licensing and Regulation of Certain Credit Services Organizations, under Chapter 393.

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

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CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS
SUBCHAPTER B. RULES FOR CRAFTED PRECIOUS METAL DEALERS

The Finance Commission of Texas (commission) adopts new §§85.1001 - 85.1011, 85.2001 and 85.2002 in Subchapter B of 7 TAC Chapter 85, concerning the registration and reporting of crafted precious metal dealers. Sections 85.1001, 85.1003, 85.1006, 85.1007, 85.1010, 85.1011, 85.2001 and 85.2002 are adopted with changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5576) and will be republished. Sections 85.1002, 85.1004, 85.1005, 85.1008 and 85.1009 are adopted without changes and will not be republished.

The purpose of the rules is to implement House Bill (HB) 2490, as enacted by the 82nd Texas Legislature. HB 2490 requires crafted precious metal dealers to register with the Office of Consumer Credit Commissioner. It also creates additional requirements for the form that must be prepared with each transaction. The adopted rules provide additional detail on the requirements for registration and the contents of the transaction report form.

The commission received fifteen written comments on the proposal, from the following organizations and persons: the Texas Jewelers Association, the Austin Jewelry Appraisers, Gold-Busters, Acme Gold Buyers (two comments), the Posey Law Firm, P.C., Universal Coin and Bullion (two comments), Jerry Jordan (two comments), the Texas Association of Independent Pawnbrokers, L Bufalo Pawn (three comments), and the Senate Committee on Business and Commerce, Chair John Carona.

Overall, the comments provide suggestions and concerns regarding the proposed rules, with the majority of the comments relating to the transaction reporting under §85.2001. Several comments were received regarding the proposed requirement of including estimated scrap values on the transaction report. Also, a number of the comments present concerns about the amount of detail contained in the description requirements of the proposed rule. The commission's responses to the comments received are addressed following the purpose paragraph for the provisions receiving comments. Additionally, many issues commented upon relate solely to statutory provisions not within the commission's authority. These comments concerning HB 2490 have been generally addressed to direct the commenter to the appropriate statutory provisions.

As a note of background regarding these rules, crafted precious metal dealers are a fairly young industry 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. Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and received written comments from interested stakeholders. Subsequently, the agency held a stakeholders meeting where stakeholders provided verbal testimony and elaborated on their written comments to the ANPR.

Upon review of all the commentary provided, the agency also distributed a proposed rule draft to the growing list of stakeholders for specific early or precomment prior to the presentation of the rules to commission. In addition, the agency conducted a public hearing under Texas Government Code, §2001.029 as requested by the Texas Jewelers Association. The agency circulated a revised draft of the rules prior to the hearing and received testimony from several jewelers and other interested stakeholders. After the public hearing, the agency received positive written comments, as one commenter "applaud[ed] the most recent changes to the rules, as well as staff's interest in clarifying their interpretation of Chapter 1956 and the proposed rules." Another commenter expressed appreciation for the agency's "openness to hear [the commenters'] thoughts and ideas in the public hearing, last week." The agency carefully evaluated all of the stakeholders' comments and has incorporated numerous recommendations offered by the stakeholders. The agency believes that this continued participation of stakeholders in the rulemaking process has greatly benefited the resulting adoption.

In order to accommodate the addition of these rules, the agency is conducting a minor reorganization of 7 TAC Chapter 85. At the present time, the agency's space limitations within 7 TAC Part 5, necessitate the sharing of chapters. As the transactions conducted by pawnshops and crafted precious metal dealers have some similarities, the agency believes the most logical location for these rules is Chapter 85. The chapter has been renamed as follows: "Pawnshops and Crafted Precious Metal Dealers." The existing rules contained in the chapter relating to pawnshops have been relocated to Subchapter A, "Rules of Operation for Pawnshops." The groupings of rules and corresponding titles formerly listed as subchapters will continue, but they will be redesignated as Subchapter A, Divisions 1 - 7, as opposed to Subchapters A - G. The section numbers of the existing pawnshop rules and the text of those rules will not change. As a result, the adopted new rules are contained in Subchapter B, "Rules for Crafted Precious Metal Dealers."

Section 85.1001 contains definitions to be used throughout the subchapter. The rule incorporates the definition of "crafted precious metal" from HB 2490, which provides that crafted precious metal is "jewelry, silverware, an art object, or another object, made wholly or partly from precious metal." Because the statute and rule apply to items "made wholly or partly from precious metal," they include metal items attached to nonmetal items. For example, if a dealer purchases a gold ring with a diamond attached, then the whole item, including the ring and the diamond, will be considered crafted precious metal subject to the statute and rule. However, if the diamond is removed from the ring before the sale, then the ring by itself will be considered crafted precious metal, and the diamond will not.

The rule's definition of "crafted precious metal" excludes a coin, a bar, a commemorative medallion, an item with trace amounts, or an item purchased by a dealer for 105% or more of the item's scrap value. This language is intended to implement the definition in HB 2490, which excludes "a coin, a bar, a commemorative medallion, or scrap or a broken item selling at five percent or more than the scrap value of the item." Section 85.1001 provides that "scrap value" means the value that would be paid for an item by a person who will melt the item or otherwise transform

it so that it will not be used for its original purpose. Under these definitions, for example, the statute and rule would apply to any dealer who purchases crafted precious metal items at less than scrap value (unless the items are coins, bars, or medallions). However, the statute and rule would not apply to a dealer who purchases a broken ring for 150% of scrap value, repairs it, and then sells the ring as a retail good. Additionally, §85.1001 defines several other terms, including "broken item," "permanent registered location," and "temporary location."

Since the proposal, the definition of "crafted precious metal" in §85.1001(2) has been further refined. In response to informal comments received, the phrase "an item that contains incidental or trace amounts of precious metal" has been added to exclude items with trace amounts, such as computer motherboards and cell phones. In addition, proposed subparagraph (A) has been deleted in order to clarify the rule and place the focus on the true determining factor of the last statutory exclusion: whether the item is sold above or below 105% of the item's scrap value. Accompanying technical corrections have been made along with these changes.

During the public hearing, a person providing testimony raised the concern of small business owners who conduct a very light volume of business in the purchase of crafted precious metal. The agency recognizes the potential need for a de minimis exception excluding persons who do not purchase and sell a certain amount of crafted precious metal or perform a certain number transactions in one calendar year. The agency would like to study this issue for future rulemaking.

Regarding the definition of "local law enforcement" in adopted §85.1001(4), an informal commenter requested clarification concerning out-of-state purchases. In order to properly encompass sales where either the seller or the dealer is located in Texas, clause (ii) has been added to subparagraph (B), which reflects filing with the dealer's local law enforcement when the seller does not reside in Texas but the dealer does.

Also in reference to the local law enforcement definition, one commenter states: "Currently I discourage mail in business. However, it does remain convenient for many customers to mail their items to a trusted source. However, in HB 2490 I see no requirement for Dealers to report to law enforcement other than in the County which they are located. This would be a time consuming challenge to have to report to the Cities or Counties from where these precious metals were mailed." Under Texas Occupations Code, §1956.063(b), the transaction report must be sent to the sheriff in "the county in which the transaction occurs," unless the transaction occurs in a city that maintains a police department, in which case it must be sent to that city's police department. The commission believes that this requirement is consistent with the rule's requirement that the report be sent to a Texas seller's home county for mail-in sales, and to a Texas dealer's home county if the seller is out-of-state (as explained in the preceding paragraph). When both parties are from Texas and the item is alleged to be stolen, the report's information will be more useful for law enforcement in the seller's county than law enforcement in the dealer's county. When the functionality becomes available, the upload transaction feature of the Metals Registration Program will help ease compliance in this type of situation. Thus, the commission declines the commenter's suggestion.

In the definition of "scrap value," the proposal included a statement that scrap value "is synonymous with 'melt value'" at the end of the definition. One commenter disagrees and pointed to situations where scrap value and melt value would not be the same. When discussing this issue with stakeholders, the agency had explained that while melt value can have a couple of different meanings, the agency intended it to mean the amount for which a dealer would sell the item to a refiner. In other words, the agency's proposed use of the term "melt value" was what a refiner would pay a dealer for the item, i.e., the scrap value. In order to reduce potential confusion involved in multiple acceptable uses of the term "melt value," the commission has deleted the last sentence from the scrap value definition in adopted §85.1001(8).

Section 85.1002 states the procedure for filing a new application for a crafted precious metal dealer registration, which will be completed through required submission to the online Metals Registration Program. The rule also outlines what information is necessary on the application, including responsible persons, assumed names, and a list of both temporary and permanent locations for the proposed business.

Section 85.1003 relates to the processing of the application. The rule includes provisions regarding when an application is complete, the required 30-day notice to the applicant concerning incomplete applications, the automatic withdrawal of an application if an applicant does not respond to a request for information within 30 days, and the issuance of certificates when a registration has been completed.

Since the proposal, paragraph (1) of §85.1003(b) has been deleted in order to properly reflect the communications provided by the agency during the registration process. It has been the agency's practice to notify registrants (or licensing applicants) when their submissions are incomplete and specify what information is required for completion. The proposed rule inadvertently stated that notification would be provided when an application is complete, which is not planned to occur. The revision in adopted §85.1003(b) accurately describes the notification provided to applicants with incomplete applications. In addition, technical corrections have been made to accommodate this deletion.

Section 85.1004 describes the procedures for relocating a registered location by filing with the online Metals Registration Program and paying the required fees under §85.1011.

Section 85.1005 provides that the agency may rely on the mailing and e-mail addresses on file for all purposes relating to notification, and that a metal dealer's failure to update these addresses is not a defense to any action taken by the OCCC as a result of the dealer's failure to respond.

Section 85.1006 requires each crafted precious metal dealer to prominently display its registration certificate in a conspicuous location visible to the public at every location where the dealer purchases crafted precious metal.

Since the proposal, §85.1006 has been revised to include clarifying provisions related to in-person sales, Internet sales, and mail order sales and advertisements. The in-person sales provision in adopted subsection (a) maintains the proposed language. For business conducted through the Internet, the crafted precious metal dealer has two options concerning registration display in subsection (b): (1) include a complete copy of the registration in a prominent and conspicuous location; or (2) include information specified by the rule related to the registration in a prominent and conspicuous location. The Internet requirements must be fulfilled "on the dealer's website and on any website where the dealer advertises to the public." Similar requirements to subsec-

tion (b) must be fulfilled in mailed communications and advertisements in §85.1006(c) as adopted. Additionally, an oral comment received at the public hearing noted that other delivery methods aside from US mail should be included. The agency agrees and has added language regarding private delivery services for this adoption.

Section 85.1007 describes the procedures for annual renewal, including the payment of fees on an annual basis and the submission of updated information concerning locations and responsible persons. In addition, §85.1007 states when a registration will no longer be effective.

As a matter of regulatory flexibility, late renewal options have been added to §85.1007 since the proposal. The agency reviewed the Sunset License Model for 2009 and crafted the provisions in new subsection (b) in accordance with the Sunset Commission's standards. The Sunset License Model specifically contemplates penalties for delinquent license renewals, with time frames and penalty amounts varying among state agencies.

The added provisions in §85.1007(b) provide two levels of late renewal penalties: (1) a late penalty of 50% of permanent location fees for renewing within 30 days of the dealer's annual anniversary, and (2) a late penalty of 100% of permanent location fees for renewing 120 days late. The agency believes that these late renewal penalties are set at a level to discourage delinquent registration renewals, as recommended by the Sunset Commission.

The last subsection of §85.1007, adopted subsection (c), has been renamed "Effects of expired registration" and divided into three paragraphs to provide better clarity to registrants. Paragraph (1) maintains the proposed language regarding the date when a registration is no longer effective. A clarifying phrase has been added to state that if a dealer does not timely renew and fails to fulfill a late renewal option in subsection (b), then the dealer's registration is no longer effective. Paragraph (2) consists of the proposed last sentence concerning reapplication after expiration, with the new tagline, "Obtaining registration after expiration."

New paragraph (3) of §85.1007(c) states: "(3) Administrative penalty. If a person has engaged in the purchase of crafted precious metal while its registration was not effective, the person may be subject to an administrative penalty under Texas Occupations Code, §1956.0615." This language has been added to clarify the consequences of engaging in unregistered activity as supported by the Sunset License Model.

Section 85.1008 outlines the process by which a metal dealer may add temporary locations after an initial application or after a renewal, as provided by Texas Occupations Code, §1956.0612(d).

Section 85.1009 states that the agency may revoke a dealer's registration for a violation of the statute and describes the dealer's right to a hearing to challenge that decision.

Section 85.1010 concerns the procedures for a new registration after revocation. A dealer whose registration has been revoked may not reapply for at least five years and must follow the procedures for new applicants under §85.1002.

Since the proposal, the term "license" in the title of §85.1010 has been replaced with "registration" in order to provide correct terminology.

Section 85.1011 sets out the fees for permanent registered locations, temporary locations, registration amendments, and temporary location additions. The rule includes provisions regarding the agency's legal authority to charge nonsufficient funds fees. In addition, the rules states that fees are nonrefundable, nontransferable, and not prorated.

Since the proposal, proposed subsection (e) regarding system fees has been deleted as the online subscription fees are included within the $50 (permanent location) and $25 (temporary location) registration fees. Additionally, technical corrections have been made to §85.1011 to reletter the remaining subsections.

Section 85.2001 outlines the required contents of the transaction report form. The rule first lists required information relating to the dealer, then provides required information concerning the seller, and finally lists the information required for the description of crafted precious metal purchased by the dealer in the transaction.

In particular, in implementing the statutory requirement, the rule states that the transaction report form be preprinted and prenumbered. Forms must be numbered sequentially in order of the date and time of transaction, so that the dealer may account for each transaction made. There are several ways in which a dealer could fulfill this requirement. For example, a dealer could have a single bundle of preprinted, sequential forms, from which the dealer's employees can take forms as transactions occur. Alternatively, the dealer could use a computer program that prints out forms numbered sequentially in order of date and time. In addition, §85.2001 allows other information to be included on the transaction report form as long as it is not misleading with respect to rights arising under the law.

One commenter is "interested in the OCCC's interpretation of the 'preprinted and prenumbered' requirement in §85.2001. We look forward to reviewing the OCCC's commentary to the rules to help our membership determine how to comply with the 'prenumbered' aspect of this rule." As stated in the proposed preamble, dealers may fulfill this requirement by having multiple employees draw from a single stack of preprinted, sequentially numbered forms. Another option would be to utilize a computer program that automatically prints out forms numbered in sequence depending on the date and time of the print request by the employee.

Regarding the full name of the seller in §85.2001(a)(5), one commenter presents a concern about the rules not including a definition of "personal identification certificate," and thought that it "could be a potential loophole for fake ID's and/or foreign Driver's licenses." The term "personal identification certificate" is used in the existing statutory provisions applicable to metal dealers in Texas Occupations Code, §1956.062(c), which remain unchanged by HB 2490. Section 1956.001(8)(C) of the Occupations Code defines "a personal identification certificate" as one "issued by the [Texas Department of Public Safety] under Section 521.101, Transportation Code, or a corresponding card or certificate issued by another state." Thus, as the current statutory provisions limit the acceptable forms of identification, it was not necessary to define it by rule. However, to clarify this statutory limitation on acceptable identification, the commission has added a specific citation reference to the definition in the statute. Therefore, for this adoption, §85.2001(a)(5) has been revised as follows: "the seller's driver's license or personal identification certificate as defined by Texas Occupations Code, §1956.001(8)."

Under §85.2001(a)(9), three commenters raise concerns about the description requirements being too "time-intensive," "awkward and onerous." Some of these concerns had been raised during the precomment stage and the agency had worked diligently prior to the public hearing to revise the description requirements. The revisions provide the appropriate balance of required information necessary to fulfill the statute's intent of assisting law enforcement in tracking stolen property, while making the rules more practical in application for metal dealers. As a result, numerous changes were made regarding the descriptions in advance of the public hearing, as follows: removing the requirement that each individual item be described in an itemized list, adding a requirement that the total number of items purchased by the dealer be included, allowing items to be grouped by each kind of metal purchased for purposes of weight and price, removal of the requirements to designate whether any item is scrap or broken, and the addition of a separate description option where a more general description may be accompanied by a clear image of all items purchased.

At the public hearing, many dealers were appreciative of the flexibility added to the description requirements. In particular, three commenters submitted written support for the alternative use of photocopies or digital photographs to provide accurate descriptions of the crafted precious metal purchased. One oral commenter asked whether photos could be grouped by metal type. It is the agency's intent to maintain the adopted rule's flexibility in this area. Thus, for a large number of items of various metal types, the agency would accept the use of grouped images (e.g., 20 items total, one photo of the 10 items of 14 karat gold, one photo of the 10 items of 10 karat gold). In contrast, for a small purchase, the agency would accept the use of one photo with a clear description indicating which piece is of a particular metal type (e.g., one 10 karat gold ring (left), one 14 karat gold ring (middle), one 0.925 sterling silver ring (right)).

Two commenters present remaining concerns related to the description of stones. At the public hearing, the detailed description without an image still required stones to be described by "type, color, shape, number, size, and approximate weight." With regard to stone type, one commenter states: "Most jewelers have several years of experience in dealing with colored stones, or become certified as a specialist, before accurately concluding a stone type." In reference to size and weight, the commenter states that "there may not be an accurate way to measure the stone" without removal of the stone or damage to the item. The agency recognizes these practical concerns and believes that a more general stone description will provide sufficient information under both description options. Hence, under adopted §85.2001(a)(9)(A) and (B), stones may be described by "color (e.g., clear, blue, green), number, and approximate size (e.g., small, medium, large)." In order to accommodate the various changes to the description requirements, appropriate revisions regarding renumbering, relettering, formatting, and grammar have been made throughout paragraph (9). Additionally, due to the optional use of images as part of dealer descriptions of purchased items, the title of §85.2001 has been revised by deleting "Contents of" at the beginning and adding "and Records" after "Form."

The issue receiving the most comments relates to the proposal's inclusion of the estimated scrap value of items as part of the transaction report provided to the seller. Five commenters are against this provision and three commenters are in support of it. The commenters opposed to including the scrap value state that it would be requiring industry members to disclose the proprietary information of their profit margin to their customers, a requirement not made of any other industry. Those in favor of including the scrap value believe that this disclosure is valuable to the sellers/customers in evaluating whether they are being made an appropriate offer for their crafted precious metal.

Two commenters in favor of maintaining the scrap value estimate on the seller's copy offer the alternative of requiring that each item sold be documented in ounces on the receipt so that a consumer could compare the item's value with a known index. The proposed rule provides three alternative weight measures: troy ounces, grams, and pennyweights. Different stakeholders provided input throughout the process of their use of all three measures and some advantages to each. The agency does not have enough information at this time to evaluate the impact on the industry of requiring only one weight measurement option. For example, the agency has no way to anticipate how many metal dealers would need to acquire new scales or other equipment to provide weights in ounces. Thus, the commission declines the commenter's suggestion of requiring ounces on the transaction report.

One commenter against the inclusion of scrap value estimates on the transaction report states: "It appears that the OCCC's purpose may be to ascertain whether any particular transaction meets the 'less than 105% of scrap value' threshold. If the purpose of §85.2001(c) is to assure the OCCC's jurisdiction over a transaction, there are easier ways to accomplish this. We believe that any transaction report kept by a dealer or submitted to a law enforcement authority is *per se* subject to the OCCC's jurisdiction, or at least an admission of jurisdiction." The agency respectfully disagrees with the commenter's position; the agency does not have the authority to assume jurisdiction over a transaction that is clearly exempted by statute (e.g., if a dealer sent in a report for the purchase of gold coins, bars, or medallions). The agency believes that a reasonable estimate of scrap value is extremely helpful information that dealers already have by being in the business.

The agency carefully weighed the commenters' views and supporting information provided. To strike the appropriate balance, the agency decided to remove the scrap value from the copy provided to the seller but maintain its inclusion on the dealer's copy of the transaction report provided to law enforcement. Placing this information on a report sent to law enforcement is not unduly burdensome while being highly beneficial to the state in carrying out its regulatory duties. The majority of stakeholders at the public hearing expressed support for this compromise (with the exception of two commenters who still feel the scrap value should be given to the consumer). Therefore, for this adoption, the reasonable estimate of scrap value has been removed from the description requirements under subsection (a) and moved to a separate requirement under subsection (c) to maintain "required scrap value estimation records."

Also with regard to the scrap value, two informal comments resulted in refining changes to the rule's language. Although the proposal included a phrase about providing a "reasonable estimate of the item's scrap value," further clarification has been added in response to an informal comment by adding the term "good faith" prior to "estimate." In addition, another informal commenter requested the option to provide either the estimated scrap value or the percentage of scrap value that the dealer will pay the seller. This concept has also been incorporated into adopted §85.2001(c).

One commenter questions the legislative intent, suggesting that the legislature did not plan for crafted precious metal dealers to include values or prices on their forms. While the proposal did include a requirement for itemized pricing, that requirement was removed prior to the public hearing as discussed earlier. As for retaining a price paid for each group of items of the same metal type, the agency believes that a listing of the purchase price and estimated scrap value (on the dealer's copy) is necessary. HB 2490 provides authority to the commission to prescribe the transaction report form and does not limit the commission's authority to require items not listed in the statute. Thus, the revised requirement to provide the price paid for each metal group as well as a total price paid to the seller will remain in adopted §85.2001(a)(9).

In §85.2001(a)(13), the dealer is required to include a consumer complaint notice, providing the contact information for the agency. One commenter requests permission "to use the phrase 'This business' or some general pronoun" to allow the creation of "a standard form that would satisfy the rule's Transaction Report Form requirements without being business specific." The commission agrees with the commenter's suggestion and has replaced the proposal's phrase of "(dealer's name)" with "this business" in both places in adopted §85.2001(a)(13).

Section 85.2002 outlines the procedures for submission of the transaction report. The dealer must provide a copy to the seller concerning that seller's transaction. Within 48 hours, the dealer must provide either a paper or electronic copy to law enforcement or submit the report to the Metals Registration Program along with written notice of that filing to law enforcement.

Since the proposal, language has been added throughout §85.2002 to reflect that any images accompanying a transaction report used under §85.2001 (as revised for this adoption) must be provided. Due to the optional use of images as part of dealer descriptions of purchased items, the title of §85.2002 has been revised by adding "and Records" after "Form." In subsection (b), the phrase "in a manner approved by local law enforcement" has been added to clarify that the dealer must provide the transaction report information in a method approved by local law enforcement. Additionally, while the rule includes the option of reporting transactions to the Metals Registration Program, the agency notes that this functionality is not yet available.

Under §85.2002(a), one commenter states that it would be unnecessary to provide a copy of the receipt or any images used for descriptions to the seller. The commission disagrees with the commenter as legislative history contains direct support for providing a copy of the receipt to the seller. During the development of the rule, the agency received an informal comment from Representative Deshotel stating: "[T]he exchange between Rep. Solomons and myself helped to clarify the intent of the legislation and to confirm that it was indeed the author's intent to require the purchaser of precious metals under this legislation to provide a physical receipt, detailing all aspects of the transaction, to a consumer as a part of any sale or purchase of precious metals under this legislation. Furthermore, it was the author's stated understanding and intent that this be accomplished under the specific rule making authority granted to the Office of Consumer Credit Commissioner by this legislation." Furthermore, the optional use of images to describe the crafted precious metal is critical to providing the seller a complete receipt. Without providing both a copy of the written transaction report and the images, a seller would be left with a minimal description of the purchase. Therefore, the commission declines the commenter's suggestions and maintains the requirements of providing the seller a copy of the transaction report and images used in that seller's transaction.

One commenter inquires about the use of the word "printed" in proposed §85.2002(a): "The dealer must provide a complete, printed copy of the transaction report form to the seller with respect to the seller's transaction." The commenter asks whether the form could be filled out by hand or whether that would conflict with the "preprinted" requirement. The commission recognizes the inconsistency of the terms used in the proposal and has removed the word "printed" from §85.2002(a) for this adoption. Furthermore, the agency does not anticipate any conflict with the preprinted requirement in filling out the necessary items by hand, as that requirement is geared toward the sequential numbering and inclusion of all covered transactions.

One commenter expresses concern about not seeing any enforcement rules. The compliance measures under HB 2490 are complaint driven under §1956.0613, which states: "The commissioner shall: (1) monitor the operation of a dealer to ensure compliance with this chapter; and (2) receive and investigate complaints against a dealer or a person acting as a dealer." Complaints may come from three primary sources: (1) consumers, (2) law enforcement, or (3) other dealers. The agency will investigate complaints as they are received and monitor dealer compliance. In addition, with newly regulated industries, the agency's practice has been to gain experience with that industry concerning enforcement issues. If compliance rules are necessary, additional rules relating to enforcement may be proposed at a later time.

Finally, as noted early in this discussion, several commenters presented issues directly related to statutory provisions, which are outside the scope of the rule proposal and not within the agency's authority. However, the agency felt it prudent to generally summarize and respond to some of these issues to provide guidance to stakeholders.

In Texas Occupations Code, §1956.060(2), one commenter is concerned that the statute's exception for "an entity affiliated with a person licensed under Chapter 371" may be "used as a loophole for unscrupulous businesses." As noted in the preceding paragraph, while this issue is not a comment on the rule proposal, the agency intends to study the area of affiliated entities in order to make any appropriate recommendations to the legislature.

One commenter would like "to insure the [computer] programs used by the precious metal dealers are approved by the Office of Consumer Credit and meet the same level of data security as those programs used by licensed pawnbrokers to minimize fraud or manipulations of the tickets." The regulatory scheme for metal dealers is one of a registration process without eligibility requirements, whereas pawnbrokers are reviewed for eligibility, licensed, and examined by the agency. The statutory authority under Texas Finance Code, Chapter 371 is much broader and provides authority for a review of recordkeeping systems. Thus, under HB 2490, the agency does not have the authority to approve the computer programs used by crafted precious metal dealers and is unable to address this comment.

One commenter states: "I do believe that recent felons should not be considered for registration." As discussed in the prior paragraph, crafted precious metal dealers are required to register with the agency but the statute does not provide for a review of criminal history or other eligibility requirements. This request is outside the purview of the agency's statutory authority.

Five commenters express concerns about the statutory hold periods. One wants no exemptions to the hold period, one requests a further requirement that items be held in a secure location in the same county where they were purchased, and yet another notes the contradiction between the general 11-day hold period where exceptions allow the dealer to sell the item before the 11-day hold expires or before the police have an opportunity to place a 60-day hold on the item.

In general, there is an 11-day hold period already required for metal dealers where they may not melt, deface, alter, or dispose of crafted precious metal under certain conditions. That general hold period remains unchanged by HB 2490 and is found in existing Texas Occupations Code, §1956.064. In addition, HB 2490 allows a peace officer who has a reasonable suspicion that an item of crafted precious metal has been stolen to extend the hold period to 60 days. New subsection (b) of §1956.064 as enacted by the bill states: "A peace officer who has reasonable suspicion to believe that an item of crafted precious metal in the possession of a dealer is stolen may place the item on hold for a period not to exceed 60 days by issuing to the dealer a written notice . . . ." Unfortunately, the latter commenter is correct in that a dealer that fulfills the exception under §1956.064(a)(2) would not have to hold the item for the 11-day period. Unlike the express statutory authority provided by the Texas Pawnshop Act to set a hold period, HB 2490 and the Texas Occupations Code do not contain that grant of authority to the commission. Hence, the commission is unable to address concerns about the hold periods through rulemaking.

One commenter estimates new costs for "initial software expense," "annual upkeep (maintenance & backup)," "upgrade of server and computers," a new security system (including safes) to accommodate the longer hold period, insurance costs, two additional employees, and "incidental expenses." The agency believes that each of these costs either is not legally required or comes from the statute rather than the proposed rule. The general requirement that dealers fill out a "preprinted and prenumbered form" that describes the crafted precious metal comes from HB 2490, not the rule. The statute and rule do not require a dealer to purchase a computer system, as the form can be submitted on paper as long as it is preprinted and prenumbered. The rule also does not address the hold period as discussed in the preceding paragraph. The general 11-day hold period is the same period that has been in effect since 2003; HB 2490 extends the period to 60 days only in cases where a peace officer alleges an item to be stolen. Thus, although the issues raised by the commenter relate to certain costs imposed by the statute, the commission maintains its position that the rules do not impose any adverse economic effect on small businesses or micro-businesses.

One commenter inquires about a number of different parties, the effects of potential registration and compliance on those parties, and whether certain parties could be exempted by rulemaking. While the bulk of these comments relate to existing statutory exemptions in the Texas Occupations Code, the agency thought it would be beneficial to educate stakeholders on certain exemptions and coverage of the statute.

The following addresses several parties not subject to or specifically exempt from the statute. Wholesalers by definition buy from and sell to businesses, i.e., they are not retailers. The purchase of crafted precious metal is the transaction covered by HB 2490. Regardless of who a metal dealer subsequently sells to, any crafted precious metal purchased from the public would be subject to the bill and to the adopted rules. Hence, as wholesalers do not purchase crafted precious metal from the public used for personal, family, or household use, wholesalers are not subject to the bill. Another situation not subject to the bill is a case where a jeweler or other dealer melts a customer's old item to create a new piece of jewelry for that customer. This dealer has not purchased crafted precious metal and this transaction would not be subject to HB 2490.

With estate sellers, there is a particular exemption under §1956.057 for a judicial sale made by an executor. Trusts and banking agencies liquidating properties would be exempt under §1956.056 (crafted precious metal acquired in dissolution or liquidation sale). Precious metal refiners would be exempt under the "dealer-to-dealer" exemption found in §1956.055 (crafted precious metal acquired from another dealer who previously made required reports). Additional common exemptions are: §1956.058 (crafted precious metal acquired as payment for other crafted precious metal by person in business of selling to consumers, i.e., the "trade-in exception"), and §1956.059 (crafted precious metal acquired from or reported to governmental agency). Due to these highly-specific statutory exemptions, the commission cannot exempt other parties through rulemaking as requested by the commenter.

The commenter also raises concerns related to the conjunction "and" contained in the statute's definition of "dealer" as "a person registered to engage in the business of purchasing and selling crafted precious metal . . . ." The commenter states that someone could argue that they are not "purchasing and selling," but are rather just purchasing. The agency's interpretation of this statutory language is that someone purchasing under the bill will most likely at some point in the future receive money for the crafted precious metal. Consequently, someone "purchasing" crafted precious metal will almost assuredly sell it and would be subject to the bill.

One commenter believes that the bill would result in extensive costs to the agency, including the hiring of 150 people and a cost of $10 million to administer the law, resulting in the need to charge a fee of $1,000 to $1,200 for each registration. HB 2490 is primarily a bill including registration and rulemaking functions with minimal enforcement delegated to the agency. The fiscal note accompanying the bill included one full-time equivalent employee (a licensing and permit specialist). The agency anticipates significantly lower costs than the commenter and believes that it will recover the costs of the registration process at the proposed fees of $50 for each permanent location and $25 for each temporary location.

Compliance with the registration rules contained in Division 1 is optional prior to January 1, 2012. Crafted precious metal dealers under this subchapter should apply for registration no later than January 31, 2012.

DIVISION 1. REGISTRATION PROCEDURES

7 TAC §§85.1001 - 85.1011

These new sections are adopted under Texas Occupations Code, §1956.0611 (Acts 2011, 82nd Leg.), which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) as enacted by HB 2490, states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the adopted new sections are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

§85.1001. Definitions.

The following terms, when used in this subchapter, have the following meanings:

(1) Broken item--An item that has been damaged so that it cannot be used for its original purpose without substantial repair.

(2) Crafted precious metal--Has the meaning provided by Texas Occupations Code, §1965.051(3). The term does not include a coin, a bar, a commemorative medallion, an item that contains incidental or trace amounts of precious metal, or an item that is purchased by a dealer for 105% or more of the item's scrap value.

(3) Date of purchase.

(A) For in-person sales, the date of purchase is the date the seller transfers the crafted precious metal to the dealer.

(B) For mail order or Internet sales, the date of purchase is the earlier of:

(i) the date the dealer sends payment for the crafted precious metal; or

(ii) the date the seller agrees by phone or written communication to a price offered by the dealer.

(4) Local law enforcement.

(A) For in-person sales, local law enforcement is:

(i) the chief of police of the municipality where the sale occurs, if the sale occurs in a municipality that maintains a police department; or

(ii) the sheriff of the county where the sale occurs, if the sale does not occur in a municipality that maintains a police department.

(B) For mail order or Internet sales, local law enforcement is:

(i) if the seller resides in Texas:

(I) the chief of police of the municipality where the seller resides, if the seller resides in a municipality that maintains a police department; or

(II) the sheriff of the county where the seller resides, if the seller does not reside in a municipality that maintains a police department; or

(ii) if the seller does not reside in Texas and the dealer's permanent registered location is in Texas:

(I) the chief of police of the municipality of the dealer's permanent registered location, if the dealer's permanent registered location is in a municipality that maintains a police department; or

(II) the sheriff of the county of the dealer's permanent registered location, if the dealer's permanent registered location is in a municipality that maintains a police department.

(5) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(6) Permanent registered location--A location where a crafted precious metal dealer engages in the business of buying crafted precious metal for one year or longer.

(7) Scrap--An item that is intended to be melted down or otherwise transformed so that it will not be used for its original purpose.

(8) Scrap value--The value at which an item would be purchased by a person who will melt the item or otherwise transform it so that it will not be used for its original purpose.

(9) Seller--An individual selling crafted precious metal to a dealer, including a transferor.

(10) Temporary location--A location where a crafted precious metal dealer engages in the business of buying crafted precious metal for less than one year.

§85.1003. Processing of Application.

(a) Complete application. An application is complete when:

(1) the application conforms to the rules and the commissioner's published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(b) Notification. Within 30 days of receiving an incomplete application for registration, the OCCC will provide written notice to the applicant stating that the application is incomplete and specifying the additional information required for completion.

(c) Application considered withdrawn. If the OCCC requests additional information required to complete an application and the applicant does not respond within 30 days, the application will be considered withdrawn. If an application is considered withdrawn, then the applicant must reapply under §85.1002 of this title (relating to Filing of New Application) in order to obtain a registration.

(d) Certificate. When an application is complete, the OCCC will issue a certificate of registration to the crafted precious metal dealer.

§85.1006. Registration Display.

(a) In-person sales. A crafted precious metal dealer's registration must be prominently displayed in any location where the dealer purchases crafted precious metal from the public. The registration must be in a conspicuous location visible to the public.

(b) Internet sales. For business conducted through the Internet, a crafted precious metal dealer must fulfill one of the following two options on the dealer's website and on any website where the dealer advertises to the public:

(1) include a complete copy of its registration in a prominent and conspicuous location which may be accessible via a direct link; or

(2) include the following information in a prominent and conspicuous location:

(A) name of the registered business followed by the phrase "crafted precious metal dealer";

(B) registration certificate number of the dealer;

(C) address of the permanent registered location of the dealer; and

(D) a statement that the registered business is regulated by the Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

(c) Mail order sales and advertisements. For business conducted through the US mail or a private delivery service (e.g., FedEx, UPS), a crafted precious metal dealer must either:

(1) include a complete copy of its registration in a prominent and conspicuous location within any communication mailed to the public or a prospective seller; or

(2) include the following information in a prominent and conspicuous location within any communication mailed to the public or a prospective seller:

(A) name of the registered business followed by the phrase "crafted precious metal dealer";

(B) registration certificate number of the dealer;

(C) address of the permanent registered location of the dealer; and

(D) a statement that the registered business is regulated by the Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

§85.1007. Annual Renewal.

(a) Date of renewal. For each calendar year following the initial registration, a registered crafted precious metal dealer must renew its registration annually by providing the following:

(1) the fees required by §85.1011 of this title (relating to Fees);

(2) a list of all permanent registered locations and temporary locations that the dealer will use in the following year, including:

(A) the approximate dates and hours of operation for each temporary location; and

(B) the name of the person responsible for on-site operations and compliance with applicable laws at each permanent registered location and each temporary location; and

(3) any other information required by the commissioner.

(b) Late renewal options. A crafted precious metal dealer that fulfills an option outlined by this subsection will not experience a lapse in the effectiveness of its registration.

(1) First level late renewal penalty. If a crafted precious metal dealer does not renew its registration before the annual anniversary of its registration, the dealer will be able to renew by paying a late renewal penalty of 50% of its permanent location fees within 30 days of the annual anniversary, in addition to the fees required under §85.1011 of this title (relating to Fees).

(2) Second level late renewal penalty. If a crafted precious metal dealer does not renew its registration within one year plus 30 days of the annual anniversary of its registration, the dealer will be able to renew by paying a late renewal penalty of 100% of its permanent location fees within 120 days of the annual anniversary, in addition to the fees required under §85.1011 of this title.

(c) Effects of expired registration.

(1) Date registration no longer considered effective. If a crafted precious metal dealer does not renew its registration before the annual anniversary of its registration, and does not fulfill a late renewal option under subsection (b) of this section, then its registration will no longer be considered effective.

(2) Obtaining registration after expiration. In order to obtain a registration, the crafted precious metal dealer must reapply under §85.1002 of this title (relating to Filing of New Application).

(3) Administrative penalty. If a person has engaged in the purchase of crafted precious metal while its registration was not effective, the person may be subject to an administrative penalty under Texas Occupations Code, §1956.0615.

§85.1010. New Registration After Revocation.

A crafted precious metal dealer whose registration has been revoked may not reapply prior to the passage of at least five years from the date of revocation. A dealer whose registration was revoked must follow the procedures set forth in §85.1002 of this title (relating to Filing of New Application).

§85.1011. Fees.

(a) Fee for permanent registered locations. In connection with a new application or an annual renewal, a crafted precious metal dealer must pay a $50 fee for each permanent registered location.

(b) Fee for temporary locations. In connection with a new application or an annual renewal, a crafted precious metal dealer must pay a $25 fee for each temporary location.

(c) Amendments to permanent registered location. In order to amend a registration by changing the assumed name of the registrant or relocating a permanent registered location, a crafted precious metal dealer must pay a $25 fee.

(d) Temporary location additions. In order to amend a registration to add one or more temporary locations after the initial application or after a renewal, a crafted precious metal dealer must pay a fee of $25 for each added location.

(e) Fees nonrefundable, nontransferable, and not prorated. All fees paid relating to a crafted precious metal dealer's registration with the OCCC are nonrefundable and nontransferable. All fees are fixed and will not be prorated based on the date of the dealer's application.

(f) Nonsufficient funds fee. As provided by Texas Business and Commerce Code, §3.506, the OCCC may charge a fee for nonsufficient funds if an applicant provides a payment device that is dishonored.

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 21, 2011.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: September 2, 2011
For further information, please call: (512) 936-7621

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DIVISION 2. OPERATIONAL REQUIREMENTS

7 TAC §85.2001, §85.2002

These new sections are adopted under Texas Occupations Code, §1956.0611 (Acts 2011, 82nd Leg.), which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) as enacted by HB 2490, states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the adopted new sections are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

§85.2001. Transaction Report Form and Records.

(a) Required elements. For each transaction in which a dealer purchases crafted precious metal, the dealer must prepare a transaction report form. The report form must be preprinted and prenumbered and must contain the following required elements:

(1) the date of purchase;

(2) the name and address of the dealer's permanent business location;

(3) the name and address where the dealer purchased the crafted precious metal, if the location is different than the dealer's permanent business location and the transaction takes place in person;

(4) the dealer's registration number;

(5) the full name of the seller, as listed on the seller's driver's license or personal identification certificate as defined by Texas Occupations Code, §1956.001(8);

(6) a physical description of the seller to include:

(A) date of birth;

(B) height;

(C) eye color;

(D) gender;

(7) the physical address where the seller is residing at the time of the transaction;

(8) the seller's driver's license number or personal identification certificate number;

(9) a description of the crafted precious metal purchased by the dealer, using either:

(A) a list containing a description of the crafted precious metal purchased by the dealer, including:

(i) total number of items purchased by the dealer;

(ii) type of each item (e.g., fork, tray, chain, ring);

(iii) type, color, and purity of each kind of metal purchased (e.g., 10 karat white gold, 0.925 sterling silver);

(iv) weight in troy ounces, grams, or pennyweights for each metal group provided in clause (iii) of this subparagraph;

(v) amount paid by the dealer for each metal group provided in clause (iii) of this subparagraph;

(vi) color (e.g. clear, blue, green), number, and approximate size (e.g., small, medium, large) of any stones and which item(s) include those stones;

(vii) size or length of each item (e.g., size 7, 18 inches);

(viii) any discernible serial numbers;

(ix) any engravings, inscriptions, distinctive markings, or designs;

(x) gender for which any jewelry item was manufactured, if identifiable; or

(B) a description of the crafted precious metal purchased by the dealer accompanied by a clear image of all items purchased, including:

(i) total number of items purchased by the dealer;

(ii) type of each item (e.g., fork, tray, chain, ring);

(iii) type, color, and purity of each kind of metal purchased (e.g., 10 karat white gold, 0.925 sterling silver);

(iv) weight in troy ounces, grams, or pennyweights for each metal group provided in clause (iii) of this subparagraph;

(v) amount paid by the dealer for each metal group provided in clause (iii) of this subparagraph;

(vi) color (e.g., clear, blue, green), number, and approximate size (e.g., small, medium, large) of any stones and which item(s) include those stones;

(vii) a clear photocopy or digital photograph of all items purchased by the dealer;

(viii) any unique markings that are not visible and identifiable from the image(s);

(10) the total amount paid to the seller by the dealer;

(11) the seller's certification that the seller's name and address, as well as the description of the crafted precious metal, are true and complete;

(12) the seller's representation that the seller has the right to possess and sell the property;

(13) the following notice: "This business is registered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against this business may contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: (800) 538-1579. Fax No.: (512) 936-7610. E-mail: consumer.complaints@occc.state.tx.us. Website: www.occc.state.tx.us."

(b) Other information permissible on form. Other information aside from that listed in subsection (a) of this section may be included on the transaction report form as long as it is not misleading with respect to rights arising under the law.

(c) Required scrap value estimation records. For each transaction in which a dealer purchases crafted precious metal, the dealer must maintain a record including a reasonable, good faith estimate of the item's scrap value or the percentage of scrap value that the dealer will pay the seller. The scrap value estimation is not required on the seller's receipt copy of the transaction report form, but must be included on the dealer's copy of the transaction report form. Scrap value estimation records must be maintained for three years as required by Texas Occupations Code, §1956.063(d).

§85.2002. Submission of Transaction Report Form and Records.

(a) Copy to seller required. The dealer must provide a complete copy of the transaction report form and any images used under §85.2001(a)(9)(B) of this title (relating to Transaction Report Form and Records) to the seller with respect to that seller's transaction.

(b) Paper or electronic submission. Within 48 hours of each transaction, the dealer must submit, in a manner approved by local law enforcement, either:

(1) a printed copy of the transaction report form and any images used under §85.2001(a)(9)(B) of this title to local law enforcement;

(2) an electronic copy of the transaction report form and any images used under §85.2001(a)(9)(B) of this title to local law enforcement; or

(3) an electronic copy of the transaction report form to the online Metals Registration Program. If the dealer submits the form to the Metals Registration Program, then the dealer must also notify local law enforcement in writing, within 48 hours of the transaction, that it has submitted a transaction report form to the Metals Registration Program and provide to local law enforcement either a paper or electronic copy of any images used under §85.2001(a)(9)(B) of this title.

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 21, 2011.

TRD-201104525
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: September 2, 2011
For further information, please call: (512) 936-7621

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.121

The Credit Union Commission (the Commission) adopts amendments to §91.121, concerning Complaint Notification, without changes to the text published in the July 1, 2011, issue of the *Texas Register* (36 TexReg 4062). The amendments update the Texas Credit Union Department's (Department's) website address and alter the content of the complaint notification to include the credit union's address and telephone number or email address.

The amendments are adopted to reflect the State of Texas's internet domain name change and to encourage members to contact the credit union first if they have a complaint.

The Commission received one comment on these amendments. The commenter supported the changes to the rule.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code, §15.409, which requires the Commission to adopt rules for directing complaints to the Department.

The specific section affected by the amendments is Texas Finance Code, §15.409.

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-201104544
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: November 13, 2011
Proposal publication date: July 1, 2011
For further information, please call: (512) 837-9236

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SUBCHAPTER H. INVESTMENTS

7 TAC §91.802

The Credit Union Commission (the Commission) adopts amendments to §91.802, concerning Other Investments, with nonsubstantive changes to the text published in the July 1, 2011, issue of the *Texas Register* (36 TexReg 4064). As published, the amendments adjusted credit ratings thresholds for counterparties and several types of investments. As adopted, these threshold adjustments have been withdrawn and the various criteria have reverted to the currently existing ratings levels. The remaining amendments update terms and clarify that rating categories are minimum standards and must be supported with the credit union's own credit analysis to demonstrate that the investment presents an acceptable credit risk. The amendments, including some of the nonsubstantive changes, also correct an erroneous citation and edit the rule for clarity and consistency

The amendments are adopted as a result of the Texas Credit Union Department's (Department's) general rule review, which was conducted in accordance with Government Code §2001.039.

The Commission received three written comments on these proposed amendments. All commenters were concerned that the adjusted ratings thresholds would restrict credit union investments unduly, particularly if (as happened) a rating agency downgraded U.S. and government-sponsored entities' debt. As noted above, the Commission has rolled back the changes to assure that the availability of possible counterparties is not materially reduced and that relatively safe investments are not unreasonably eliminated. Due to informal comments received, a nonsubstantive change was made to §91.802(j)(2) to correct an outdated citation.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code, §124.351 and §124.352, which address permitted investments and investment limitations.

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

§91.802. Other Investments.

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

(1) Asset-backed security--A bond, note, or other obligation issued by a financial institution, trust, insurance company, or other corporation secured by either a pool of loans, extensions of credit which are unsecured or secured by personal property, or a pool of personal property leases.

(2) Bailment for hire contract--A contract whereby a third party, bank, or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers; also known as a custodial agreement.

(3) Bankers' acceptance--A time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

(4) Cash forward agreement--An agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of 30 days from the trade date.

(5) Counterparty--An entity with which a credit union conducts investment-related activities in such a manner as to create a credit risk exposure for the credit union to the entity.

(6) Eurodollar deposit--A deposit denominated in U. S. dollars in a foreign branch of a United States financial institution.

(7) Federal funds transaction--A short-term or open-ended transfer of funds to a financial institution.

(8) Financial institution--A bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation, a federal or state-chartered credit union, or the National Credit Union Central Liquidity Facility.

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

(10) Mortgage related security--A security which meets the definition of mortgage related security in United States Code Annotated, Title 15, §78c(a)(41).

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

(12) Ordinary care--The degree of care, which an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

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

(14) Borrowing repurchase transaction--A transaction whereby a credit union either:

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

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

(15) Security--An investment that has a CUSIP number or that is represented by a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

(A) either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;

(B) is of a type commonly traded on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or traded as a medium for investment; and

(C) either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

(16) Settlement date--The date originally agreed to by a credit union and a vendor for settlement of the purchase or sale of a security.

(17) Trade date--The date a credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

(18) Yankee dollar deposit--A deposit in a United States branch of a foreign bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, that is licensed to do business in the state in which it is located, or a deposit in a state chartered, foreign controlled bank.

(b) Policy. A credit union may invest funds not used in loans to members, subject to the conditions and limitations of the written investment policy of the board of directors. The investment policy may be part of a broader, asset-liability management policy. The board of directors must review and approve the investment policy at least annually to ensure that the policies adequately address the following issues:

(1) The types of investments that are authorized to be purchased.

(2) The aggregate limit on the amount that may be invested in any single investment or investment type, set as a percentage of net worth.

(3) The delegation of investment authority to the credit union's officials or employees, including the person or persons authorized to purchase or sell investments, and a limit of the investment authority for each individual or committee.

(4) The authorized broker-dealers or other third-parties that may be used to purchase or sell investments, and the internal process for assessing the credentials and previous record of the individual or firm.

(5) The risk management framework given the level of risk in the investment portfolio. This will include specific methods for evaluating, monitoring, and managing the credit risk, interest-rate risk, and liquidity risk from the investment activities.

(6) The authorized third-party safekeeping agents.

(7) If the credit union operates a trading account, the policy shall specify the persons authorized to engage in trading account activities, trading account size limits, stop loss and sale provisions, time limits on inventoried trading account investments, and internal controls that specify the segregation of risk-taking and monitoring activities related to trading account activities.

(8) The procedure for reporting to the board of directors investments and investment activities that become noncompliant with the credit union's investment policy subsequent to the initial purchase.

(c) Authorized activities.

(1) General authority. A credit union may contract for the purchase or sale of a security provided that delivery of the security is by regular-way settlement. Regular-way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for that type of security. All purchases and sales of investments must be delivery versus payment (i.e., payment for an investment must occur simultaneously with its delivery).

(2) Cash forward agreements. A credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(A) the period from the trade date to the settlement date does not exceed 90 days;

(B) if the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(C) if the credit union is the seller, it owns the security on the trade date; and

(D) the cash forward agreement is settled on a cash basis at the settlement date.

(3) Investment repurchase transactions. A credit union may enter an investment repurchase transaction provided:

(A) the purchase price of the security obtained in the transaction is at or below the market price;

(B) the repurchase securities are authorized investments under Texas Finance Code §124.351 or this section;

(C) the credit union has entered into signed contracts with all approved counterparties;

(D) the counterparty is rated in one of the three highest long-term or counterparty rating categories by a NRSRO; and

(E) the credit union receives a daily assessment of the market value of the repurchase securities, including accrued interest, and maintains adequate margin that reflects a risk assessment of the repurchase securities and the term of the transaction.

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

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

(B) the credit union has entered into signed contracts with all approved counterparties; and

(C) investments referred to in subparagraph (A) of this paragraph mature no later than the maturity date of the borrowing repurchase transaction; and

(D) the counterparty is rated in one of the three highest long-term or counterparty rating categories by a NRSRO.

(5) Federal funds. A credit union may enter into a federal funds transaction with a financial institution, provided that the interest or other consideration received from the financial institution is at the market rate for federal funds transactions and that the transaction has a maturity of one or more business days or the credit union is able to require repayment at any time.

(6) Yankee dollars. A credit union may invest in yankee dollar deposits.

(7) Eurodollars. A credit union may invest in eurodollar deposits.

(8) Bankers' acceptance. A credit union may invest in bankers' acceptances.

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

(10) Government-sponsored enterprises. A credit union may invest in government-sponsored enterprise obligations such as Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Farm Credit Bank, and the Student Loan Marketing Association.

(11) Commercial paper. A credit union may invest in commercial paper issued by a corporation domiciled within the United States and having a short-term or commercial paper rating of no less than A1 or P1 by Standard & Poor's or Moody's, respectively, or an equivalent rating by a NRSRO.

(12) Corporate bonds. A credit union may invest in corporate bonds issued by a corporation domiciled in the United States. The bonds must be rated by a NRSRO in one of the two highest long-term rating categories and have remaining maturities of five years or less.

(13) Municipal bonds. A credit union may invest in municipal bonds rated by a NRSRO in one of the two highest long-term rating categories with remaining maturities of five years or less.

(14) Mortgage-related securities. With the exception of "accrual bonds" (or Z-bonds) or the residual interest of the mortgage-related security, a credit union may invest in mortgage-related securities backed by mortgages secured by real estate upon which is located a residential dwelling, a mixed residential and commercial structure, or a residential manufactured home. The security must be rated by a NRSRO in one of the two highest long-term rating categories.

(15) Asset-backed securities. Provided the underlying collateral is domestic- and consumer-based, a credit union may invest in asset-backed securities which are rated by a NRSRO in one of the two highest long-term rating categories.

(d) Documentation. A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgment in exercising the investment powers under the Act and this rule including:

(1) Except for investments that are issued, insured or fully guaranteed as to principal and interest by the U.S. Government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation, a credit union must conduct and document a credit analysis of the issuing entity and/or investment before purchasing the investment. The credit union must update the credit analysis at least annually as long as the investment is held.

(2) Credit and other due diligence documentation for each investment shall be maintained as long as the credit union holds the investment and until it has been both audited and examined. Before purchasing or selling a security, a credit union must obtain either price quotations on the security (or a similarly-structured security) from at least two broker-dealers or a price quotation on the security (or similarly-structured security) from an industry-recognized information provider.

(3) The reference to and use of NRSRO credit ratings in this rules provides a minimum threshold and is not an endorsement of the quality of the ratings. Credit unions must conduct their own independent credit analyses to determine that each security purchased presents an acceptable credit risk, regardless of the rating.

(e) Classification. A credit union must classify a security as hold-to-maturity, available-for-sale, or trading, in accordance with generally accepted accounting principles and consistent with the credit union's documented intent and ability regarding the security.

(f) Purchase or Sale of Investments Through a Third-Party.

(1) A credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or is a financial institution whose broker-dealer activities are regulated by a federal or state regulatory agency.

(2) Before purchasing an investment through a broker-dealer, a credit union must analyze and annually update the following information.

(A) The background of the primary sales representative and the local broker-dealer firm with whom the credit union is doing business, using information available from federal or state securities regulators and securities industry self-regulatory organizations, such as the Financial Industry Regulatory Authority and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer firm, its affiliates, or associated personnel.

(B) If the broker-dealer is acting as the credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, long-term or counterparty ratings that have been assigned by NRSROs, reports of NRSROs, relevant disclosure documents such as annual independent auditor reports, and other sources of financial information.

(3) Paragraphs (1) and (2) of this subsection do not apply when a credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other financial institution.

(g) Discretionary Control Over Investments and Investment Advisers.

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

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

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

(4) A credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

(5) A credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and their performance.

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

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

(j) Waivers.

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

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

(B) The higher limit or ratio sought;

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

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

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

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

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

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

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

This agency hereby certifies that the 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-201104539
Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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7 TAC §91.803

The Credit Union Commission (the Commission) adopts amendments to §91.803, concerning Investment Limits and Prohibitions, without changes to the text published in the July 1, 2011, issue of the *Texas Register* (36 TexReg 4068). The amendments edit the rule for clarity.

The amendments are adopted as a result of the Texas Credit Union Department's (Department's) general rule review.

The Commission received no comments on these amendments.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code, §124.351 and §124.352, which address permitted investments and limitations on investments.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §91.804

The Credit Union Commission (the Commission) adopts amendments to §91.804, concerning Custody and Safekeeping, without changes to the text published in the July 1, 2011, issue of the *Texas Register* (36 TexReg 4070). The amendments clarify and update terms and provide an example of information a credit union should consider when evaluating a safekeeper.

The amendments are adopted as a result of the Texas Credit Union Department's (Department's) general rule review.

The Commission received no comments on these amendments.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code, §124.351 which sets out permitted investments for credit unions.

The specific section affected by the amendments 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
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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7 TAC §91.805

The Credit Union Commission (the Commission) adopts amendments to §91.805, concerning Loan Participation Investments, without changes to the text published in the July 1, 2011, issue of the *Texas Register* (36 TexReg 4070). The amendments clarify that a credit union purchasing a participation interest in a nonmember loan must report that interest in accordance with generally accepted accounting principles. The amendments also notify the credit union of the requirement to comply with Part 741 of the National Credit Union Administration, if applicable.

The amendments are adopted as a result of the Texas Credit Union Department's (Department's) general rule review.

The Commission received no comments on these rules.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code, §124.351, which sets out permitted investments for credit unions.

The specific section affected by the amendments 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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TRD-201104542

Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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SUBCHAPTER K. RESIDENTIAL MORTGAGE LOAN ORIGINATORS EMPLOYED BY A CUSO

7 TAC §§91.2000 - 91.2007

The Credit Union Commission (Commission) adopts new 7 TAC Chapter 91, Subchapter K, §§91.2000 - 91.2007, without changes to the text published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6090). (The Department discovered that the version of Subchapter K that was published in the July 1, 2011, issue of the *Texas Register* (36 TexReg 4071) was not the version approved by the Commission at its June meeting. That version was withdrawn and the correct version of Subchapter K was published as stated above with a thirty-day comment period.) The new subchapter, entitled Residential Mortgage Loan Originators Employed by a Credit Union Subsidiary Organization, contains eight new rules which describe certain requirements for residential mortgage loan originators and which explain the process the Credit Union Department (Department) will use in examining, inspecting, and investigating these employees of credit union subsidiary organizations (CUSOs).

The new rules are adopted in response to House Bill 10 (HB 10) enacted by the 81st Legislature. HB 10 assigned the Department oversight of CUSO employees that engage in residential mortgage loan originations and authorizes the Commission to adopt rules consistent with this oversight.

The Commission received one comment on these new rules. The commenter objected to the requirement in §91.2001 that a CUSO reimburse the Department for any out-of-state travel costs. The commenter felt that in-state travel could be just as costly. The Commission points out that the portion of the license fees allocated to the examination of mortgage loan originators (MLOs) employed by a CUSO will be only $200 for new licensees and $175 for renewals. The fees are set based on the assumption that the Department will conduct examinations in Texas; any out-of-state examination would be for the convenience of the CUSOs. CUSOs are free to make their MLO records available in Texas if they wish to avoid being charged out-of-state travel costs. Moreover, if the CUSOs are not charged these costs, Texas credit unions must absorb them. The Commission believes it is inequitable for all Texas credit unions to bear the additional costs associated with an out-of-state examination when the majority of the CUSOs employing MLOs are owned by out-of-state credit unions. The Commission declines to amend the rule.

The new rules are adopted under Texas Finance Code §15.4024, which permits the Commission to adopt and enforce rules providing for the commissioner to examine, inspect, or investigate employees of credit union subsidiary organizations who are licensed to act as residential mortgage loan originators.

The specific section affected by the new rules is Texas Finance Code, §15.4024.

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-201104543
Harold E. Feeney
Commissioner
Credit Union Department
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TITLE 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

CHAPTER 176. ENTERPRISE ZONE PROGRAM

10 TAC §§176.1 - 176.5

The Economic Development and Tourism Division (EDT) of the Office of the Governor adopts amendments to §§176.1 - 176.5, concerning the Enterprise Zone Program. Section 176.1 is adopted with changes to the proposed text as published in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4527) and will be republished. Sections 176.2 - 176.5 are adopted without changes and will not be republished.

The adopted amendment to §176.1 relating to the definition of a capital investment clarifies that in order to receive an incentive, expenditures must be made for capital assets that are an integral part of the business' operations. The adopted amendment further clarifies the types of expenditures that are allowed to be claimed as a qualified capital investment.

The adopted amendment to §176.2 eliminates references to empowerment zones, enterprise communities and renewal communities, which are federal designations that no longer exist; removes language regarding local incentives offered exclusively in an enterprise zone to reflect change in statute; and removes language regarding additional local incentives to reflect change in statute.

The adopted amendment to §176.3 clarifies that the applicant governing body (city or county) must be in compliance with the requirements of the program; updates the rules to reflect legislative changes to the Texas Enterprise Zone Act by increasing to nine the number of project designations for which a city or county with a population of 250,000 or more may apply; increasing to six the number of project designations for which a city or county with a population of less than 250,000 can apply; eliminating bonus project designations, given the increase of project designations allocated per applicant; limiting the number of project designations that are approved to twelve per application round to prevent all of the designations from being used in a single round and to allow designations to be available for the entire biennium; and allowing up to nine designations to be used for projects that would

create a significant number of new jobs and make a substantial capital investment.

The adopted amendment to §176.4 corrects the application fee ($500) addressed earlier in the rules; clarifies the name of the payee (Office of the Governor); adds a requirement for identifying the applicant; clarifies that the application and fee must be received by the application deadline; deletes obsolete references to enterprise zones prior to September 1, 2003; includes statutory reporting requirements regarding employment of undocumented workers; and clarifies the location of concurrent designations; removes language regarding qualified business certification; and eliminates language related to the requirement for a certificate of occupancy.

The adopted amendment to §176.5 removes the requirement that the Economic Development Bank certify qualified businesses that were approved before September 1, 2003, annually since all of these business have completed their program eligibility; eliminates the option for a nominating body to issue a report on the qualified business at the beginning of a project; and changes the recipient of the Qualified Business Benefit Request Status Report from the Bank to the Comptroller to accurately reflect the responsibilities of the Comptroller to determine capital investments, jobs created and/or retained and ultimately the qualified business' eligibility for sales and use tax refunds.

EDT received four comments regarding the proposed amendment of these rules.

Regarding §176.1, one commenter stated that by presenting the amended definitions as a clarification in the preamble, EDT was suggesting that the new definition of "capital investment" will apply to current program participants. To prevent the retroactive application of the definition of capital investment, EDT states that the new definition will apply only to designations awarded after the effective date of the adopted rule.

Regarding §176.1, three commenters stated that the elimination of "routine and planned maintenance required to maintain regular business operations" was too restrictive. One of these three commenters further stated that this change is a complete reversal of the previous policy. EDT agrees in part with these comments and, in response, revises §176.1(b)(6) to continue to allow routine and planned maintenance if there will be a measurable increase in production capacity or if the expenditures will result in increased productivity which may be expressed as a decrease in the overall cost per unit produced, and are limited to 40 percent of the total capital investment spent at a qualified business site.

Regarding §176.3, three commenters stated that requiring projects to create a significant number of new jobs and have a substantial capital investment to receive one of the nine designations outside of the twelve allocated per round is too restrictive. We do not agree that this is the case, as there are 96 designations available for projects that do not meet both criteria and we therefore adopt the rule as proposed.

The amendments are adopted under Texas Government Code, §2303.051(c), which authorizes the executive director of EDT to adopt rules necessary for the Program; Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies; Texas Government Code, Chapter 481, creating EDT; Texas Government Code, Chapter 489, creating the Economic Development Bank within EDT; and Texas Government Code, Chapter 2303, relating to the Texas Enterprise Zone Act.

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

§176.1. General Provisions.

(a) Purpose. It is the purpose of the Texas Enterprise Zone Act to establish a process that clearly identifies distressed areas and provides incentives by both local and state government to induce private investment in those areas by the provision of tax incentives and economic development program benefits for the creation and retention of high quality jobs. Under this program economic development is encouraged by allowing enterprise projects to be designated outside of an enterprise zone, with a higher threshold of hiring economically disadvantaged or enterprise zone residents. The purpose of these sections is to provide standards of eligibility and procedures for designation of applications for qualified businesses as enterprise projects.

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

(1) Act--The Texas Enterprise Zone Act, Chapter 2303, Texas Government Code, as amended.

(2) Active designation--The period of time from the designation date to the ending date of the project or activity as provided in the nominating ordinance, order or resolution.

(3) Applicant--The municipality or county filing an application with the Bank on behalf of a qualified business for designation of an enterprise project under the Act, §2303.405, and this chapter.

(4) Application date--The first business day of the months of September, December, March and June, if there are designations available.

(5) Approval date--The application date of an enterprise project as approved by the Bank.

(6) Capital investment--Money paid to purchase capital assets to be used in the regular conduct of the business or activity at the qualified business site, or fixed assets including but not limited to land, buildings, labor used to construct or renovate a capital asset, furniture, manufacturing machinery, computers and software, or other machinery and equipment. Expenditures for routine and planned maintenance required to maintain regular business operations are only considered qualified capital investment if there will be a measurable increase in production capacity or if the expenditures will result in increased productivity which may be expressed as a decrease in the overall cost per unit produced, and are limited to 40 percent of the total capital investment spent at the qualified business site. Property that is leased under a capitalized lease is considered a qualified capital investment but property that is leased under an operating lease is not considered a qualified capital investment.

(7) Claim period--A twelve-month period, during the active designation period, for which hours are accumulated by qualified employees to be claimed for benefit.

(8) Concurrent designation--Two or more enterprise project designations for the same qualified business at the same qualified business site for separate projects or activities, with overlapping designation periods.

(9) Controlled group--A group of businesses as defined in Title 26, Subtitle A, Subchapter B, Part II, Section 1563(a), Internal Revenue Code, or business entities with the same ownership.

(10) Director--The Director of the Texas Economic Development Bank.

(11) Distressed county--A county that has a poverty rate above 15.4 percent based on the most recent decennial census; in which at least 25.4 percent of the adult population does not hold a high school diploma or high school equivalency certificate based on the most recent decennial census; and that has an unemployment rate that has remained above 4.9 percent during the preceding five years, based on Texas Workforce Commission data.

(12) Economic Development and Tourism--Economic Development and Tourism Office in the Governor's Office (Office) as established under Chapter 481, Texas Government Code.

(13) Eligible taxable proceeds--Taxable proceeds generated, paid, or collected by a qualified hotel project or a business at a qualified hotel project including hotel occupancy taxes, ad valorem taxes, sales and used taxes, and mixed beverage taxes.

(14) Enterprise project--A designation given to a qualified business by the Bank under the Act, §2303.406, and §176.3 of this title (relating to Qualification for Designation of Enterprise Projects) making the qualified business eligible for the state tax incentives provided by law for an enterprise project.

(15) Executive Director--The Executive Director of the Office.

(16) Extraterritorial jurisdiction--Territory in the extraterritorial jurisdiction (ETJ) of a municipality that is considered to be in the jurisdiction of the municipality, as defined by Chapter 42, Local Government Code.

(17) Governing body--The governing body of a municipality or county participating in the program.

(18) Governing body liaison--The person who holds the position set out in the ordinance or order indicating participation in the program, for the municipality or county to communicate and negotiate with the Bank or Office, qualified businesses nominated to be enterprise projects and any other entities affected by the enterprise zone.

(19) Local government--A municipality or county.

(20) Local incentive--Each tax incentive, grant, other financial incentive or benefit, or program to be provided by the governing body to business enterprises through the program.

(21) Ninety-day window--The period 90 days prior to the quarterly application deadline date for which an enterprise project is approved. The period of time in which the project may begin making investment and creating jobs for purposes related to the enterprise project designation.

(22) Nominating body--The governing body of a municipality or county that nominated a project or activity of a qualified business for designation as an enterprise project which is located within the jurisdiction of that governing body.

(23) Primary job--A job to be created or retained for benefit by a designated enterprise project, as defined by the Development Corporation Act of 1979.

(24) Qualified property--Any one or more of the following:

(A) tangible personal property located at the qualified business site that was acquired by a taxpayer not earlier than the 90th day before the date of designation as an enterprise project and was or will be used predominantly by the taxpayer in the active conduct of a trade or business;

(B) real property located at a qualified business site that:

(i) was acquired by the taxpayer not earlier than the 90th day before the date of designation of the enterprise project, and used predominantly by the taxpayer in the active conduct of a trade or business; or

(ii) was the principal residence of the taxpayer on the date of the sale or exchange; or

(C) interest in a corporation, partnership, or other entity if, for the most recent taxable year of the entity ending before the date of sale or exchange, the entity was a qualified business.

(25) Staff--The staff of the Texas Economic Development Bank.

(26) Undocumented worker--An individual who, at the time of employment, is not:

(A) lawfully admitted for permanent residence to the United States; or

(B) authorized under law to be employed in that manner in the United States.

(c) Amendment and suspension of the rules. These sections may be amended by the executive director at any time in accordance with the Administrative Procedure Act, Texas Government Code, Subchapter B, as amended. The executive director may suspend or waive a section, not statutorily imposed, in whole or in part, upon the showing of good cause or when, at the discretion of the executive director, the particular facts or circumstances render such waiver of the section appropriate in a given instance.

(d) Written communication with the office. Application and other written communication to the office should be addressed to the attention of the Office of the Governor, Economic Development and Tourism, Texas Economic Development Bank, Attn: Texas Enterprise Zone Program, Post Office Box 12428, Austin, Texas 78711-2428, or by overnight mail to Office of the Governor, Economic Development and Tourism, Texas Economic Development Bank, Attn: Texas Enterprise Zone Program, 1100 San Jacinto Street, Austin, Texas 78701, (512) 936-0100.

(e) Fees. On a regular basis, the bank will review all application fees with regard to the program and make adjustments as needed to further the purposes of the program.

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 21, 2011.

TRD-201104520
Michael Bryant
Assistant General Counsel
Office of the Governor, Economic Development and Tourism Division
Effective date: November 10, 2011
Proposal publication date: July 15, 2011
For further information, please call: (512) 463-1788

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER C. GRANT POLICIES

DIVISION 9. IMPACT GRANTS FOR LIBRARY INNOVATION AND IMPROVEMENT

13 TAC §§2.910 - 2.912

The Texas State Library and Archives Commission (TSLAC) adopts new 13 TAC §§2.910 - 2.912, concerning Impact Grants for Library Innovation and Improvement, without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5581).

The new rules are adopted to establish the "Impact Grants for Library Innovation and Improvement" grant program.

The following four comments were received regarding the proposal.

Comment: One person commented, "Thank you for working on our behalf. I reviewed the guidelines. I would want to always have a requirement that libraries must be accredited to receive grant funding from the state. It is one of the ways that we can insure that we keep a minimum standard. Otherwise, our local governments may not feel compelled to fund us adequately."

Agency response: The agency agrees with the comment.

Comment: One person commented, "I am new to the grant writing process and was interested to see that TSLAC is planning grants for library innovation. I think the competitive grant process forces applicants to really investigate community needs. These guidelines will also help libraries keep a forward focus at a time when budgets are tight and the temptation is to stick with basic services."

Agency response: The agency agrees with the comment.

Comment: One person commented, "I understand trying to create a possible grant program to help a large number of libraries especially since Loan Star Libraries wasn't funded. If that is the case, here is my concern about the way the new grant is worded. You are only funding new and innovative programs. If this is the case, few libraries will apply due to the fact that they can barely get funding to keep current services levels. Asking them to come up with a new program that may only be funded for 1 year is not the best use of monies at this time. In other words, only the well funded libraries will be able to get the grants... Also, I don't see much difference in the wording of the new grant program versus the Special Project grants."

Agency response: The grant rules allow funding for both new projects and expanding existing projects. The intent is to help as many libraries as possible in key areas of need get started or to expand efforts. This program provides more focused funding, and smaller grant awards, than the Special Projects grants. The agency believes the grant rules are flexible enough to address concerns and do not need revision.

Comment: One person commented, "After looking at the grant proposals, I think everything looks fair and good. Thank you for all your work to make this happen."

Agency response: The agency agrees with the comment.

The new sections are adopted under the authority of Government Code §441.009 that directs the commission to adopt a state plan for Library Services and Technology, §441.0091 that authorizes the commission to establish competitive grant programs, and §441.135 that authorizes the commission to establish competitive grant programs to support innovation.

The new sections affect Government Code §§441.009, 441.0091, and 441.135.

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 21, 2011.

TRD-201104536
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
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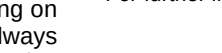
For further information, please call: (512) 463-5459



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.13

The Texas Alcoholic Beverage Commission (Commission) adopts amendments to §33.13, relating to Process to Apply for License or Permit. The section is adopted without changes to the proposed text as published in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5171), and the text will not be republished.

The amendments to §33.13 are adopted to conform the rule to recently amended provisions of the Alcoholic Beverage Code.

House Bill (HB) 1953, 82nd Regular Session, Texas Legislature amended Alcoholic Beverage Code §11.391(a) and §61.381(a). These sections require an applicant for an on-premises permit or license to prominently post an outdoor sign giving notice of the application. Before these amendments to the Alcoholic Beverage Code, the notice was required to be posted at least 60 days before the application was filed. After the amendments, the notice is required to be posted at least 60 days before the permit or license is issued. The amendments to §33.13 change the 60-day notification requirement in subsection (e) to conform to HB 1953 and add language to subsection (f) to clarify when the notification requirement is triggered.

On September 7, 2011, the staff of the commission held a Public Hearing to receive oral comment on the proposed amendments. Alan Gray, representing Licensed Beverage Distributors (LBD), stated that LBD supports the requirement to post a notice sign in a timely manner and supports the proposed amendments. LBD

supported the changes in the Alcoholic Beverage Code made by HB 1953, 82nd Regular Session, Texas Legislature. LBD believes the changes in the Alcoholic Beverage Code and in this rule do not harm public safety, because 60 days are required from the time the sign is posted before the application can be granted. This is adequate time for the public to be heard, while allowing the application to be processed in the meantime. No change was requested and none is made as a result of these comments.

The amendments are adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Alcoholic Beverage Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 21, 2011.

TRD-201104485
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: November 10, 2011
Proposal publication date: August 19, 2011
For further information, please call: (512) 206-3443

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16 TAC §33.15

The Texas Alcoholic Beverage Commission (Commission) adopts an amendment to §33.15, relating to Use of Winery Festival Permit. The section is adopted without changes to the proposed text as published in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5172), and the text will not be republished.

The amendment to §33.15 is adopted to conform the rule to a recently amended provision of the Alcoholic Beverage Code.

Senate Bill (SB) 438, 82nd Regular Session, Texas Legislature amended Alcoholic Beverage Code §17.01(b) to change the limitation on how often the holder of a winery festival permit may offer wine for sale under the permit. Before the amendment, the permit could not be used for more than three consecutive days at the same location. The amendment changed the consecutive day limit from three to four. The amendment to §33.15 changes the consecutive day limitation on use of the permit in subsection (c) from three days to four days to conform to SB 438.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201104486
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
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Proposal publication date: August 19, 2011
For further information, please call: (512) 206-3443

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CHAPTER 45. MARKETING PRACTICES
SUBCHAPTER E. REGULATION OF CREDIT TRANSACTIONS
DIVISION 1. DELINQUENT LIST

16 TAC §45.121

The Texas Alcoholic Beverage Commission (Commission) adopts amendments to §45.121, relating to Credit Restrictions and Delinquent List for Liquor. The amendments are adopted without changes to the proposed text as published in the September 9, 2011, issue of the *Texas Register* (36 TexReg 5778), and the text will not be republished.

The amendments to §45.121 are adopted to conform the rule to a recently amended provision of the Alcoholic Beverage Code and to shorten the time allowed from the end of the payment period to the date of publication of the Delinquent List.

House Bill (HB) 2012, 82nd Regular Session, Texas Legislature amended Alcoholic Beverage Code §102.32 to specify that, for purposes of credit restrictions and reporting delinquencies, a holder of a winery permit is considered a retailer when purchasing wine from a Chapter 19 wholesaler for resale to ultimate consumers in unbroken packages. No comments were received regarding the proposal to amend the definition of "retailer" in §45.121(b)(6) to conform to HB 2012, and that amendment is adopted.

In addition, §45.121(j)(2) is amended to give a retailer two fewer days to pay a delinquent bill before the retailer's name appears on the Delinquent List. When a retailer's name appears on the Delinquent List, all wholesalers are on notice that they may not sell any liquor to that retailer until that delinquent account is paid in full, pursuant to Alcoholic Beverage Code §102.32(d).

Comments were received from Alan Gray, representing Licensed Beverage Distributors (LBD), at a September 7, 2011 Public Hearing held by Staff to receive oral comments. LBD supports adoption of the rule as published. Mr. Gray noted that it is consistent with a plan developed two years ago to shorten by two days (each year for five years) the time allowed for payment after the reporting period. He stated that the changes already made pursuant to the plan have resulted in a significant improvement in fostering an orderly marketplace. At a September 28, 2011 Public Hearing held by Staff, Mr. Gray indicated LBD's belief that the plan to phase in these reductions was a fair means to bring current practice in line with the requirements of the Alcoholic Beverage Code, since it allowed parties time to adjust their current practices.

Also at the September 28, 2011 Public Hearing, Fred Marosko, representing the Texas Package Store Association (TPSA), noted that TPSA had not agreed to the initial plan for reductions on an annual basis and indeed had reserved the right to review developments as the plan progressed. Lance Lively, also representing TPSA at the September 28, 2011 Public Hearing, noted

that since the plan was implemented delinquencies had fallen from about $600 million to about $20 million. He also noted that fewer stores appear on the Delinquent List now and that repeat offenders account for some of those who continue to appear on that list. However, because of the technical problems mentioned in written comments filed by TPSA, Mr. Lively indicated that the proposed reduction in the time period from eight to six days would have a detrimental effect on the industry. Both Mr. Marosko and Mr. Lively stated that if the commission decides to proceed with the plan by adopting the proposed rule, the time allowed should be changed from six calendar days to six business days.

Ralph Townes, representing Glazer's at the September 28, 2011 Public Hearing, said that a change from six calendar days to six business days might be considered acceptable, but that such a change would need to be accompanied by tightening holes that currently exist in the credit law. Specific examples mentioned by Mr. Townes as things that would need to be addressed related to the use of the U.S. Postal Service to deliver payments.

A total of 26 comments were received by mail and an additional seven comments were received by e-mail. All of the written comments oppose the proposed amendment shortening the time period from eight to six days but urge that if a change is made; it should be to six business days.

TPSA's written comments state that "shortening the time period to less than eight days will be counterproductive to the effective and fair implementation of the credit law, will create major workability problems, and will increase the TABC workload". TPSA asserts that any period less than six business days will result in a dramatic increase in errors on the published Delinquency List. (TPSA notes that six calendar days may actually result in less than six days to actually resolve disputes if weekends and holidays occur somewhere other than at the end of the six-day period.) The errors resulting from the shortened time period would harm a significant number of businesses who will not be able to purchase product until the errors are corrected. This, in turn, will dramatically increase TABC workload as the TABC is forced to deal with urgent requests by industry members to correct the errors. TPSA believes that the commission is better served by keeping the current system in place, which allows retailers and wholesalers to resolve disputes among themselves.

TPSA contends that there must be a reasonable time after the statutory payment deadline before a retailer's name is published on the Delinquent List to account for the time required for payments mailed on the payment deadline to be delivered. There also must be a reasonable time (which TPSA asserts cannot be less than six business days) because the commission should be interested in assuring the Delinquent List is as accurate as possible. Finally, there must be a reasonable time because it would be unfair for an innocent retailer who has mistakenly been placed on the Delinquent List to first learn from publication of the list that an error has been made.

TPSA observes that while changes in technology and business practices may lead some to argue that a shorter time period is required, such changes also create pressures to have more time to correct errors. TPSA asserts that the time savings for sending notices electronically rather than by mail has already been accounted for when the time was shortened from ten days to eight days. However, because mail is still a communication option for some, across-the-board time savings are not guaranteed by switching to electronic communication. Similarly, computerization of TABC clerical processing does not guarantee time savings because some manual entry still must be made for paper reports. More significantly, decreasing TABC clerical processing time does not add any time for wholesalers and retailers to resolve disputes. More generally, computerization across the board also makes it easy to create errors, which take time to track down and rectify.

Furthermore, TPSA argues that the increase in the number of available products, brands and sizes complicates the reconciliation process. TPSA states that a mid-sized liquor store may deal with up to 7,000 different wine and distilled spirits products. The process is made even more complex by multi-store retailers who must consolidate invoices from many locations. And another level of complexity is introduced by wholesaler practices such as individual salesmen negotiating customer-specific pricing deals, different pricing structures for the same wholesaler in different regions across the state, and frequent price changes (which might be made daily).

TPSA urges the commission to consider "real world workability" in deciding whether to amend the rule. Among these "real world" factors that should be considered are: payment delivery and bank processing time; time required to communicate the delinquency to the commission; TABC clerical processing time; additional TABC resources needed to resolve more disputes if the time is shortened and the parties cannot resolve the disputes on their own; providing advance notice to the retailer that the retailer has been reported as delinquent; opportunity and time required to correct errors in the "soft" or preliminary Delinquent List; allowing the retailer to file an affidavit requesting removal from the list due to a payment dispute; and the time the retailer remains on the "hard" Delinquent List (and thus is unable to buy product) until the wholesaler notifies TABC that the dispute is resolved.

Comments were also received from the following, affirming their own and TPSA's opposition to the proposed amendment shortening the "delinquent list process": Steven E. Mayfield, Bergheim Cellars; Joseph L. Saglimbeni, Joe Saglimbeni Fine Wines; Mehul Shah, Bottle Giant; David Arterburn, Legacy Liquors, Inc.; Sanjeev Patel, The Bottle Shop-Lampasas; Frank W. Dicorte, Frank Dicorte's Wine & Beer Emporium and Frank Dicorte's Bad Bear Liquor; Jami Clark, Benny's Liquor; Austin R. Keith, Pinkie's Inc.; Vernon Russell, Two Bucks Beverages; Leon Myers, River Liquor; Arthur Madeley, Faultline Liquor; Cheryl Ahlschlager; Rick R. Zipp, Ralston Drug Stores and Discount Liquor; Kyle Gillin, Tuckers Package Store; Chelsea Allen, Uptown Liquor; Jorge E. Baca, Licores Baca; Craig James, Village Bottle Shop; Justin Spirits; David and Margaret Jabour, Twin Liquors; Vanny Huoth, Buckshot Liquor; Edith Clark, The Line & The Line II Inc.; and Desh Dhingra, Dany's Liquor. These comments assert that shortening the time period to less than eight days will be counterproductive to the effective and fair implementation of the credit law, will create major workability problems and will increase the TABC workload. They urge consideration of the complexities of getting invoices corrected and paid in a timely fashion based on very short delivery windows. If the time is shortened, they support revising the proposal to insure the passage of at least six full business days, because little can be done to correct errors between wholesalers, retailers or the TABC on a non-business day.

In addition to joining the general comments made by other TPSA members, Pinkie's states that it spends most of the time waiting on statements or credit memos. Pinkie's has stores located in Abilene, Amarillo, Lubbock, Midland and Odessa. The Abilene stores receive deliveries and communicate with Republic

National Distributing in Grand Prairie, while the other four markets deal with either Amarillo or Odessa.

In addition to joining the general comments made by other TPSA members, Edith Clark notes that for her business located in Fritch, Texas on the Potter County line, having to mail checks to San Angelo instead of Amarillo has resulted in checks being lost by the Post Office for awhile. This is also a problem with deposits being mailed to the bank in Amarillo.

Karen Pospisil comments that she opposes the proposal to decrease the time period from eight to six days. She notes that because of holidays and three-day weekends, she frequently does not receive statements until near the 10th. Mail delays will increase if the postal service stops Saturday mail deliveries. "If anything, the time period needs to be increased because of the postal service or changed to include business days only."

Milton Syring comments that the current rule should not be changed.

Lewis Syring, LiquorMax, comments that a further shortening of the payment window would be a tremendous burden on his business. He asserts that a six-day payment window "is not practical for most small retailers, as it provides inadequate time to correct errors between wholesalers, retailers or the TABC on a non-business day." He notes that cashier's checks or money orders cannot be obtained on a non-business day. He also observes that the payment window is actually shorter because the time is not extended under the rule unless the publication date falls on the weekend or a holiday, but not if a weekend or holiday falls in the middle of the payment window. If the period is shortened it should be to six business days instead of six calendar days.

Hermen Key, Spec's Wines, Spirits and Finer Foods, comments that an analysis based on the company's business model shows that the proposed amendment shortening the time period "will impact our ability to reasonably conduct our reconciliation process". Spec's asserts that the proposed change "will create an inefficient burden on customer's payables programs" because it does not account for delays associated with: mail delivery; the supplier's need to reconcile all events through the pay period before the supplier's statement reconciliation is even delivered to the customer; the supplier's responsiveness to customer inquiries related to corrections, errors and discrepancies; and clerical and administrative tasks related to the cycle of communication between the supplier and the customer, especially since there is little incentive on the supplier.

Spec's also contends that the proposed change may impose greater TABC involvement in the process. Since the opportunity to mutually resolve mistakes, errors and discrepancies will diminish, the customer will make payment decisions based on incomplete information in order to avoid enforcement penalties. The increased number of published default events will require use of the formal dispute resolution process, which requires use of more TABC resources.

Spec's notes that invoice errors involving quantity mistakes and rejections typically involve ten percent of every pay period's invoices that require individual verification and resolution. Furthermore, the supplier's corrections are quite often not confirmed until receiving the supplier's statements. Spec's also states that pricing errors on supplier's invoices typically represent one percent of the total value of any pay period's outstanding balance due. Although pricing disputes are usually amicably concluded, they are rarely corrected until after delayed discussions between supplier and customer. Spec's strongly urges that the time period should allow for common, established business practices and should recognize that days of business do not include weekends and holidays. If the period is shortened it should be to six full business days.

Jack Labovitz, King's Liquors Inc., comments that his few appearances on the Delinquent List during his many years in business were attributable to mistakes by the wholesaler. Shortening the current period would not allow enough time for many problems to be corrected and would be unfair to retailers. Although a few people do abuse the system, most retailers are honest, well-meaning people. If the period is shortened it should be to six full business days.

Richard Telles-Goins, The Barrel House Liquor Stores, comments that changing the current waiting period would be a big mistake. Among factors to be considered are: ending periods on weekends or Fridays when little or no billing is done by the wholesalers; the likelihood that the U.S. Postal Service will stop delivering mail on Saturdays; Monday holidays; and bank procedures that cause delay in sending out checks their customers request.

Joe Spano, H&H Beverage, comments that the changes to the credit rules that have already taken place over the last two years, coinciding with the largest recession since the Great Depression, have already caused hardship to many small package store owners. They have been placed at a competitive disadvantage to larger businesses that have unlimited lines of credit from banks. He does not understand "why the TABC became a collection enforcer for private enterprise i.e.: the Major Wholesalers." He asks how the agency benefits and why the enforcement burden should be increased for something that should be handled between a vendor and his customer. He notes that the vendors have remedies to deal with their customers on a one on one basis, which is the free enterprise system. He raises the issue of whether there are forces trying to eliminate small players in the industry. Noting that the eventual goal of the commission is to keep reducing the days from six to four to two, he asks whether any other industry in Texas is held to such a standard and questions whether it is consistent with the "business Friendly Texas" touted by the Governor as he pursues the office of President of the United States. He asks that the proposal be reconsidered and that if a change must be made, it should be to six business days.

Alvin Miller comments that shortening the time period would be counterproductive because TABC will have to remove more retailers from the Delinquent List. Changing from eight to six days would make it impossible to do a credible job of reporting. Just the time it takes for the mail to be delivered is a problem.

Kermit Belzer, JT's Liquor Box, comments that the proposed amendment should not be adopted. He notes that much of his small business operation depends on customers who use credit cards. The majority of his business falls on the weekend. "However, when a credit card is used in my store on Thursday, Friday or Saturday, I do not actually receive that money from the credit card company until the following Monday morning at the earliest." Shortening the time from eight to six days does not allow for possible errors. It is counterproductive to the effective and fair implementation of the credit law, will create major workability problems, and will increase TABC's workload. He asks that if the time period is shortened, it allow six full business days. "Or if the 10th and 25th falls on a weekend then please delay publishing of the list until Tuesday at 12:01 a.m. in order to allow time for

credit card companies to post transactions, and to correct any errors between my store, wholesalers and TABC."

After reviewing the comments, the commission believes that the amendments should be adopted as proposed and declines to make the change to six business days recommended in the comments.

In contrast to the payment scheme for beer outlined in Code §102.31, which requires cash on or before delivery, the payment scheme for liquor outlined in Code §102.32 allows payment to be made by cash or on the terms prescribed by the Legislature in Code §102.32(c). In upholding the constitutionality of the credit scheme for liquor, the Court of Appeals in Austin speculated that "probably for reasons of business convenience", the Legislature allowed short periods of time for payment of goods purchased. Neel v. Texas Liquor Control Board, 259 S.W.2d 312 (Tex. App.-Austin 1953, writ ref. n.r.e.) The credit terms prescribed by Code §102.32(c) require payment to be made on or before the 25th day of the month for purchases made from the 1st to the 15th day of that month. Where purchases are made from the 16th to the last day of the month, payment must be made no later than the 10th day of the following month. Code §102.32(d) further provides that an account becomes delinquent if it is not paid when required by Code §102.32(c). The Legislature specifically set the credit terms allowed, and did not allow for payment on credit terms to be devised by the commission or as decided upon between the parties.

When a retailer becomes delinquent in the payment of an account for liquor, Code §102.32(d) requires the wholesale dealer to immediately report that fact in writing to the commission. No wholesale dealer may sell any liquor to a delinquent retailer until the delinquent account has been paid in full and "cleared from the records of the commission", and any wholesale dealer who participates in a scheme to assist a retailer in violation of Code §102.32 commits an offense.

The commission is required to adopt rules to give effect to Code §102.32. In §45.121(j), the commission provides for publication of a Delinquent List as a means to provide notice of payment delinquencies. However, the Delinquent List is designed to give effect to the provisions of Code §102.32 and not to substitute for it. The length of the credit period is provided by the Code. For example, for a purchase from the 1st to the 15th day of a month, the credit period ends on the 25th and not on the date the Delinquent List is published. If a retailer does not make the payment on the 25th, the Code has already been violated. The retailer's subsequent appearance on the Delinquent List is not itself an offense. It is the means by which we know if an offense has been committed.

For a retailer, the real penalty for a delinquency is, of course, not being able to make purchases from any wholesaler until the delinquency is resolved. The significance of the Delinquent List is therefore that the wholesalers will not begin enforcing that penalty until they receive notice of the delinquency when the list is published.

It is the commission's intention to shorten the length of the perceived credit period (i.e., from the date of purchase to the date of publication of the Delinquent List) to the length of the Code-mandated credit period (i.e., from the date of purchase to the date specified in Code §102.32(c), which could be the 25th of the month when the purchase is made or the 10th day of the following month depending on when the purchase is made). In recognition of the fact that current business practices have grown around the perceived credit period, the commission is gradually shortening the perceived credit period until it matches the Code-mandated credit period. The commission is powerless to alter the Code, but understands the need to allow a reasonable period of time for the industry to change its business practices to meet the requirements of the Code. In furtherance of that goal, the commission believes the reduction in the time period proposed in this rulemaking is appropriate and therefore declines to make any changes to the rule as proposed.

The commission urges all segments of the industry to cooperate in making changes to current business practices to facilitate this transition. As always, the commission will monitor the industry to gauge the progress of this transition, and the effect of these amendments in particular.

The amendments are adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, Alcoholic Beverage Code §102.32(f), which requires the commission to adopt rules to give effect to that section of the Code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

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 21, 2011.

TRD-201104487
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: November 10, 2011
Proposal publication date: September 9, 2011
For further information, please call: (512) 206-3443

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.309

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.309, relating to Assignability of Prizes, without changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5284). The purpose of the amendments is to conform to recent legislation regarding assignability of prizes. Specifically, the amendments add new paragraphs (3) and (4) to subsection (e), which state the following: "(3) The prize winner and assignee must provide tax identification information to the commission for proper prize verification and W-2G preparation, and the citizenship or resident alien number for the assignee, if the assignee is an individual. (4) The assignee must promptly provide the commission an original notarized statement containing payment instructions and contact information."

The Commission received no written comments from any individuals, groups, or associations during the public comment period.

The amendments are adopted under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption is intended to implement Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104457
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 9, 2011
Proposal publication date: August 26, 2011
For further information, please call: (512) 344-5012

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16 TAC §401.317

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.317, relating to "Powerball®" On-Line Game Rule, without changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5285), with an effective date to be determined at the discretion of the Executive Director to coincide with the effective date of the implementation by the Multi-state Lottery Association, currently anticipated to be in mid-January. The primary purpose of the amendments is to change the game matrix and the ticket price. The Texas Lottery is adopting these amendments in order to conform the Texas Powerball game rule to the Multi-State Lottery Association (MUSL) Powerball game rule.

A public comment hearing was held on Wednesday, September 7, 2011 at 11:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No members of the public were present at the hearing. The commission received no written comments from individuals, groups, or associations during the public comment period.

The amendments are adopted under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption is intended to implement Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104471
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 9, 2011
Proposal publication date: August 26, 2011
For further information, please call: (512) 344-5275

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16 TAC §401.318

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.318, relating to Withholding of Delinquent Child-Support Payments from Lump-sum and Periodic Installment Payments of Lottery Winnings in Excess of Six Hundred Dollars, without changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5290). The purpose of the amendments is to conform to recent legislation regarding withholding of delinquent child-support payments from lump-sum and periodic installment payments of lottery winnings in excess of six hundred dollars. Specifically, the amendments add and delete language at subsections (a) and (b) for clarification purposes and to conform to legislation, and add the following language to subsection (b): "The Commission will maintain the certified court order, notice of a child support lien, or writ of withholding, for a total of twenty-four months from the date of receipt in accordance with time limits of Government Code, §466.408 for claimants to claim a lottery prize. It is the responsibility of the person to whom delinquent child support is owed to re-submit the certified court order, notice of child support lien, or writ of withholding in accordance with Commission procedures."

The Commission received no written comments from any individuals, groups, or associations during the public comment period.

The amendments are adopted under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption is intended to implement Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104458
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 9, 2011
Proposal publication date: August 26, 2011
For further information, please call: (512) 344-5012

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16 TAC §401.319

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.319, relating to Withholding of Child-Support Payments from Periodic Installment Payments of Lottery

Winnings, without changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5291). The purpose of the amendments is to conform to recent legislation regarding withholding of child-support payments from periodic installment payments of lottery winnings. Specifically, the amendments add and delete language at subsections (a) - (c) and (e) for clarification purposes and to conform to legislation.

The Commission received no written comments from any individuals, groups, or associations during the public comment period.

The amendments are adopted under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption is intended to implement Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104459
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 9, 2011
Proposal publication date: August 26, 2011
For further information, please call: (512) 344-5012

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CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.202

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §403.202, relating to Prerequisites to Suit, without changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5291). The purpose of the amendments is to conform the rule language to the language in Texas Government Code §2260.005 and, specifically, to reference Texas Government Code §2260.007, which recognizes the Texas Legislature's authority to deny or grant a waiver of immunity to suit against a unit of state government.

The Commission received no written comments from individuals, groups, or associations during the public comment period.

The amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §2260.052(c), which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims.

This adoption is intended to implement Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104472
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 9, 2011
Proposal publication date: August 26, 2011
For further information, please call: (512) 344-5275

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16 TAC §403.205

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §403.205, relating to Agency Counterclaim, without changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5292). The purpose of the amendments is to conform the rule language to the language in Texas Government Code §2260.051; and, specifically, to require the Commission to deliver notice of a contract counterclaim to a contractor no later than 60 days after the Commission's receipt of the contractor's notice of a contract claim.

The Commission received no written comments from individuals, groups, or associations during the public comment period.

The amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §2260.052(c), which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims.

This adoption is intended to implement Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104473
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 9, 2011
Proposal publication date: August 26, 2011
For further information, please call: (512) 344-5275

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16 TAC §403.207

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §403.207, relating to Duty to Negotiate, without changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5292). The purpose of the amendments is to clarify the timetable for the negotiation of contract claims under Chapter 2260, Texas Government Code, by adding a reference to the Commission's rule at 16 TAC §403.208, relating to the timetable for negotiations.

The Commission received no written comments from individuals, groups, or associations during the public comment period.

The amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §2260.052(c), which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims.

This adoption is intended to implement Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104474
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 9, 2011
Proposal publication date: August 26, 2011
For further information, please call: (512) 344-5275

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16 TAC §403.208

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §403.208, relating to Timetable, with changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5293). The purpose of the amendments is to conform the rule language to the language in Texas Government Code §2260.052 and §2260.056, regarding the time frame for negotiating and mediating contract claims. Specifically, in subsection (h), the word "deadlines" will be changed to "deadline".

The Commission received no written comments from individuals, groups, or associations during the public comment period.

The amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §2260.052(c), which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims.

This adoption is intended to implement Texas Government Code, Chapter 466.

§403.208. Timetable.

(a) Following receipt of a contractor's notice of claim, the Commission's executive director or the executive director's designated representative(s) shall review the contractor's claim(s) and the counterclaim(s), if any, and initiate negotiations with the contractor to attempt to resolve the claim(s) and counterclaim(s).

(b) The parties shall begin negotiations not later than the 120th day after the date the Commission receives a contractor's notice of claim.

(c) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the deadline set forth in subsection (b) of this section.

(d) Subject to subsection (e) of this section, the parties shall complete the negotiations that are required by this chapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the Commission receives the contractor's notice of claim.

(e) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the Commission receives the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(f) The contractor may request a contested case hearing before the State Office of Administrative Hearings ("SOAH") pursuant to §403.213 of this title (relating to Request for Contested Case Hearing) after the 270th day after the Commission receives the contractor's notice of claim, or the expiration of any extension agreed to under subsection (e) of this section.

(g) The parties may agree to mediate the dispute at any time before the 120th day after the date the claim is filed with the Commission and before the expiration of any extension agreed to by the parties pursuant to subsection (e) of this section.

(h) Nothing in this section is intended to prevent the parties from agreeing to commence negotiations earlier than the deadline established in subsection (b) of this section, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104475
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 9, 2011
Proposal publication date: August 26, 2011
For further information, please call: (512) 344-5275

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16 TAC §403.213

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §403.213, relating to Request for Contested Case Hearing, without changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5294). The purpose of the amendments is to clarify the numbering of a reference to 16 TAC §403.208(e), regarding agreements to extend the time for negotiations, which is being amended in a separate rulemaking action.

The Commission received no written comments from individuals, groups, or associations during the public comment period.

The amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §2260.052(c), which requires each unit

of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims.

This adoption is intended to implement Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104476
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 9, 2011
Proposal publication date: August 26, 2011
For further information, please call: (512) 344-5275

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16 TAC §403.214

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §403.214, relating to Mediation Timetable, without changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5294). The purpose of the amendments is to conform the rule language to the language in Texas Government Code §2260.056; and, specifically, to provide that a contractor and the Commission may agree to mediate a contract claim before the 120th day after the date the claim is filed with the Commission.

The Commission received no written comments from individuals, groups, or associations during the public comment period.

The amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §2260.052(c), which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims.

This adoption is intended to implement Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104477
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 9, 2011
Proposal publication date: August 26, 2011
For further information, please call: (512) 344-5275

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16 TAC §403.301

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §403.301, relating to Historically Underutilized Businesses, without changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5295). The purpose of the amendments is to reflect the new numbering of the Comptroller of Public Accounts' recently amended rules regarding Historically Underutilized Businesses (HUBs) (at 34 TAC Chapter 20, Subchapter B), which were effective September 14, 2011, and to readopt the Comptroller's HUB rules. The Comptroller's amendments add a new rule section number which needs to be referenced in this Commission rule.

The Commission received no written comments from individuals, groups, or associations during the public comment period.

The amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §2161.003, which requires state agencies to adopt the Comptroller's rules regarding Historically Underutilized Businesses as the agency's own rules.

This adoption is intended to implement Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104478
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 9, 2011
Proposal publication date: August 26, 2011
For further information, please call: (512) 344-5275

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16 TAC §403.501

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §403.501, relating to Custody and Use of Criminal History Record Information, without changes to the proposed text as published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5294). The purpose of the amendments is to make the agency rules compliant with the current statutory provisions; increase readability by replacing long sentences with short, simple sentences in new subsections; move a paragraph from a bottom location to better fit in the flow of the rule; make a stand-alone sentence and delete a redundant phrase in the next sentence; create a new paragraph; and clarify that criminal history information received through Department of Public Safety is confidential.

The Commission received no written comments from individuals, groups, or associations during the public comment period.

The amendments are adopted under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption is intended to implement Texas Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104479
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: November 9, 2011
Proposal publication date: August 26, 2011
For further information, please call: (512) 344-5275

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 2. CAPITOL ACCESS PASS

37 TAC §§2.1 - 2.13

The Texas Department of Public Safety (the department) adopts new §§2.1 - 2.13, concerning Capitol Access Pass. The new sections are adopted without changes to the proposed text as published in the September 9, 2011, issue of the *Texas Register* (36 TexReg 5795) and will not be republished.

The new sections are necessary to comply with the requirements of House Bill 2131, 82nd Legislature, to be codified at Government Code, §411.0625. This bill requires that the department adopt rules establishing a procedure by which a resident of the state may apply for and be issued a Capitol access pass that allows a person to enter the Capitol building and the Capitol Extension, including any public space in the Capitol or Capitol Extension, in the same manner as the department currently allows entry to a person who presents a concealed handgun license (CHL) issued under Government Code, Chapter 411, Subchapter H.

The department accepted comment on the proposed rules through October 10, 2011. Written comments were submitted by Suzii Paynter representing Christian Life Commission; Walt Baum representing Association of Electric Companies of Texas; Harvey Kronberg representing Quorum Report and Texas Energy Report; Mike Peterson representing AT&T Texas; Ken Whalen representing Texas Daily Newspaper Association; Susan Patten representing Time Warner Cable; Kirby Brown representing Texas Wildlife Association; Perla Cavazos representing Texas Legal Services Center; Bill Hammond representing Texas Association of Business; Steve Bresnen, Amy Bresnen, and Glenn Deshields representing Steve Bresnen & Associates; and Jack Gullahorn representing the Professional Advocacy Association of Texas.

The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: The department received comments from thirteen individuals representing eleven different companies requesting access to the Capitol be offered through the Capitol Extension entrances/elevators and through the Capitol drive entrances and tunnels from the Sam Houston, Johnson, and Supreme Court buildings.

RESPONSE: These comments concern a matter of policy unrelated to the proposed administrative rules. Pursuant to House Bill 2131, the access afforded to pass-holders is to be the same as that which is afforded to CHL holders. The manner and degree of access afforded to CHL holders is within the discretion of the department, and is not affected by the proposed Capitol Access Pass administrative rules. The department therefore will make no changes to the rules as proposed in response to these comments.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Government Code, §411.0625, which mandates that the department adopt rules to administer that section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2011.

TRD-201104548
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: November 13, 2011
Proposal publication date: September 9, 2011
For further information, please call: (512) 424-5848

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CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.2

The Texas Department of Public Safety (the department) adopts amendments to §16.2, concerning Commercial Motor Vehicles. This section is adopted without changes to the proposed text as published in the September 9, 2011, issue of the *Texas Register* (36 TexReg 5797) and will not be republished.

The amendments to §16.2 are necessary to comply with Federal Rules specific to commercial driver licensing.

No comments were received regarding the adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to

carry out Chapter 522 and the federal act and to maintain compliance with Code of Federal Regulations, Title 49, Part 383 and Part 384.

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 24, 2011.

TRD-201104549
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: November 13, 2011
Proposal publication date: September 9, 2011
For further information, please call: (512) 424-5848

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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER C. STANDARDS

37 TAC §35.33

The Texas Department of Public Safety (the department) adopts the repeal of §35.33, concerning Certificate of Installation. The repeal of this section is adopted without changes to the proposal as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5644) and will not be republished.

The repeal of §35.33 is necessary because the rule clarified an obligation of alarm installers arising from the Texas Insurance Code. However, the statutory provision giving rise to this rule has been repealed and the rule now serves no purpose.

No comments were received regarding the adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this 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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D. Phillip Adkins
General Counsel
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37 TAC §§35.41, 35.43, 35.46

The Texas Department of Public Safety (the department) adopts amendments to §§35.41, 35.43, and 35.46, concerning Standards. The sections are adopted without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5645) and will not be republished.

The amendments to §35.41, relating to Company Name Selection, are necessary to remove subsection (b) and (c) which require the department to make determinations regarding the similarity of proposed names with those of existing licensees, and to disapprove those proposed names that are similar to the names of current licensees. The removal of these subsections is intended to eliminate the department's involvement in the choice of company names.

The amendments to §35.43, relating to Military Discharges, are necessary to conform the guidelines in §35.43 to those being proposed in amendments to §35.46. The amendments to §35.43 provide guidance to the Private Security Bureau (the bureau) staff, the regulated industry, and prospective applicants regarding the nature of the discharges considered by the Private Security Board (the board) to be disqualifying for purposes of licensure under the Private Security Act (the Act) (Texas Occupations Code, Chapter 1702).

The amendments to §35.46, relating to Guidelines for Disqualifying Convictions, are necessary to enhance the guidelines relating to disqualifying criminal offense, by providing for the permanent disqualification of certain violent criminals. The amendments to §35.46 also provide clarification of the existing guidelines to the bureau staff, the regulated industry, and prospective applicants regarding the criminal offense considered by the board to be related to the various regulated security fields, for purposes of licensure under the Act.

No comments were received regarding the adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this 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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SUBCHAPTER G. UNIFORMED MOTORCYCLE ESCORT SERVICE

37 TAC §§35.111 - 35.117

The Texas Department of Public Safety (the department) adopts the repeal of §§35.111 - 35.117, concerning Uniformed Motorcycle Escort Service. The repeals of these sections are adopted

without changes to the proposal as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5647) and will not be republished.

The repeals are necessary to eliminate a set of rules purporting to regulate an activity determined by the Office of the Attorney General (Opinion GA-0008) to be outside the scope of the Private Security Act (Texas Occupations Code, Chapter 1702).

No comments were received regarding the adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this 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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SUBCHAPTER I. COMMISSIONED SECURITY OFFICERS

37 TAC §35.141

The Texas Department of Public Safety (the department) adopts an amendment to §35.141, concerning Requirements for Issuance of a Security Officer Commission by the Board. The section is adopted without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5647) and will not be republished.

The amendment is necessary to enhance the training requirements for applicants by increasing the required number of training hours from 30 hours to 40 hours.

No comments were received regarding the adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this 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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SUBCHAPTER P. INVESTIGATIONS

37 TAC §35.241

The Texas Department of Public Safety (the department) adopts the repeal of §35.241, concerning Business Evaluation Service. The repeal of this section is adopted without changes to the proposal as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5648) and will not be republished.

The repeal is necessary to eliminate an unnecessary rule that purports to create an exemption from the Private Security Act (Chapter 1702, Texas Occupations Code) for certain types of investigations. Section 35.241 conflicts with the Act's definition of investigative services. In conjunction with the repeal of this rule, the department amends the title of Subchapter P, in a manner that reflects the content of the remaining rule within the subchapter, §35.242, concerning Investigations Related to Unclaimed Property.

No comments were received regarding the repeal of this section.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this 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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SUBCHAPTER Q. TRAINING

37 TAC §35.251

The Texas Department of Public Safety (the department) adopts amendments to §35.251, concerning Training Requirements. The section is adopted without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5649) and will not be republished.

The amendments are necessary to enhance the training requirements for security and personal protection officer applicants by

specifying the required number of training hours and providing additional substance to the material requirements.

No comments were received regarding the adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this 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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SUBCHAPTER R. PERSONAL PROTECTION OFFICERS TRAINING

37 TAC §35.281

The Texas Department of Public Safety (the department) adopts an amendment to §35.281, concerning Training - Personal Protection Officers. The section is adopted without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5650) and will not be republished.

The amendment is necessary to eliminate the outdated requirement that a personal protection officer training school obtain training video tapes from the Private Security Board (or the department).

No comments were received regarding the adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this 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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SUBCHAPTER S. CONTINUING EDUCATION

37 TAC §35.291, §35.292

The Texas Department of Public Safety (the department) adopts amendments to §35.291 and §35.292, concerning Continuing Education. The sections are adopted without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5650) and will not be republished.

The amendments are necessary to enhance and clarify the requirements for private security continuing education courses.

No comments were received regarding the adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this 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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SUBCHAPTER V. ACTIVE MILITARY AND SPOUSES - SPECIAL CONDITIONS

37 TAC §§35.321 - 35.323

The Texas Department of Public Safety (the department) adopts new §§35.321 - 35.323, concerning Active Military and Spouses - Special Conditions. The sections are adopted without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5652) and will not be republished.

The new sections became necessary when Senate Bill 1733, 82nd Legislative Session amended Texas Occupations Code, Chapter 55. The amendments to the statute require rules that relate to provisions for the renewal of private security licenses to those who have served in the military and for issuance of such licenses to spouses of active duty military, under certain circumstances.

No comments were received regarding the adoption of the new sections.

The sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this 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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PART 3. TEXAS YOUTH COMMISSION

CHAPTER 81. INTERACTION WITH THE PUBLIC

37 TAC §81.31

The Texas Youth Commission (TYC) adopts the repeal of §81.31, concerning Weapons and Concealed Handguns, without changes to the proposal as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6123).

The repeal allows for new §97.3, which is also adopted in this issue of the *Texas Register,* to replace §81.31.

No comments were received regarding the proposed repeal.

The repeal is adopted under Human Resources Code §242.003, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

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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For further information, please call: (512) 424-6014

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CHAPTER 85. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

SUBCHAPTER E. PAROLE PLACEMENT AND DISCHARGE

37 TAC §85.71

The Texas Youth Commission (TYC) adopts an amendment to §85.71, concerning Home Placement, with changes to the proposed text as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6123). Changes to the proposed text consist of a minor grammatical correction.

The amended rule reorganizes, clarifies, and revises several provisions relating to TYC's responsibilities to place youth in their homes or other approved locations while released under parole supervision. The rule specifies the different placement options TYC may pursue for youth who are released under supervision. The amended rule adds certain controls and safeguards to the approval process, such as the ability to require written authorization to conduct criminal history checks on certain primary caregivers in non-family placements as a prerequisite to placing a youth in the home. The rule also emphasizes that TYC will attempt to place youth with their custodial parent or legal guardian whenever possible, and that all placement decisions will be based on the best interests of the youth.

Additionally, a requirement is added for TYC to make a referral to the Department of Family and Protective Services when a youth's parents cannot be located or refuse to allow the youth to return and TYC is unable to find a relative willing to offer his/her home as a parole placement. Clarification is added to reflect that parents whose homes are disapproved as parole placements will be notified in writing of their right to file a grievance concerning that decision.

The justification for the amended rule is placement of youth in the parole setting that provides the best opportunity for youth to safely and effectively reintegrate with their families and communities.

TYC did not receive any public comments regarding the proposed amendment.

The amended rule is adopted under Human Resources Code §245.051, which provides TYC with the authority to evaluate each child's home setting and to release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by TYC.

§85.71. Home Placement.

(a) Purpose. The Texas Youth Commission (TYC) recognizes that positive contact with parents, family members, guardians, and other significant persons plays a critical role and can greatly enhance a youth's successful re-entry to the community. TYC considers the totality of the home environment when making decisions regarding an appropriate home placement for youth. The purpose of this rule is to establish criteria and procedures to identify a suitable parole placement for youth who have completed residential program requirements.

(b) Applicability.

(1) This policy applies to youth who will be placed on parole prior to age 19.

(2) This policy does not apply to sentenced offenders whose minimum period of confinement will expire within two months prior to the youth's 19th birthday or after the 19th birthday, because the youth, if released to parole, will be under the supervision of the Texas Department of Criminal Justice-Parole Division.

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

(1) Close Family Friend--a person at least 21 years of age who has a longstanding, significant relationship with the youth. Examples may include a godparent or someone considered to be an aunt or uncle even though not related to the youth.

(2) Guardian--has the meaning assigned in Section 601 of the Probate Code.

(3) Parent--an individual who has established a parent-child relationship under §160.201 of the Family Code. Parent does not include an individual whose parental rights have been terminated.

(4) Relative--any person at least 21 years of age, other than a parent, who is:

(A) currently related to the youth in any of the following ways by blood or adoption: grandparent, sibling, great-grandparent, uncle, aunt, nephew, niece, first cousin, first cousin once-removed (the child of one's first cousin), second cousin (the child of the first cousin of one's parent), great uncle, or grant aunt;

(B) the spouse of the youth or a person listed in subparagraph (A) of this paragraph; or

(C) the youth's step-father, step-mother, or adult stepsibling.

(d) General Provisions.

(1) TYC shall attempt to place paroled youth in the home of the youth's custodial parent(s) or legal guardian whenever possible. All parole placements will be made consistent with the best interests, safety, rehabilitative needs, and special needs of the youth.

(2) TYC may place a youth at the following placements:

(A) home of the custodial parent(s) or legal guardian;

(B) home of the non-custodial parent;

(C) home of a relative;

(D) home of a close family friend;

(E) program placement such as a halfway house, subsidized independent living, or foster home; or

(F) if the youth meets required supervision and surveillance levels, an unsupervised home location such as an apartment, dormitory, or homeless shelter.

(3) TYC will consider input from the youth, the youth's parents/guardian, and relatives when determining the parole placement that is in the youth's best interest.

(4) For youth under supervision of both the Department of Family and Protective Services (DFPS) and TYC, TYC will collaborate with DFPS to determine the appropriate home placement.

(5) TYC will conduct home placement assessments for youth referred for parole supervision through the Texas Interstate Compact for Juveniles Office according to the rules of the Interstate Commission for Juveniles.

(6) TYC may conduct background and public criminal history checks and/or require written authorization to conduct full criminal history checks of the primary caregiver(s) as a prerequisite to placing a youth in the home of a close family friend. Confidential criminal history record information shall not be released or disclosed except on court order or with the consent of the individual who is the subject of the criminal history record information. Criminal records obtained pursuant to this rule will be destroyed after completion of the home placement decision.

(7) For youth under age 18 whose parents cannot be located or refuse to allow the youth to return home and TYC is unable to locate a placement with a relative, TYC will refer the matter to DFPS.

(8) The executive director or his/her designee may make exceptions to provisions of this rule on a case-by-case basis, based on a consideration of the youth's best interests and public safety.

(e) Placement Assessment.

(1) The assigned parole officer shall evaluate the parole placement options of each youth upon commitment to TYC. If it is determined that the home of the custodial parent/legal guardian is not available for a parole placement, alternative placement options will be identified in consultation with the youth's case manager, the youth, and when possible, the youth's parent/guardian.

(2) The assigned parole officer shall assess the home of each youth in his/her jurisdiction, provide a parent/parole orientation, and determine whether the home is approved or disapproved for placement. The home placement assessment will be completed in the home where the youth will be placed.

(3) The home placement assessment status may be changed but only as a result of a follow-up home placement assessment by the assigned parole officer.

(4) A completed home placement assessment shall be considered current for 12 months. Home placement re-assessments will be conducted annually.

(5) Any time new evidence or special circumstances warrant, a follow-up home placement assessment shall be conducted.

(f) Disapproval Criteria for Home Placements.

(1) A home may be disapproved if one or more of the following criteria exists and can be documented:

(A) physical abuse;

(B) sexual abuse;

(C) physical absence of parent caretaker due to criminal incarceration or physical/ psychiatric hospitalization;

(D) serious physical/survival neglect;

(E) legal termination of parental rights for youth under 18 years of age;

(F) the youth is a sex offender and the victim or a potential victim resides in the home and requirements for family re-integration have not been met;

(G) the legal head of household cannot or will not supervise the youth and/or the youth is not welcome in the home; or

(H) the home being assessed is that of a close family friend and there is documented evidence that a primary caregiver residing in the home has a criminal or other background that would present or has presented a negative and/or unsafe influence or impact on the youth.

(2) If a home is disapproved, parole staff will provide supports and services to the family that will assist with addressing safety or other issues identified as disapproval criteria. A disapproved home may later be approved as a placement if the assigned parole staff determines specific actions have been taken to address the identified issues.

(3) If a home is not approved, the parent(s) or legal head of household will receive written notice of the disapproval, the reasons for the disapproval, any action that may be taken to correct a deficiency, and information concerning the right to file a grievance concerning the decision.

(g) Non-Relative Placements.

(1) Youth under 18 years of age may only be placed with a close family friend or in an unsupervised home location if approved by the executive director or his/her designee, and for placements with a close family friend, only if a criminal history check has been conducted on the primary caregiver(s).

(2) If a parent/guardian objects to a non-relative placement, the objection will be considered in the final decision.

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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Executive Director
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For further information, please call: (512) 424-6014

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CHAPTER 87. TREATMENT
SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.87

The Texas Youth Commission (TYC) adopts an amendment to §87.87, concerning Sex Offender Risk Assessment, without changes to the proposed text as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6126).

The amended rule more closely reflects TYC's responsibilities under Chapter 62, Code of Criminal Procedure with regard to conducting sex offender risk assessments and risk level overrides. The rule includes a new provision allowing TYC to refer requests for an override of a sex offender's risk level to the statutorily-created Risk Assessment Review Committee. The amended rule also establishes that TYC uses the assessment instrument(s) approved by the Risk Assessment Review Committee. The rule no longer lists specific criteria which may warrant a request for an override, but states that an override may be considered any time a youth's assessed risk level is not believed to be an accurate prediction of the risk the youth poses to the community.

The justification for the amended rule is protection of the public through a process that accurately assesses the risk levels of youth subject to sex offender registration.

No comments were received regarding the proposed amendment.

The amended rule is adopted under Code of Criminal Procedure §62.007, which provides TYC with the authority to override sex offender risk levels, and §62.010, which provides TYC with rulemaking authority for purposes of implementing its responsibilities under the state's sex offender registration program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 91. PROGRAM SERVICES
SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.83

The Texas Youth Commission (TYC) adopts an amendment to §91.83, concerning Health Care Services for Youth, with changes to the proposed text as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6128). Changes to the proposed text consist of minor grammatical corrections.

The rule has been amended to reflect updates to staff titles and clarify criteria for medical care. The justification for the amended rule is provision of agency rules that are current and up-to-date.

No comments were received regarding the proposed amendment.

The amended rule is adopted under Human Resources Code §242.003, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

§91.83. Health Care Services for Youth.

(a) Purpose. The purpose of this rule is to establish basic criteria, standards, and guidelines for delivery of health care services to youth who are assigned to Texas Youth Commission (TYC) operated residential facilities and certain identified contract care programs.

(b) Applicability.

(1) Definitions pertaining to this rule are under §91.75 of this title.

(2) For consent to treatment, see §91.81 of this title.

(c) Criteria for Medical Care.

(1) As established by the TYC medical director, primary medical care will be provided by medical providers according to the following criteria:

(A) life saving treatment;

(B) limb saving treatment;

(C) reasonable care to relieve pain;

(D) reasonable care for a degenerative condition;

(E) preventive services to include age-appropriate immunizations; and

(F) treatment for medical conditions which, if left untreated, could result in serious bodily harm.

(2) Procedures outside these criteria for medical care must be approved by the TYC medical director in consultation with TYC's executive director.

(d) Criteria for Dental Care.

(1) The dentist will assure equitable access to basic preventive services and essential treatment procedures based upon the occurrence of disease, significant malfunction or injury. Priority of treatment categories are:

(A) Emergency/urgent--treatment for conditions which will worsen or become life-threatening or acute without immediate intervention.

(B) Interceptive--intermediate treatment for asymptomatic advanced hard or soft tissue disease or loss of masticatory function.

(C) Rehabilitative--definitive treatment for chronic hard or soft tissue disease or loss of masticatory function.

(D) Elective or special needs.

(2) The attending dentist may vary from this prioritization on an individual basis if judged to be necessary for the protection of the youth's overall health.

(3) TYC will provide for necessary care of orthodontic braces to prevent injury to the mouth. Maintenance and treatment will be arranged by and paid for by the parent/guardian after notification of TYC policy. TYC staff will assist youth and parents/guardians in making appointments and providing transportation for orthodontic care.

(e) Services.

(1) TYC will administer the following services, either directly or through contractual arrangements. These services include but are not limited to the following:

(A) physical examinations and treatment;

(B) dental examinations and treatment;

(C) treatment of injuries;

(D) mental health evaluations;

(E) immunizations;

(F) laboratory and diagnostic tests;

(G) administration of prescription or non-prescription medication for an illness or condition;

(H) chemical dependency evaluations; and

(I) examination following use of physical force and/or contamination caused by use of oleoresin capsicum spray, also known as pepper spray.

(2) Each TYC-operated facility and certain identified contract care programs will have a health services administrator who is designated to act as the local health authority.

(3) The appropriate level of health care services will be provided in the infirmary at each institution through contract health care professionals for youth who are not in need of hospitalization, but who need increased observation or medical care.

(4) Nurses will provide services for routine sick call requests at least five days per week. Medical providers, dentists, and a psychiatrist will provide services on-site or via telemedicine/telepsychiatry at least once weekly.

(5) In halfway houses, nursing case management and consultation will be provided as needed. Medical providers, dentists, and psychiatrists will provide services as needed.

(6) Upon admission to TYC, all youth will receive a health screening, physical examination (if no documentation within the past 90 days), mental health screening and evaluation, a dental screening, examination, and dental cleaning as prescribed by the dentist. Youth will receive a health screening, physical examination, dental examination, and dental cleaning annually thereafter.

(7) Upon admission to TYC, all youth will receive a vision screening. If the vision screening indicates that the youth needs a new prescription, state-issued prescription eyewear will be provided. Youth whose placement is in a high restriction facility are prohibited from wearing contact lenses, except where medically necessary as a form of treatment and glasses are ineffective for correcting vision.

(8) In facilities housing females, obstetrical, gynecological, and family planning services will be available on-site or by referral.

(f) Limitation of Services.

(1) TYC is not responsible for medical costs incurred by a youth:

(A) on furlough with a parent, relative, or guardian;

(B) on parole status, unless the youth's placement is in a TYC-operated/contract residential program;

(C) on escape/abscond status; or

(D) in a detention center or a county facility.

(2) Pharmaceutical, cosmetic, and medical experiments are prohibited. This policy does not preclude individual treatment of a youth based on the need for a specific medical procedure which is not generally available.

(g) Health Care Requirements.

(1) Facilities housing more than 25 youth must have a central medical room with medical examination facilities.

(2) Youth present in the infirmary will be supervised by a TYC staff member at all times.

(3) The physician or dentist is the decision authority for medical/dental services at the respective facility.

(4) The medical provider will develop the youth's medical plan of care.

(5) A medical provider will be available once each week to respond to youth complaints regarding services which they did or did not receive.

(6) In each TYC-operated residential program and certain identified contract care programs, the superintendent, health services administrator, medical provider, and dentist must have regularly scheduled meetings to review health care services, including any concerns or problems related to the provision of health care. If problems are identified, follow-up must occur to ensure that the recommended actions are implemented and the problem has been resolved.

(7) A youth who, by history or examination, has a serious or life-threatening medical condition may be placed on medical alert status by a medical provider. A nurse may place a youth on medical

alert status if such conditions occur during movement from one facility to another until a medical provider can be notified.

(8) The medical provider or psychiatrist may authorize medical and pharmacological intervention when required in a life-threatening situation consistent with §91.81 of this title. When this intervention requires the use of psychotropic medication, the authorization must be consistent with criteria in §91.92 of this title.

(9) Each TYC-operated residential program and certain identified contract care programs will post procedures for providing health care to youth when there is not a nurse on duty, including how to contact the on-call nurse.

(10) Pharmaceutical procedures will comply with federal and state laws and accepted industry practices pertaining to the acquisition, storage, administration, and documentation of prescription drugs.

(h) Medical Concerns Reported by Youth.

(1) Any youth may request a sick call for the evaluation of health care concerns.

(2) Any youth may file a complaint related to his/her health care service through the youth grievance procedure in accordance with §93.31 of this title.

(i) Emergency Room Referrals. Emergency room referrals may only be authorized by a medical provider, health services administrator or designee, or the medical or nursing director.

(j) Notification. Parents or guardians will immediately be notified of a youth's serious illness, injury, or recommended need for surgery.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104450
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Effective date: November 15, 2011
Proposal publication date: September 16, 2011
For further information, please call: (512) 424-6014

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CHAPTER 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.12

The Texas Youth Commission (TYC) adopts an amendment to §93.12, concerning Visitation, without changes to the proposed text as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6128).

The amended rule revises, clarifies, and reorganizes several provisions relating to the process for granting approval to visit youth in TYC facilities. Except for parents and guardians who are visiting youth in an orientation and assessment facility, persons wishing to visit a youth will be required to submit a visitor application. Except for the limited reasons set forth in the rule, visitors will be added to the youth's approved visitor list. A new provision requires written justification, with notice of appeal rights, to be provided to any person who is disapproved for a youth's visitor list. Reasons which may justify disapproval of a non-family member for placement on a youth's visitor list will be expanded to include a felony conviction within the past 10 years or a requirement to register as a sex offender. Non-family members who are under 18 years of age will require approval from the facility superintendent to be placed on a youth's approved visitor list. The amended rule also states that TYC may conduct a public background check and/or require an individual's authorization to conduct a full criminal history check prior to placing the individual on a youth's approved visitor list.

Additional revisions include removal of references to obsolete programs and facilities, minor changes to dress code requirements for visitors, and minor changes to the list of items visitors are allowed to bring to visitation.

The justification for the amended rule is compliance with national best practices, as well as provision of a system of visitation that promotes contact with the public while maintaining the safety and security of the youth, staff, and facility.

No comments were received regarding the proposed amendment.

The amended rule is adopted under Human Resources Code §242.051, which provides TYC with the responsibility to provide for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the TYC.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104451
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Effective date: November 15, 2011
Proposal publication date: September 16, 2011
For further information, please call: (512) 424-6014

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37 TAC §93.15

The Texas Youth Commission (TYC) adopts an amendment to §93.15, concerning Youth Mail, without changes to the proposed text as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6132).

The amended rule no longer requires the stoppage of all mail from any person who has ever attempted to send contraband to a youth. Instead, the rule contains a provision allowing the executive director or designee to issue a notice of stopped mail when a person attempts to send contraband that would be a violation of law or create a safety or security risk.

The definition of special correspondent has been amended to include the TYC ombudsman and members of advocacy and support groups.

The rule clarifies that youth mail or other written material may not be read by staff while in a youth's possession or in the youth's assigned living unit, unless the youth possesses the written material in an area other than his/her assigned living unit. In such

cases, the written material may only be read to the extent necessary to determine whether the item constitutes contraband.

The amended rule also allows youth to send mail to other youth under TYC jurisdiction only if the other youth is a family member.

A provision has been added that allows the executive director or his/her designee to make exceptions on a case-by-case basis regarding individuals permitted to correspond with youth, based on whether it is in the youth's best interest to correspond with the individual.

The justification for the amended rule is compliance with national best practices and accreditation standards, as well as the provision of a youth mail system that promotes communication with the public while maintaining the safety and security of the facility, youth, and staff.

No comments were received regarding adoption of the proposed amendment.

The amended rule is adopted under Human Resources Code §242.051, which assigns TYC the responsibility for the welfare, custody, and rehabilitation of youth committed to it, and §242.003, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104452
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Effective date: November 15, 2011
Proposal publication date: September 16, 2011
For further information, please call: (512) 424-6014

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CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.3

The Texas Youth Commission (TYC) adopts new §97.3, concerning Weapons and Concealed Handguns, without changes to the proposed text as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6134).

In accordance with Senate Bill 321 (82nd Texas Legislature), the new rule allows employees to transport or store lawfully possessed weapons and ammunition in a locked, privately owned vehicle in a TYC-provided parking area.

The justification for the new rule is compliance with recently enacted legislation.

No comments were received regarding the adopted new rule.

The new rule is adopted under Labor Code §52.061, which prohibits a public or private employer from prohibiting an employee who lawfully possesses a firearm or ammunition from transporting or storing the firearm or ammunition in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees, and Human Resources Code §242.003, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104453
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Effective date: November 15, 2011
Proposal publication date: September 16, 2011
For further information, please call: (512) 424-6014

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CHAPTER 99. GENERAL PROVISIONS
SUBCHAPTER A. YOUTH RECORDS

37 TAC §99.11

The Texas Youth Commission (TYC) adopts an amendment to §99.11, concerning Youth Masterfile Records, without changes to the proposed text as published in the September 16, 2011, issue of the *Texas Register* (36 TexReg 6134).

The rule has been amended to clarify that TYC shall maintain a list of documents approved for filing in each subfile and to remove references to a rule that is adopted for repeal.

The justification for the amended rule is provision of agency rules that are current and up-to-date.

No comments were received regarding adoption of the proposed amendment.

The amended rule is adopted under Human Resources Code §242.003, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 20, 2011.

TRD-201104454
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Effective date: November 15, 2011
Proposal publication date: September 16, 2011
For further information, please call: (512) 424-6014

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §57.58

The Automobile Burglary and Theft Prevention Authority (ABTPA) adopts new §57.58, concerning Licensure of Intellectual Property, without changes to the proposed text as published in the July 22, 2011, issue of the *Texas Register* (36 TexReg 4646). The text of the rule will not be republished.

The adopted new rule includes language to authorize ABTPA to apply for, register, secure, hold, license, and protect copyrights, trademarks, patents, or other evidence of protection or exclusivity. ABTPA may receive license fees, royalties, or other consideration for the use of its intellectual property. This new rule prescribes the policies and procedures governing the protection of ABTPA intellectual property, and the use of ABTPA intellectual property by third parties.

No written comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules that implement its statutory powers and duties.

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, 2011.

TRD-201104429
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Effective date: November 8, 2011
Proposal publication date: July 22, 2011
For further information, please call: (512) 374-5101

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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.

Adopted Rule Reviews

Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 15 (Corporate Activities), in its entirety, specifically Subchapter A (§§15.1 - 15.7 and 15.9 - 15.12); Subchapter B (§15.23 and §15.24); Subchapter C (§§15.41 - 15.44); Subchapter E (§15.81); Subchapter F (§§15.101 - 15.111 and 15.113 - 15.117); and Subchapter G (§15.121 and §15.122).

Notice of the review of Chapter 15 was published in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5219). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 15 continue to exist. However, the commission has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 15, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 15 in accordance with the requirements of the Government Code, §2001.039.

TRD-201104490
A. Kaylene Ray
General Counsel
Texas Department of Banking
Filed: October 21, 2011

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On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 17 (Trust Company Regulation), in its entirety, specifically Subchapter A (§§17.2 - 17.4); and Subchapter B (§§17.21 - 17.23).

Notice of the review of Chapter 17 was published in the July 22, 2011, issue of the *Texas Register* (36 TexReg 4683). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 17 continue to exist. However, the commission has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 17, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 17 in accordance with the requirements of the Government Code, §2001.039.

TRD-201104491
A. Kaylene Ray
General Counsel
Texas Department of Banking
Filed: October 21, 2011

♦ ♦ ♦

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 19 (Trust Company Loan and Investments), in its entirety, specifically Subchapter A (§19.1); Subchapter B (§19.21 and §19.22); and Subchapter C (§19.51).

Notice of the review of Chapter 19 was published in the July 22, 2011, issue of the *Texas Register* (36 TexReg 4683). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting the rules in Subchapters B and C of Chapter 19 continue to exist. However, the commission has determined that the reasons for adopting Subchapter A composed of §19.1 no longer exist and therefore the repeal of Subchapter A, §19.1 is appropriate and necessary. Proposed repeal of §19.1, with discussion of the justification for the repeal, will be published in the *Texas Register* at a later date.

With the exception of Subchapter A, §19.1, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 19 in accordance with the requirements of the Government Code, §2001.039.

TRD-201104492
A. Kaylene Ray
General Counsel
Texas Department of Banking
Filed: October 21, 2011

♦ ♦ ♦

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 21 (Trust Company Corporate Activities), in its entirety, specifically Subchapter A (§§21.1 - 21.7 and 21.9 - 21.12); Subchapter B (§21.23 and §21.24); Subchapter C (§21.31 and §21.32); Subchapter D (§21.41 and §21.42); Subchapter E (§21.51); Subchapter F (§§21.61 - 21.64, 21.67 - 21.70 and 21.72 - 21.76); and Subchapter G (§21.91 and §21.92).

Notice of the review of Chapter 21 was published in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5219). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 21 continue to exist. However, the commission has determined that certain revisions and amendments are appropriate and necessary. Proposed amendments and revisions to Chapter 21, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 21 in accordance with the requirements of the Government Code, §2001.039.

TRD-201104493
A. Kaylene Ray
General Counsel
Texas Department of Banking
Filed: October 21, 2011

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Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Texas Administrative Code, Title 7, §§91.6001 (Fiduciary Duties), 91.6002 (Fiduciary Capacities), 91.6003 (Notice Requirements), 91.6004 (Exercise of Fiduciary Powers), 91.6005 (Exemption from Notice), 91.6006 (Policies and Procedures), 91.6007 (Review of Fiduciary Accounts), 91.6008 (Recordkeeping), 91.6009 (Audit), 91.6010 (Custody of Fiduciary Assets), 91.6011 (Trust Funds), 91.6012 (Compensation, Gifts, and Bequests), 91.6013 (Bond Coverage), 91.6014 (Errors and Omissions Insurance) and 91.6015 (Litigation File) as published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4421).

The rules were reviewed as a result of the Credit Union Department's (Department's) general rule review.

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 readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

TRD-201104545
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 24, 2011

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Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring; Subchapter BB, Memoranda of Understanding; Subchapter DD, Investigative Reports, Sanctions, and Record Reviews; Subchapter EE, Accreditation Status, Standards, and Sanctions; and Subchapter FF, Commissioner's Rules Concerning the Job Corps Diploma Program, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 97, Subchapters AA, BB, and DD-FF, in the August 5, 2011, issue of the *Texas Register* (36 TexReg 4981).

Relating to the review of 19 TAC Chapter 97, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter AA. At a later date, the TEA plans to amend §97.1001, Accountability Rating System, and §97.1004, Adequate Yearly Progress, to align the rules with the accountability rating system that will be implemented in the 2012-2013 school year.

Relating to the review of 19 TAC Chapter 97, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter BB. At a later date, the TEA plans to make changes to Subchapter BB to update references to statute.

Relating to the review of 19 TAC Chapter 97, Subchapter DD, the TEA finds that the reasons for adopting Subchapter DD continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter DD. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 97, Subchapter EE, the TEA finds that the reasons for adopting Subchapter EE continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter EE. At a later date, the TEA plans to amend Subchapter EE to align with Senate Bill 738, 82nd Texas Legislature, 2011.

Relating to the review of 19 TAC Chapter 97, Subchapter FF, the TEA finds that the reasons for adopting Subchapter FF continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter FF. At a later date, the TEA plans to make changes to Subchapter FF to update Job Corps diploma program accountability procedures.

This concludes the review of 19 TAC Chapter 97.

TRD-201104619
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: October 26, 2011

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapter of the Administrative Code, Title 28, Part 2: Chapter 133, General Medical Provisions. The reviewed sections in this chapter are subsequently referred to collectively in this notice of adopted review as "the sections."

The notice of proposed rule review was published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 3001). As provided in the notice, the Division reviewed and considered the sections for readoption, revision, or repeal.

The Division considered whether the reasons for adoption of these sections continue to exist. The Division received written comments from one entity regarding multiple sections within Chapter 133.

Summary of Comments

Comment: Commenter states that §133.2 should be updated or clarified as a result of amendments to the Insurance Code Chapter 4201, which affect Utilization Review Agents and Independent Review Organizations.

Agency Response: The Division agrees that future amendments to §133.2 may be required to update this chapter. The amendment or repeal of §133.2 is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

Comment: Commenter states that §133.4 and §133.5 should be repealed since Labor Code §413.011 expired January 1, 2011.

Agency Response: The Division agrees that §133.4 and §133.5 expired as of January 1, 2011, and declines to readopt those sections at this time. The Division will consider the repeal of those sections at a future date. Any repeal of those sections will be accomplished in accordance with rulemaking under the Administrative Procedure Act.

Comment: Commenter states that §133.210 includes a reference to Division rules in §133.210(c)(4) that needs to be updated.

Agency Response: The Division agrees that future amendments to §133.210 may be required to update this chapter. The amendment of §133.210(c)(4) is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input before any amendment. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

Comment: This Commenter states that §133.240 should be updated or clarified as a result of amendments to the Insurance Code Chapter 4201, which affect Utilization Review Agents and Independent Review Organizations.

Agency Response: §133.240 is proposed for rulemaking. The proposed rule amendments are contained in the July 29, 2011, issue of the *Texas Register* (36 TexReg 4774). The comment period for amendments to §133.240 ended 5:00 p.m., CST, on September 27, 2011.

Comment: Commenter states the Division may need to update §133.306 to include the adoption of a pharmacy closed formulary rule.

Agency Response: The Division disagrees that §133.306 needs updating since adoption of the closed formulary. Amended §133.306 was adopted on December 17, 2010 and becomes effective September 1, 2011. The adoption was published in the December 17, 2010, issue of the *Texas Register* (35 TexReg 11344). The adopted amendments have provisions that incorporate the pharmacy closed formulary.

Comment: Commenter states that §133.308 should be updated or clarified as a result of amendments to the Insurance Code Chapter 4201, which affect Utilization Review Agents and Independent Review Organizations.

Agency Response: The Division agrees that future amendments to §133.308 may be required to update this chapter. The amendment or repeal of §133.308 is a policy decision which would require analysis and formal rulemaking, including notice and an opportunity for further stakeholder input. These suggestions may have merit and will be retained and used in future analysis and rulemaking efforts under the Government Code.

The Division has determined that the reasons for adopting the following sections continue to exist and the sections are retained in their present form. However, if revisions are determined to be needed based on further analysis, those revisions will be accomplished in accordance with the Administrative Procedure Act.

Subchapter A - General Rules for Medical Billing and Processing

§133.1. Applicability of Medical Billing and Processing.

§133.2. Definitions.

§133.3. Communication Between Health Care Providers and Insurance Carriers.

Subchapter B - Health Care Provider Billing Procedures

§133.10. Required Billing Forms/Formats.

§133.20. Medical Bill Submission by Health Care Provider.

Subchapter C - Medical Bill Processing/Audit by Insurance Carrier

§133.200. Insurance Carrier Receipt of Medical Bills from Health Care Providers.

§133.210. Medical Documentation.

§133.230. Insurance Carrier Audit of a Medical Bill.

§133.240. Medical Payments and Denials.

§133.250. Reconsideration for Payment of Medical Bills.

§133.260. Refunds.

§133.270. Injured Employee Reimbursement for Health Care Paid.

§133.280. Employer Reimbursement for Health Care Paid.

Subchapter D - Dispute of Medical Bills

§133.305. MDR - General.

§133.307. MDR of Fee Disputes.

§133.308. MDR by Independent Review Organizations.

Subchapter G - Electronic Medical Billing, Reimbursement, and Documentation

§133.500. Electronic Formats for Electronic Medical Bill Processing.

§133.501. Electronic Medical Bill Processing.

§133.502. Electronic Medical Billing Supplemental Requirements.

During the rule review of Chapter 133 conducted by the Division, §§133.2, 133.240, 133.250, 133.270, and 133.305 were proposed for rulemaking. That rulemaking is a separate and distinct process from the rule review process. The proposed amendments for those sections are contained in the July 29, 2011, issue of the *Texas Register* (36 TexReg 4774). The comment period for amendments to §§133.2, 133.240, 133.250, 133.270, and 133.305 ended 5:00 p.m., CST, on September 27, 2011. Those sections are readopted as they exist on the date of submission to the *Texas Register.*

As noted above, amendments to §133.306 were adopted on December 17, 2010 and became effective September 1, 2011. The adoption was published in the December 17, 2010, issue of the *Texas Register* (35 TexReg 11344). The Division has determined that the reasons for adopting §133.306 continue to exist, and readopts that section as it exists on the date of submission to the *Texas Register.*

Subchapter D - Dispute of Medical Bills

§133.306. Interlocutor Orders for Medical Benefits.

As a result of the review, the Division has determined that the reason for adoption of §133.309 does not continue to exist due to this section being declared invalid by judicial review. A Texas Appellate Court has held that this section was in conflict with statutes governing judicial review of medical fee disputes, and therefore this section is not readopted. This section will be amended or repealed at a later date in accordance with the Administrative Procedure Act.

Subchapter D - Dispute of Medical Bills

§133.309. Alternate Medical Necessity Dispute Resolution by Case Review Doctor.

As a result of the review, the Division has determined that the reason for adoption of §133.4 and §133.5 does not continue to exist due to those sections expiring on January 1, 2011. Those sections expired in accordance with Labor Code §413.011(d-6). These sections are not readopted. These sections will be repealed at a later date in accordance with the Administrative Procedure Act.

Subchapter A - General Rules for Medical Billing and Processing

§133.4. Written Notification to Health Care Providers of Contractual Agreements for Informal and Voluntary Networks.

§133.5. Informal Network and Voluntary Network Reporting Requirements to the Division.

This concludes the Division's review of Chapter 133. The completion of the review of this chapter concludes the rule review process.

TRD-201104594
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: October 24, 2011

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Texas Lottery Commission

Title 16, Part 9

The Texas Lottery Commission (Commission) has reviewed 16 TAC Chapter 401 relating to Administration of State Lottery Act, in accordance with the requirements of Texas Government Code, §2001.039, and readopts the rules in Chapter 401. The Commission has determined that the reasons continue to exist for adopting the rules in Chapter 401.

Subchapter A (Procurement) sets forth rules relating to Lottery Procurement Procedures, Protests of Terms of a Formal Competitive Solicitation, Protests of Contract Award, and Contract Monitoring Roles and Responsibilities. Subchapter B (Licensing of Sales Agents) sets forth rules relating to Application for License, Qualifications for License, Expiration of License, Renewal of License, Provisional License, Suspension or Revocation of License, Summary Suspension of License, and Standard Penalty Chart. Subchapter C (Practice and Procedure) sets forth rules relating to Intent and Scope of Rules, Construction of Rules, Contested Cases, Initiation of a Hearing, Law Governing Contested Cases, Subpoenas, Depositions, and Orders to Allow Entry, Motion for Rehearing, and Definitions. Subchapter D (Lottery Game Rules) sets forth rules relating to General Definitions, Instant Game Rules, Grand Prize Drawing Rule, On-Line Game Rules (General), "Lotto Texas" On-Line Game Rule, Video Lottery Games, "Pick 3" On-Line Game Rule, "Cash Five" On-Line Game, Assignability of Prizes, Payment of Prize Payments Upon Death of a Prize Winner, "Texas Two Step" On-Line Game, Promotional Drawings, Retailer Bonus Programs, "Mega Millions" On-Line Game Rule, "Daily 4" On-Line Game Rule, "Powerball®" On-Line Game Rule, Withholding of Delinquent Child-Support Payments from Lump-sum and Periodic Installment Payments of Lottery Winnings in Excess of Six Hundred Dollars, and Withholding of Child-Support Payments from Periodic Installment Payments of Lottery Winnings. Subchapter E (Retailer Rules) sets forth rules relating to Proceeds from Ticket Sales, Settlement Procedures, Retailer Settlements, Financial Obligations, and Commissions, Restricted Sales, Texas Lottery as Retailer, Payment of Prizes, Required Purchases of Lottery Tickets, Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property, Retailer Record, Training, Compliance with All Applicable Laws, Instant Ticket Vending Machines, Online Self-Service Terminals, Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost, Collection of Delinquent Obligations for Lottery Retailer Related Accounts, and Display of License. Subsection F (ADA Requirements) sets forth rules relating to Definitions, General Requirements, Readily Achievable Barrier Removal, Priority of ADA Compliance by Lottery Licensees, Alternatives to Barrier Removal, Future Alterations to a Lottery Licensed Facility, Complaints Relating to Non-accessibility, and Requests for Hearings. Subchapter G (Lottery Security) sets forth a rule relating to Lottery Security.

As a result of the Commission's rule review, the Commission has concluded that some of the rules in Chapter 401 need to be amended in order to reflect current legal and policy considerations, and current procedures of the Commission. The Commission will propose amendments to the rules requiring amendments in separate rulemaking actions.

This review and readoption has been conducted in accordance with Texas Government Code §2001.039. The Commission received no comments on the proposed review, which was published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5417).

This concludes the review of 16 TAC Chapter 401.

TRD-201104455
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 20, 2011

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The Texas Lottery Commission (Commission) has reviewed 16 TAC Chapter 402 relating to Charitable Bingo Administrative Rules, in accordance with the requirements of Texas Government Code, §2001.039, and readopts the rules in Chapter 402. The Commission has determined that the reasons continue to exist for adopting the rules in Chapter 402, with the exception of three rules in Subchapter G, relating to Compliance and Enforcement, which will be repealed in separate rulemaking actions.

Subchapter A (Administration) sets forth rules relating to Definitions, Advisory Opinions, Bingo Advisory Committee, and Training Program. Subchapter B (Conduct of Bingo) sets forth rules relating to General Restrictions on the Conduct of Bingo, Prohibited Bingo Occasion, Transfer of Funds, Unit Accounting, Prohibited Price Fixing, Unit Agreements, House Rules, and Promotional Bingo. Subchapter C (Bingo Games and Equipment) sets forth rules relating to Pull-Tab Bingo, Bingo Card/Paper, Card-Minding Systems, and Pull-tab or Instant Bingo Dispensers. Subchapter D (Licensing Requirements) sets forth rules relating to General Licensing Provisions, Temporary License, Registry of Bingo Workers, Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises, License Fees, Temporary Authorization, Bingo Chairperson, Unit Manager, Designation of Members, Amendment for Change of Premises or Occasions Due to Lease Termination or Abandonment, Amendment of a License - General Provisions, Late License Renewal, Signature Requirements, Qualifications and Requirements for Conductor's License, Amendment to a Regular License to Conduct Charitable Bingo, Amendment of License by Telephone or Facsimile, Amendment to a Commercial Lessor License, Request for Waiver, Operating Capital, Net Proceeds, and Request for Operating Capital Increase. Subchapter E (Books and Records) sets forth rules relating to General Records Requirements, Charitable Use of Net Proceeds, Charitable Use of Net Proceeds Recordkeeping, Bingo Gift Certificates, Debit Card Transactions, Permissible Expense, Disburse-

ment Records Requirements, Required Inventory Records, and Electronic Fund Transfers. Subchapter F (Payment of Taxes, Prize Fees and Bonds) sets forth rules relating to Bingo Reports, Interest on Delinquent Tax, Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest, Bond or Other Security, and Delinquent Purchaser. Subchapter G (Compliance and Enforcement) sets forth rules relating to Denials; Suspensions; Revocations; Hearings, Investigation of Applicants for Licenses, Books and Records Inspection, Tax Review Inspection, Standard Administrative Penalty Guideline, Expedited Administrative Penalty Guideline, Dispute Resolution, Corrective Action, and Compliance Audit.

As a result of the Commission's rule review, the Commission has concluded that some of the rules in Chapter 402 need to be amended in order to reflect current legal and policy considerations, and current procedures of the Commission. Specifically, the sections of Chapter 402 that need to be amended are: §402.100 (Definitions), §402.103 (Training Program), §402.200 (General Restrictions on the Conduct of Bingo), §402.202 (Transfer of Funds), §402.203 (Unit Accounting), §402.204 (Prohibited Price Fixing), §402.205 (Unit Agreements), §402.303 (Pull-tab or Instant Bingo Dispensers), §402.400 (General Licensing Provisions), §402.402 (Registry of Bingo Workers), §402.420 (Qualifications and Requirements for Conductor's License), §402.450 (Request for Waiver), §402.451 (Operating Capital), §402.452 (Net Proceeds), §402.453 (Request for Operating Capital Increase), §402.503 (Bingo Gift Certificates), §402.600 (Bingo Reports), §402.603 (Bond or Other Security), §402.701 (Investigation of Applicants for Licenses), §402.706 (Standard Administrative Penalty Guideline), §402.707 (Expedited Administrative Penalty Guideline), and §402.708 (Dispute Resolution). The Commission will propose the amendments to each of these rules in separate rulemaking actions.

Also as a result of the Commission's rule review, staff has concluded that the reasons for adopting §§402.703 (Books and Records Inspection), 402.704 (Tax Review Inspection), and 402.715 (Compliance Audit) no longer exist. Section 402.703 and §402.704 are no longer necessary because the activities contained in these two rules are no longer performed by the Charitable Bingo Operations Division as a result of a change in audit methodology. Finally, §402.715 is no longer necessary because the new audit methodology has changed the processes contained in this rule.

This review and readoption has been conducted in accordance with Texas Government Code §2001.039. The Commission received no comments on the proposed review, which was published in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5417).

This concludes the review of 16 TAC Chapter 402.

TRD-201104456
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 20, 2011

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §25.3(k)(1)

Complaint Disclosure.

To use this form: You must reproduce the narrative of this form exactly as written. The form is in Times 9 pt fonts.

For Insurance-Funded Contracts:

Inquiries should be directed as below. All complaints must be in writing.

Concerning the Prepaid Contract:	**Concerning the funeral service or funeral director:**	**Concerning the Insurance Policy:**
Texas Department of Banking	Texas Funeral Service Commission	Texas Department of Insurance
2601 N. Lamar,	P. O. Box 12217,	P. O. Box 149194,
Austin, Texas 78705	Austin, Texas 78711	Austin, Texas 78714
1-877-276-5554 (toll free)	1-888-667-4881 (toll free)	1-800-252-3439 (toll free)
www.dob.texas.gov	www.tfsc.texas.gov	www.tdi.texas.gov

For Trust-Funded Contracts:

Inquiries should be directed as below. All complaints must be in writing.

Concerning the Prepaid Contract:	**Concerning the funeral service or funeral director:**
Texas Department of Banking	Texas Funeral Service Commission
2601 N. Lamar,	P. O. Box 12217,
Austin, Texas 78705	Austin, Texas 78711
1-877-276-5554 (toll free)	1-888-667-4881 (toll free)
www.dob.texas.gov	www.tfsc.texas.gov

Figure: 7 TAC §79.2(b)

COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TX 78705. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 877-276-5550.

A complaint form and instructions may be downloaded and printed from the Department's website located at www.sml.texas.gov or obtained from the department upon request by mail at the address above, by telephone at its toll-free consumer hotline listed above, or by email at smlinfo@sml.texas.gov.

Figure: 7 TAC §83.6007(a)

Payday Loans: Repaid in One Payment

MY LOAN

Borrowed Amount: $ 500.00
The amount I will receive today

Amount to be Repaid: $ 576.90
The amount I must pay back in one payment (Borrowed Amount + Finance Charges)

Date Due: 10/31/2011
The date I must pay off the "Amount to be Repaid"

Consumer Disclosure

A payday loan helps me meet immediate financial needs and allows me to repay the loan in a short amount of time.

The information on this form tells me how much money I have borrowed, how much it will cost me to borrow this money, and when I must repay the amount borrowed *and* the interest and fees that are included in this loan.

I understand that after reviewing the terms of the loan, I am not required to choose this loan. I may consider other options including those shown on the back side of this form.

I must pay the full "Amount to be Repaid" no later than the due date shown on this form.

I must pay the full "Amount to be Repaid" in one payment.

If I do not pay the full amount in one payment, I may be charged additional fees and interest.

TERMS OF MY LOAN

$ 1.90	$ 75.00	$ 76.90	400 %	1
Interest *The amount I will pay to the lender*	**Fees** *The amount I will pay to the third-party Credit Access Business*	**Total Amount of Finance Charges (Interest + Fees)**	**APR** *The yearly rate of my interest and fees for this loan*	**Total Number of Payments**

A payday loan is a cash advance that is not meant to meet long-term money needs and may be one of the more expensive borrowing options. Payday loans are suggested for people who must meet immediate short-term cash or money needs.

As an informed consumer, I can use this short-term lending option wisely by comparing all borrowing options available to me and by repaying loans on time to avoid penalties and extra fees.

How much do I have to pay back if I borrow $ 500.00?

If I pay the loan in:	I will have to pay:
2 Weeks	$ 576.90
1 Month	
2 Months	
3 Months	

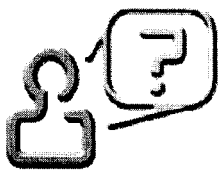
OCCC Office of Consumer Credit Commissioner

For additional information, visit www.occc.state.tx.us
or contact us at info@occc.state.tx.us

Is a Payday Loan Right for Me?

Before taking out a payday loan, ask yourself:

- ⇒ Is it necessary for me to borrow the money?
- ⇒ Can I afford the loan payment, including the fees and interest?
- ⇒ Will I be able to pay my regular bills and make a payment on this loan?
- ⇒ Can I afford the extra charges, interest, and fees that may be applied if I miss a payment?
- ⇒ What other credit or loan options are available to me?



Average time it takes to repay a $300 single-payment loan

Of 10 people who take out a new payday loan...

2 1/2 people will pay the loan on time and in **1 payment**
(typically two weeks)

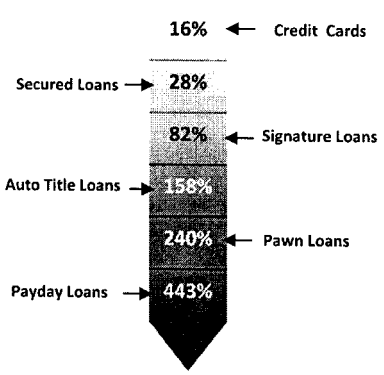
2 people will **renew** the loan **1 or 2 times**

1 1/2 people will **renew** the loan **3 or 4 times**

4 people will **renew** the loan **5 or more times**

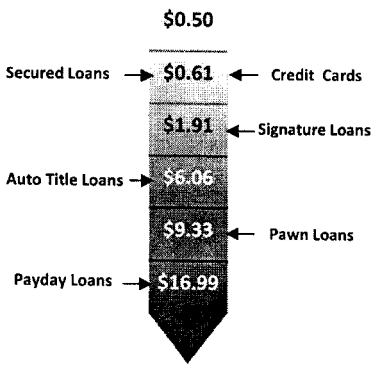
Adapted from: Bertrand & Morse, "Information Disclosure, Cognitive Biases and Payday borrowing", Milton Friedman Institute for Research in Economics (Oct. 2009)

Comparison of Loan Options Available to Me



Average Annual Percentage Rate

How does a payday loan compare to other options?



Average Amount of Interest & Fees for each $100 borrowed over 2 weeks

OCCC Office of Consumer Credit Commissioner

For additional information, visit www.occc.state.tx.us
or contact us at info@occc.state.tx.us

Figure: 7 TAC §83.6007(b)

Payday Loans: Repaid in Multiple Payments

MY LOAN

Borrowed Amount: $ 600.00
The amount I will receive today

Amount to be Repaid: $ 760.11
The amount I must pay back
(Borrowed Amount + Finance Charges)

Date Due: 01/30/2012
The date I must pay off the "Amount to be Repaid"

Consumer Disclosure

A payday loan helps me meet immediate financial needs and allows me to repay the loan in a short amount of time.

The information on this form tells me how much money I have borrowed, how much it will cost me to borrow this money, and when I must repay the amount borrowed *and* the interest and fees that are included in this loan.

I understand that after reviewing the terms of the loan, I am not required to choose this loan. I may consider other options including those shown on the back side of this form.

I must pay the full "Amount to be Repaid" no later than the due date shown on this form.

I must pay the full "Amount to be Repaid" in 6 payments.

If I do not pay the full amount, I may be charged additional fees and interest.

TERMS OF MY LOAN

$ 10.11	$ 150.00	$ 160.11	187.43 %	$ 126.69	6
Interest *The amount I will pay to the lender*	**Fees** *The amount I will pay to the third-party Credit Access Business*	**Total Amount of Finance Charges (Interest + Fees)**	**APR** *The yearly rate of my interest and fees for this loan*	**Total Amount of Each Payment**	**Total Number of Payments to be Paid Every 2 weeks**

A payday loan is a cash advance that is not meant to meet long-term money needs and may be one of the more expensive borrowing options. Payday loans are suggested for people who must meet immediate short-term cash or money needs.

As an informed consumer, I can use this short-term lending option wisely by comparing all borrowing options available to me and by repaying loans on time to avoid penalties and extra fees.

How much do I have to pay back if I borrow $ 600.00 ?

Payment Number:	Due After:	Total amount paid in fees and interest with this payment:	Total amount paid with this payment:	Payoff amount as of this installment.
1	2 weeks	$ 122.12	$ 126.69	$ 752.88
2	4 weeks	$ 25.28	$ 126.69	$ 628.59
3	6 weeks	$ 1.93	$ 126.69	$ 503.83
4	8 weeks	$ 1.45	$ 126.69	$ 378.58
5	10 weeks	$ 0.97	$ 126.69	$ 252.86
6	12 weeks	$ 0.48	$ 126.65	$ 126.65

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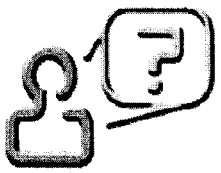
Is a Payday Loan Right for Me?

Before taking out a payday loan, ask yourself:

- ⇒ Is it necessary for me to borrow the money?
- ⇒ Can I afford the loan payment, including the fees and interest?
- ⇒ Will I be able to pay my regular bills and make a payment on this loan?
- ⇒ Can I afford the extra charges, interest, and fees that may be applied if I miss a payment?
- ⇒ What other credit or loan options are available to me?



Average time it takes to repay a $300 single-payment loan

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(typically two weeks)

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____ people will **renew** the loan **3 or 4 times**

____ people will **renew** the loan **5 or more times**

Adapted from: Bertrand & Morse, "Information Disclosure, Cognitive Biases and Payday borrowing", Milton Friedman Institute for Research in Economics (Oct. 2009)

Comparison of Loan Options Available to Me

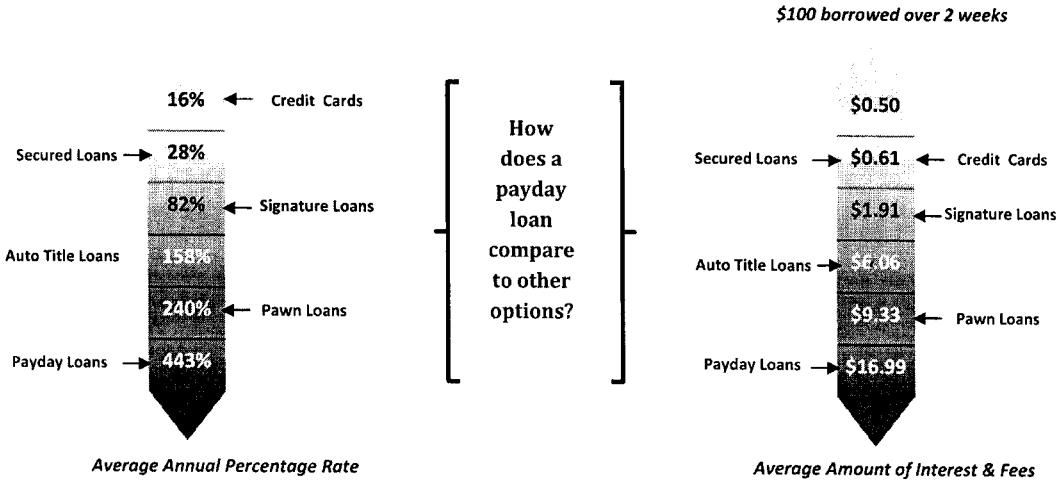

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Figure: 7 TAC §83.6007(c)

Auto Title Loans: Repaid in One Payment

MY LOAN

Borrowed Amount: $ 500.00
The amount I will receive today

Amount to be Repaid: $ 576.90
The amount I must pay back in one payment (Borrowed Amount + Finance Charges)

Date Due: 10/31/2011
The date I must pay off the "Amount to be Repaid"

Consumer Disclosure

An auto title loan helps me meet immediate financial needs and allows me to repay the loan in a short amount of time.

The information on this form tells me how much money I have borrowed, how much it will cost me to borrow this money, and when I must repay the amount borrowed *and* the interest and fees that are included in this loan.

I understand that after reviewing the terms of the loan, I am not required to choose this loan. I may consider other options including those shown on the back side of this form.

I must pay the full "Amount to be Repaid" no later than the due date shown on this form.

I must pay the full "Amount to be Repaid" in one payment.

If I do not pay the full amount in one payment, I may be charged additional fees and interest.

TERMS OF MY LOAN

$ 1.90	$ 75.00	$ 76.90	400 %	1
Interest *The amount I will pay to the lender*	**Fees** *The amount I will pay to the third-party Credit Access Business*	**Total Amount of Finance Charges (Interest + Fees)**	**APR** *The yearly rate of my interest and fees for this loan*	**Total Number of Payments**

An auto title loan is a cash advance that is not meant to meet long-term money needs and may be one of the more expensive borrowing options. As an informed consumer, I can use this short-term lending option wisely by comparing all borrowing options available to me and by repaying loans on time to avoid penalties and extra fees.

I understand that if I choose an auto title loan and do not repay the loan by the due date I may lose my car by repossession and may not be able to get it back.

How much do I have to pay back if I borrow $ 500.00 ?

If I pay the loan in:	I will have to pay:
2 Weeks	$ $ 576.90
1 Month	$
2 Months	$
3 Months	$

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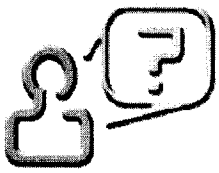
- ⇒ Can I afford to lose my car?
- ⇒ What other credit or loan options are available to me?



Average time it takes to repay an auto title loan

(whether through single or multiple payments)

Of 10 people who take out a new auto title loan...

3 people will pay the loan on time and will not renew the loan

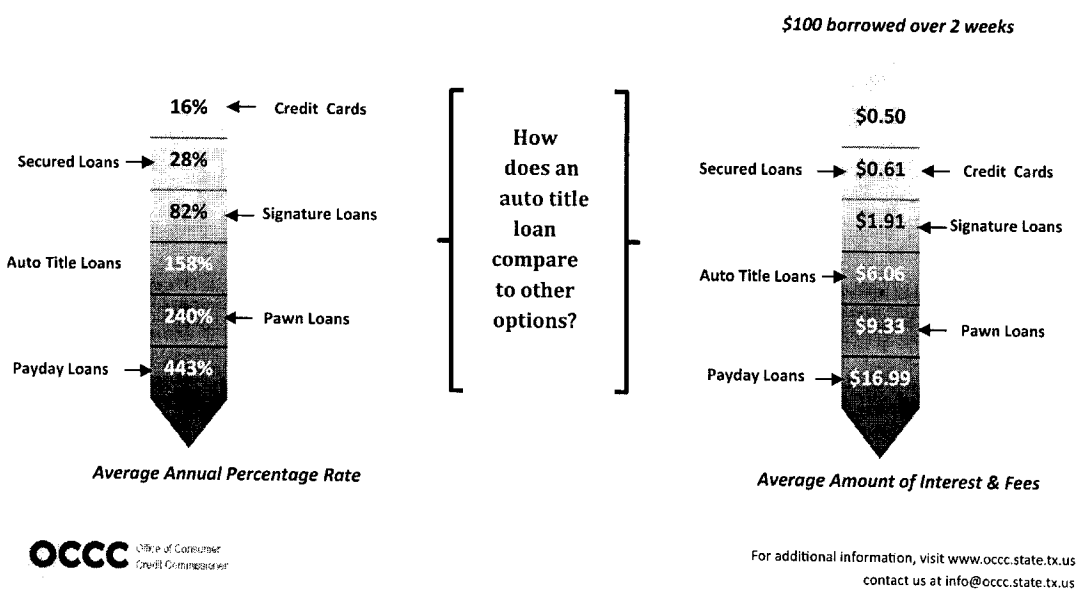
2 1/2 people will **renew** the loan **1 or 2 times**

1 person will **renew** the loan **3 or 4 times**

3 1/2 people will **renew** the loan **5 or more times**

Adapted from: Tennessee Department of Financial Institutions "The 2010 Report on the Title Pledge Industry" (March 2010)

Comparison of Loan Options Available to Me



Average Annual Percentage Rate

Average Amount of Interest & Fees

OCCC Office of Consumer Credit Commissioner

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Figure: 7 TAC §83.6007(d)

Auto Title Loans: Repaid in Multiple Payments

MY LOAN

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The amount I will receive today

Amount to be Repaid: $ 760.11
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If I do not pay the full amount in, I may be charged additional fees and interest.

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Is an Auto Title Loan Right for Me?

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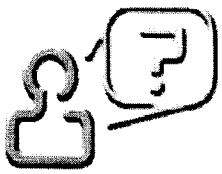
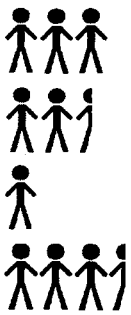
- ⇒ Will I be able to pay my regular bills and make a payment on this loan?
- ⇒ Can I afford the extra charges, interest, and fees that may be applied if I miss a payment?
- ⇒ Can I afford to lose my car?
- ⇒ What other credit or loan options are available to me?



Average time it takes to repay an auto title loan

(whether through single or multiple payments)

Of 10 people who take out a new auto title loan...



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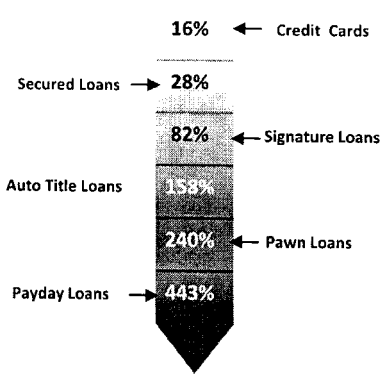
Adapted from: Tennessee Department of Financial Institutions "The 2010 Report on the Title Pledge Industry" (March 2010)

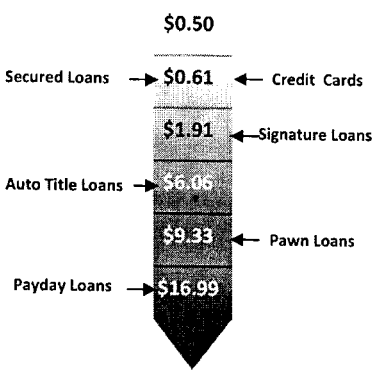
Comparison of Loan Options Available to Me

$100 borrowed over 2 weeks



Average Annual Percentage Rate

How does an auto title loan compare to other options?



Average Amount of Interest & Fees

OCCC Office of Consumer Credit Commissioner

For additional information, visit www.occc.state.tx.us
or contact us at info@occc.state.tx.us

Figure: 7 TAC §155.2(b)(6)

PAYOFF STATEMENT

{Date Issued}

{Issued To}
{Address}
{City, State Zip}

Via {Method of Delivery)

Mortgagor:	{Primary Borrower Name}
Collateral:	{Property Address or Legal Description}
Loan No.:	{Loan Number}
Due Date:	{Due Date}
Loan Type:	{i.e. FHA, Conventional, ARM}

THIS STATEMENT REFLECTS THE TOTAL AMOUNT DUE UNDER THE TERMS OF THE NOTE/SECURITY INSTRUMENT THROUGH THE CLOSING DATE WHICH IS {INSERT CLOSING DATE}. If this obligation is not paid in full by this date, then you should obtain from us an updated payoff amount before closing.

Total Principal, Interest, and other amounts due under the Note/Security Instrument:

Unpaid Principal Balance:	${INSERT AMOUNT}
Interest through {insert good through date}	${INSERT AMOUNT}
Less Reductions in amount due	${INSERT AMOUNT}
{INSERT DESCRIPTION}	${INSERT AMOUNT}
{INSERT DESCRIPTION}	${INSERT AMOUNT}
{INSERT DESCRIPTION}	${INSERT AMOUNT}
{INSERT DESCRIPTION}	${INSERT AMOUNT}
TOTAL AMOUNT DUE:	${INSERT AMOUNT}

(OPTIONAL) {This is an Adjustable Rate Mortgage. Under the terms of this loan the next Change Date for the interest rate charged is {Insert Next Rate Change Date}. We will only issue a payoff good through the next Change Date. If the closing date is past the next Change Date an updated Payoff Statement from us will be required.}

(OPTIONAL) {If loan has quotable per diem interest, then "Funds received after {insert good through date} will be subject to an additional ${Insert Per Diem Amount} of interest per day."} FUNDS MUST BE RECEIVED BY {INSERT POSTING CUT OFF TIME} FOR SAME-DAY PROCESSING. PAYOFFS ARE NOT POSTED ON WEEKENDS OR HOLIDAYS. INTEREST WILL BE ADDED TO THE ACCOUNT FOR THESE DAYS.

(OPTIONAL) Note: This Note/Security Instrument is due for payment on {Insert Next Due Date}. If payment is not received within {insert number of days} of the current payment due date, a late charge of ${insert amount} will be assessed. Please add that amount to the payoff total.

(OPTIONAL) Escrow Disbursement Amounts & Dates:

{Insert Description}	${Insert Amount Held}	{Insert Next Disbursement Date}
{Insert Description}	${Insert Amount Held}	{Insert Next Disbursement Date}
{Insert Description}	${Insert Amount Held}	{Insert Next Disbursement Date}

(OPTIONAL) Current Escrow Balance ${Insert Escrow Balance (if any)}
{Insert either - The escrow balance has been netted from the above payoff figures. **Or** The escrow balance has NOT been netted from the above payoff figures. We will automatically process a refund of the escrow balance within {Insert Number of Days} of the date we process the loan payoff.}

(OPTIONAL) Release of Lien Processing: {Provide the Servicer's practice regarding releases (i.e. The Servicer will prepare the release of lien; the title company must prepare the release of lien. The release is mailed to the county, borrower, or Title Company for recording)}

WHERE TO SEND PAYOFF FUNDS

By Wire:
{Beneficiary Name}
Beneficiary Bank: {Insert Receiving Bank Name}
Beneficiary Bank ABA: {Insert ABA}
Beneficiary Bank Acct: {Insert Account No.}
Special Information to Beneficiary:
{Include ODI Text Information required}

By Overnight Delivery:
{Attention Line}
{Company Name}
{Address}
{City, State, Zip}

NOTICE: TEXAS FINANCE CODE §343.106 REQUIRES PAYOFF STATEMENT CONTAIN CLOSING DATE AND DATE THROUGH WHICH PAYOFF AMOUNT IS VALID. THESE REQUIREMENTS CANNOT BE DELETED FROM PAYOFF STATEMENT.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Policies Available for Public Comment

The Texas State Affordable Housing Corporation presents for public comment the draft 2012 Private Activity Bond Program Request for Proposals and draft 2012 501(c)(3) Bond Program Policies. The drafts are open to public comment for at least 30 days and available for download or viewing at the Corporation's website: www.tsahc.org.

The Corporation anticipates approving the final versions at its December Board meeting. Any party interested in submitting comments or questions about the drafts are invited to submit comments in writing to David Danenfelzer, Manager of Development Finance, at ddanenfelzer@tsahc.org or by letter. Please address mail to Manager of Development Finance, 2200 East MLK Jr. Blvd., Austin, Texas 78722.

Interested parties may also call the Corporation directly at (512) 477-3555 for more information.

TRD-201104577
David Long
President
Texas State Affordable Housing Corporation
Filed: October 24, 2011

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 12, 2011, through October 19, 2011. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office website. The notice was published on the website on October 26, 2011. The public comment period for this project will close at 5:00 p.m. on November 28, 2011.

FEDERAL AGENCY ACTIONS:

Applicant: Mr. Dean Fuller; Location: The project site is located on a private residential property at 2108 Travis Street, along Adams Bayou Lateral No. 1, a tributary off of the main stem of Adams Bayou, in West Orange, Orange County, Texas. The project site can be located on the U.S.G.S. quadrangle map titled: TX-ORANGEFIELD, Texas. NAD 27, Latitude: 30.07784; Longitude: -93.7539. Project Description: The applicant proposes to obtain After-The-Fact authorization for work that has been performed within jurisdictional areas at his property. Specifically, the applicant extended the navigable reach of a tributary to Adams Bayou by excavating a 20-foot-wide, approximately 150-foot-long, 8-foot-deep boat slip (0.08 acre) which now connects with his property. The applicant discharged excavated sediment onto adjacent cleared land, filling approximately 0.28 acre of jurisdictional wetlands. Based on remaining sections of the applicant's uncleared property, the impacted wetlands were likely comprised of forested shrub-scrub and herbaceous plants including black willow (Salix nigra), bald cypress (Taxodium distichum) and tallow (Triadica sebifera) trees, ragweed (Ambrosia trifida), cattail (Typha latifolia) and broadleaf arrowhead (Sagittaria latifolia). The stated purpose of the proposed work was to create a boat slip that would provide recreational boating access from the applicant's property to Adams Bayou and to clear and level the applicant's adjacent land to create more useable areas (e.g. for a lawn) adjacent to the applicant's home. CMP Project No.: 11-0517-F1. Type of Application: U.S.A.C.E. permit application #SWG-2009-00688 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Gulfgate Terminal, LLC; Location: The project is located in the Sabine-Neches Waterway, immediately south of the State Highway 82 Martin Luther King Bridge, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: TX-PORT ARTHUR SOUTH, Texas. Latitude & Longitude (NAD 83): Latitude: 29.85018 North; Longitude: -93.9452 West. Project Description: The applicant is proposing to construct a bulk liquid terminal located on the northwest side of the Sabine-Neches Waterway, immediately south of the State Highway 82 Martin Luther King Bridge, in Jefferson County, Texas. The construction of this facility would include dredge work, construction of a dock and associated mooring and breasting structures, the construction of a bulkhead and shoreline protection, grading and filling of the site for landside services, and the installation of a pipeline from the terminal to existing tanks. Specifically concerning the dredging, the applicant is proposing to utilize a combination of mechanical and hydraulic dredge methods to dredge the proposed turning basin and vessel berth to -52 feet Mean Low Tide which would result in a dredge volume of approximately 1.9 million cubic yards of dredge materials. The applicant is requesting authorization to place the dredge materials in Dredge Material Placement Area's 8, 9A, 9B, and 11. The project would also impact a total of 1.28 acres of wetlands (0.09 acre of tidal Spartina alterniflora salt marsh, and 1.19 acres of heavily disturbed freshwater wetlands dominated by Chinese Tallow). The applicant is proposing to mitigate for the proposed impacts by creating 0.27 acre of tidal wetlands within the southern portion of the project site, and 1.2 acres of freshwater wetlands within the northern portion of the project site. Specifically, the applicant is proposing to construct tidal wetlands along the edge of a drainage feature located on the south end of the project site. CMP Project No.: 11-0518-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00437 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the

Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Harris County Public Infrastructure Department - Architecture and Engineering Division; Location: The proposed RGP would be valid in all waters of the United States (U.S.), including wetlands, in Harris County, Texas. Project Description: HCPID-AED proposes a RGP for maintenance and minor new construction activities related to public infrastructure in Harris County, Texas. HCPID-AED is responsible for the maintenance and construction of a wide variety of public infrastructure projects for the citizens of Harris County. The mission of HCPID-AED is "to execute the planning, study, design, and construction of various buildings, roads, bridges, traffic signals, drainage improvements, parks, and other architectural and maintenance projects in accordance with certain design standards and contract documents." To effectively execute this mission, the HCPID-AED designs technically sound plans to ensure that risks to public safety are minimized as it constructs new and maintains existing public infrastructure. The construction and maintenance of this infrastructure often requires activities regulated by Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899. A RGP would allow HCPID-AED to meet its stated mission and would provide authorization of maintenance and minor new construction activities that are substantially similar in nature and that cause only minimal direct and cumulative environmental effects. The purpose of this RGP is to achieve the following objectives: Addressing damage and failures in a timely manner, reducing their size, minimizing adverse environmental effects, and reducing the amount and frequency of suspended solids that may be discharged to receiving streams from repetitive maintenance events; Implement maintenance and minor new construction projects resulting in long term solutions using a watershed approach that effectively reduces the adverse direct, indirect, and cumulative environmental effects of repetitive work for the same issue; Establish a consistent, predictable and simplified approach to certain categories of work known to have little individual or cumulative effect; Reduce the permitting backlog and workload of both the HCPID-AED and the Corps; Reduce costs to taxpayers by streamlining the permitting process and reducing repetitive work in the same locations; Implement a consistent and predictable construction schedule; and Comply with requirements established by project cooperation agreements, Corps permits, and Operations and Maintenance manuals. Compensatory mitigation is required for all minor new construction activities covered in this RGP with the exception of bank stabilization on previous Federally-authorized projects, minor dredging, and U.S. Coast Guard approved bridge activities. All proposed mitigation will be described in detail in a mitigation plan that will be prepared in accordance with 33 CFR §332.4(c). CMP Project No.: 11-0520-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00629 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Charles Doolin; Location: The project is located in Offatts Bayou; south of the Gulf Freeway, Galveston County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: Christmas Point, Texas. Latitude & Longitude (NAD 83): 29.28637 degrees North; Longitude: -94.85442 degrees West. Project Description: The applicant is seeking to dredge approximately 10,000 cubic yards of sand by a barge-mounted dragline to lower the marina turning basin to a depth of 9 feet below mean high tide. Approximately 1,452 cubic yards of sand will be used to nourish the existing beach at the site. The remainder of the sand will be used to fill the adjoining upland in preparation for dormitory and parking lot construction. Approximately 75 cubic yards of riprap will be relocated to construct a pier breakwater. Approximately 1,000 feet of wave attenuation structure will be installed to protect the basin. The applicant will install 58 pilings and 50 floating pier/slip structures within the basin to create a floating marina for the Sea Scout training facility. Approximately 0.57 acre of shallow water habitat will be deepened. Approximately 0.14 acre of beach area will be filled with sand dredged from the basin, and approximately 0.64 acres of floating dock area will be installed. Dredged sand will be beneficially placed on the existing beach shoreline. CMP Project No.: 11-0521-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00245 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201104597
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: October 25, 2011

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Comptroller of Public Accounts

Notice of Contract Award

The Comptroller of Public Accounts (Comptroller) announces the following contract award.

The notice of request for proposals (RFP #202c) was published in the July 29, 2011, issue of the *Texas Register* (36 TexReg 4836).

The contractor will provide commercial paper dealer services for marketing of tax exempt commercial paper for the Comptroller.

The contract was awarded to J.P. Morgan Securities LLC, 383 Madison Avenue, Floor 8, New York, New York 10179. The fee for the contract is to be calculated on a basis point per annum on the average daily principal amount of securities outstanding. The term of the contract is October 19, 2011 through August 31, 2012.

TRD-201104446
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: October 20, 2011

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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, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/31/11 - 11/06/11 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/31/11 - 11/06/11 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201104601
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 25, 2011

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Texas Education Agency

Request for Applications Concerning the 2012-2014 Public Charter School Start-Up Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-12-101 from eligible charter schools to provide initial start-up funding for planning and/or implementing charter school activities. This competitive grant opportunity is available for charter schools that meet the federal definition of a charter school, have never received Public Charter Schools Program start-up funds, and are one of the following: (1) a campus charter school approved by its local board of trustees pursuant to the Texas Education Code (TEC), Chapter 12, Subchapter C, on or before November 30, 2011, that submits all required documentation as required by the RFA and previously described in the "To the Independent School District Administrator Addressed" letter dated August 10, 2011; (2) an open-enrollment charter school approved by the State Board of Education (SBOE) under the Generation 16 charter application pursuant to the TEC, Chapter 12, Subchapter D; (3) a college, university, or junior college charter school approved by the SBOE pursuant to the TEC, Chapter 12, Subchapter E; or (4) an open-enrollment charter school designated by the commissioner of education on or before January 12, 2012, as a new school under an existing charter. For a charter awarded by the SBOE under the Generation 16 application, all contingencies pertaining to the charter application and approval must be cleared and a contract issued to the charter holder prior to applying for grant funding. Charter schools that have been notified of contingencies to be cleared prior to receiving a charter contract should be diligent in working with TEA to complete this process so that a grant application may be completed and submitted by the deadline date.

Description. The purpose and goals of the 2012-2014 Public Charter School Start-Up Grant program are to provide financial assistance for the planning, program design, and initial implementation of charter schools and expand the number of high-quality charter schools available to students.

Dates of Project. The 2012-2014 Public Charter School Start-Up Grant will be implemented during the 2012-2013 and 2013-2014 school years. Applicants should plan for a starting date of no earlier than May 1, 2012, and an ending date of no later than July 31, 2014.

Project Amount. Approximately $8.8 million is available for funding the 2012-2014 Public Charter School Start-Up Grant. It is anticipated that approximately 20 grants of no more than $600,000 each will be awarded. Applicants that are in their first or second year of eligibility may apply for grant funding if they meet the eligibility criteria. However, if selected for funding, the award amount will be prorated based on the remaining months of eligibility. This project is funded 100 percent with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

Applicants' Conference. A webinar will be held on Wednesday, November 30, 2011, from 9:00 a.m. to 12:00 p.m. Register for the webinar at https://www2.gotomeeting.com/register/950507154.

Questions relevant to the RFA may be emailed to Arnoldo Alaniz at CharterSchools@tea.state.tx.us or faxed to (512) 463-9732 prior to Friday, November 18, 2011. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. RFAs are no longer available in print. The announcement letter and complete RFA will be posted on the TEA Grant Opportunities web page at http://burleson.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Christine McCormick, Division of Grants Administration, Texas Education Agency, (512) 463-8525. In order to assure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in Part 2: Program Guidelines of the RFA at CharterSchools@tea.state.tx.us. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Friday, December 23, 2011. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, January 12, 2012, to be eligible to be considered for funding.

TRD-201104618
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: October 26, 2011

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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 (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an op-

portunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is December 5, 2011. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on December 5, 2011. 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, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: ALL-TEX ERECTION SYSTEMS, INCORPORATED; DOCKET NUMBER: 2011-1415-PST-E; IDENTIFIER: RN100919109; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(B) and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); and also by failing to provide proper release detection for the suction piping associated with the UST system; PENALTY: $2,641; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Arkema Incorporated; DOCKET NUMBER: 2011-1353-AIR-E; IDENTIFIER: RN100216373; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §§116.115(c), 101.20(3), and 122.143(4), Air Permit Numbers 865A and PSD-TX-1016M1, Special Conditions Number 2, Federal Operating Permit Number O1636, Special Terms and Conditions Number 15, and General Terms and Conditions, and Texas Health and Safety Code, §382.085, by failing to prevent unauthorized emissions; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Avis Rent A Car System, LLC; DOCKET NUMBER: 2011-1048-PST-E; IDENTIFIER: RN102274131; LOCATION: Houston, Harris County; TYPE OF FACILITY: property with underground storage tank (UST); RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Avis Rent A Car System, LLC; DOCKET NUMBER: 2011-0933-PST-E; IDENTIFIER: RN101534287; LOCATION: Addison, Dallas County; TYPE OF FACILITY: property with underground storage tank (UST); RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Ballard Exploration Company, Incorporated; DOCKET NUMBER: 2011-0714-AIR-E; IDENTIFIER: RN106078058; LOCATION: Sheldon, Harris County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §115.112(d)(4) and Texas Health and Safety Code (THSC), §382.085(b), by failing to meet the control requirements for the storage of volatile organic compounds; 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and operate a source of air emissions; 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; and 30 TAC §106.4(c) and THSC, §382.085(b), by failing to maintain all emissions control equipment in good condition and operating properly; PENALTY: $42,500; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Ballard Exploration Company, Incorporated; DOCKET NUMBER: 2011-0712-AIR-E; IDENTIFIER: RN106062771; LOCATION: Nome, Liberty County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §115.112(d)(4) and Texas Health and Safety Code (THSC), §382.085(b), by failing to meet the control requirements for the storage of volatile organic compounds; 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and operate a source of air emissions; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; PENALTY: $62,500; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Ballard Exploration Company, Incorporated; DOCKET NUMBER: 2011-0711-AIR-E; IDENTIFIER: RN106062946; LOCATION: Raywood, Liberty County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and operate a source of air emissions; 30 TAC §115.112(d)(4) and THSC, §382.085(b), by failing to meet the control requirements for the storage of volatile organic compounds; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; PENALTY: $52,500; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Ballard Exploration Company, Incorporated; DOCKET NUMBER: 2011-0713-AIR-E; IDENTIFIER: RN106077985; LOCATION: Sheldon, Harris County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §115.112(d)(4) and Texas Health and Safety Code (THSC), §382.085(b), by failing to meet the control requirements for the storage of volatile organic compound; 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and operate a source of air emissions; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; PENALTY: $62,500;

ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: BHAI BUSINESS, LLC dba K Food Mart; DOCKET NUMBER: 2011-1138-PST-E; IDENTIFIER: RN101378313; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,550; ENFORCEMENT COORDINATOR: Charlie Lockwood, (512) 239-1653; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: BOZE ENTERPRISES II, LLC; DOCKET NUMBER: 2011-1057-SLG-E; IDENTIFIER: RN105622260; LOCATION: Houston, Harris County; TYPE OF FACILITY: sludge transporting facility; RULE VIOLATED: 30 TAC §312.142(d), by failing to submit an application to renew an existing TCEQ Sludge Transporter Registration by June 15 of the year in which the registration expired; 30 TAC §312.144(f), by failing to prominently mark the discharge valve on each truck used to transport chemical toilet waste; and 30 TAC §312.145(b)(4), by failing to submit to the executive director an annual summary report of activities showing the amounts and types of waste collected, the disposition of such wastes, and the amounts and types of waste delivered to each facility; PENALTY: $5,550; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Carl Homeyer; DOCKET NUMBER: 2011-1278-PST-E; IDENTIFIER: RN101673929; LOCATION: Caldwell, Burleson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 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 USTs; PENALTY: $9,011; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: City of Floydada; DOCKET NUMBER: 2011-1019-MWD-E; IDENTIFIER: RN101917292; LOCATION: Floyd County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(5) and TCEQ Permit Number WQ0010170001, Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures; 30 TAC §305.125(1) and §319.11(d) and TCEQ Permit Number WQ0010170001, Monitoring Requirements Number 5, by failing to accurately calibrate all automatic flow measuring or recording devices and all totalizing meters for measuring flows by a trained person at facility start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually and by failing to timely submit the results of the annual soil sample analysis to the TCEQ by July 31, 2010; 30 TAC §305.125(1) and TCEQ Permit Number WQ0010170001, Special Provisions Number 18, by failing to submit the results of the semiannual groundwater analysis to the TCEQ during the month of September 2010; and 30 TAC §305.125(1) and TCEQ Permit Number WQ0010170001, Special Provisions Number 17, by failing to limit access to the playa lake by fencing and/or installing no trespassing signs; PENALTY: $7,060; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(13) COMPANY: City of Nacogdoches; DOCKET NUMBER: 2011-1116-MWD-E; IDENTIFIER: RN101611283; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §315.1, 40 Code of Federal Regulations (CFR) §403.5(c)(1) and §403.8(f)(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010342004, Contributing Industries and Pretreatment Requirements Number 1, by failing to submit a pretreatment program modification by September 23, 2010 containing all required Streamlining Rule provisions; and 30 TAC §315.1, 40 CFR §403.5(c)(1) and TPDES Permit Number WQ0010342004, Contributing Industries and Pretreatment Requirements Number 2(2), by failing to submit written notification that a technical redevelopment of the current technically based local limits, draft legal authority which incorporates such revisions, and any additional modifications of the pretreatment program including the enforcement response plan, and standard operating procedures and all required Streamlining Rule provisions will be submitted by November 23, 2010; PENALTY: $8,300; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Co-Cathedral of the Sacred Heart Catholic Parish; DOCKET NUMBER: 2011-0819-PST-E; IDENTIFIER: RN101860401; LOCATION: Houston, Harris County; TYPE OF FACILITY: parish church; RULE 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 a petroleum underground storage tank; PENALTY: $900; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(15) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2011-1056-AIR-E; IDENTIFIER: RN100210665; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143 and §122.146(2), Federal Operating Permit Number O-1339, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit the permit compliance certification for the certification period of May 18, 2009 - November 17, 2009 within the required time frame; PENALTY: $4,325; Supplemental Environmental Project offset amount of $1,730 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2011-0541-AIR-E; IDENTIFIER: RN102574803; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), Air Permit Numbers 36476 and PSDTX996M1, Special Conditions Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O-01278, General Terms and Conditions, and THSC, §382.085(b), by failing to submit a permit compli-

ance certification within 30 days after the end of the certification period; PENALTY: $15,550; Supplemental Environmental Project offset amount of $6,220 applied to Houston - Galveston Texas Area Emission Reduction Credit Organization Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Food Fast Corporation dba Fast Food 64; DOCKET NUMBER: 2011-1159-PST-E; IDENTIFIER: RN103141917; LOCATION: Mabank, Kaufman County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain underground storage tanks records and make them immediately available for inspection upon request by agency personnel; PENALTY: $1,000; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Gilbane Building Company; DOCKET NUMBER: 2011-1330-WQ-E; IDENTIFIER: RN106061369; LOCATION: Harlingen, Cameron County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $750; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(19) COMPANY: HEBRON ENTERPRISES, INCORPORATED dba Hebron Fina; DOCKET NUMBER: 2011-1317-PST-E; IDENTIFIER: RN101446722; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain all underground storage tank records and make them immediately available for review upon request by agency personnel; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Marcia Alonso, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Kountry Korner Store, Incorporated; DOCKET NUMBER: 2011-1271-PST-E; IDENTIFIER: RN102229937; LOCATION: Rhome, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the underground storage tank system; PENALTY: $2,004; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: LEIBHAM MILK TRANSPORT, INCORPORATED; DOCKET NUMBER: 2011-1438-PST-E; IDENTIFIER: RN101665628; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: milk transport facility; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: $2,379; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Levelland/Hockley County Ethanol, LLC; DOCKET NUMBER: 2011-0913-MLM-E; IDENTIFIER: RN104488499; LOCATION: Levelland, Hockley County; TYPE OF FACILITY: ethanol production; RULE VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(b), by failing to prevent nuisance odor conditions; and 30 TAC §335.4 and TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of industrial hazardous waste into or adjacent to water in the state; PENALTY: $5,830; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(23) COMPANY: Mainali Corporation dba Timeout Chevron; DOCKET NUMBER: 2011-0906-PST-E; IDENTIFIER: RN101765824; LOCATION: Decatur, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: $1,999; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2011-0688-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Texas Health and Safety Code, §382.085(b), Flexible Permit Numbers 8404 and PSD-TX-1062, Special Conditions Numbers 1 and 5, and Federal Operating Permit Number O1386, General Terms and Conditions Number 16A, by failing to prevent unauthorized emissions; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(25) COMPANY: Oldcastle BuildingEnvelope, Incorporated; DOCKET NUMBER: 2011-1190-AIR-E; IDENTIFIER: RN100218783; LOCATION: Terrell, Kaufman County; TYPE OF FACILITY: aluminum extrusions manufacturer; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O2730, Special Terms and Conditions (STC) Number 11, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the semiannual deviation report within 30 days after the end of the reporting period; 30 TAC §§101.20(2), 113.960, 116.115(c), and 122.143(4), FOP Number O2730, STC Numbers 1.D. and 8, New Source Review (NSR) Permit Number 9396, Special Conditions Number 5, 40 Code of Federal Regulations §63.3920(a)(3)(v) by failing to include calculation results for each rolling 12-month organic Hazardous Air Pollutant emission rate from the paint booths during six-month reporting periods; and 30 TAC §116.115(b)(2)(F) and (c), and §122.143(4), FOP Number O2730, STC Number 8, NSR Permit Number 9396, General Conditions Number 8, and THSC, §382.085(b), by failing to comply with the permitted emission rates for volatile organic compounds; PENALTY: $12,730; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Olmito Water Supply Corporation; DOCKET NUMBER: 2011-0990-PWS-E; IDENTIFIER: RN102673332; LOCATION: Olmito, Cameron County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.111(e)(1)(A) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to achieve a turbidity level of combined filter effluent that is less than 1.0 Nephelometric Turbidity Units (NTU) for one day in December 2010 and two days in February 2011; 30 TAC §290.11(e)(1)(B) and THSC, §341.0315(c), by failing to achieve a turbidity level of the combined filter effluent that is less than 0.3 NTU in at least 95% of the samples tested in August 2010, September 2010, December 2010, January 2011, February 2011, and March 2011; and 30 TAC §290.111(e)(3)(D)(ii), by failing to measure and record the turbidity level at the effluent of each filter at least once per day for 31 days in August 2010 and nine days in September 2010; PENALTY:

$6,240; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(27) COMPANY: SARA PANTRY INCORPORATED dba Mr. Lube; DOCKET NUMBER: 2011-1457-PST-E; IDENTIFIER: RN102027018; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tanks; PENALTY: $2,004; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(28) COMPANY: Square Mile Energy, L.L.C.; DOCKET NUMBER: 2011-0341-AIR-E; IDENTIFIER: RN106074818; LOCATION: Houston, Brazoria County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §115.112(d)(1), (4), and (5), and Texas Health and Safety Code (THSC), §382.085(b), by failing to route flashed gases from the tank battery at Skrla Unit Well 1 to a vapor recovery system or control device to prevent the release of volatile organic compound emissions; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain the proper authorization and continued to operate Skrla Unit Well 1; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a Federal Operating Permit to continue to operate Skrla Unit Well 1; PENALTY: $40,440; Supplemental Environmental Project offset amount of $16,176 applied to Houston-Galveston Area Emission Reduction Credit Organization Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Union Pacific Railroad Company; DOCKET NUMBER: 2011-1433-WQ-E; IDENTIFIER: RN106172166; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: train; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state; PENALTY: $11,250; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: VOSS ROAD EXXON, LLC; DOCKET NUMBER: 2011-1054-PST-E; IDENTIFIER: RN101474005; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $7,929; ENFORCEMENT COORDINATOR: Kimberly Walker, (512) 239-2596; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201104606
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 25, 2011

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the 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 5, 2011.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building 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 5, 2011.** 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, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Acme Readymix, Ltd., LLP; DOCKET NUMBER: 2011-0754-IWD-E; TCEQ ID NUMBER: RN105760912; LOCATION: 2705 County Road (CR) 342, Alice, Jim Wells County; TYPE OF FACILITY: ready-mix concrete batch plant; RULES VIOLATED: 30 TAC §305.125(17) and §319.1 and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG110975, Part IV Standard Permit Conditions 7(f), by failing to timely submit the discharge monitoring reports (DMRs) for the monitoring periods ending January 31, 2010 - December 31, 2010; 30 TAC §305.125(17) and TPDES General Permit Number TXG110975, Part IV Standard Permit Conditions 7(f), by failing to timely submit the annual metals report for the monitoring period ending July 31, 2010; and 30 TAC §305.125(17) and TPDES General Permit Number TXG110975, Part IV Standard Permit Conditions 7(f), by failing to timely submit the annual toxicity report for the monitoring period ending July 31, 2010; PENALTY: $1,400; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: Jesus Iglesias; DOCKET NUMBER: 2011-0458-PST-E; TCEQ ID NUMBER: RN102270527; LOCATION: approximately 0.25 mile south of the intersection of La Homa Road and 5 Mile Line Road, Mission, Hidalgo County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding USTs, within 30 days from the date of occurrence of the change or addition; 30 TAC §334.50(b)(1)(A), §334.54(c)(2) and (d)(2) and TWC, §26.3475(c)(1), by failing to monitor for releases a UST system that has not been emptied of all

regulated substances at the time it was temporarily removed from service; and by failing to ensure that any residue from stored regulated substances which remained in the temporarily out-of-service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and 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 USTs; PENALTY: $5,408; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: K C Utilities, Inc.; DOCKET NUMBER: 2010-1111-MWD-E; TCEQ ID NUMBER: RN102186459; LOCATION: approximately 3.2 miles north-northwest of the intersection of State Highway (SH) 6 and SH 35, adjacent to Brazoria CR 144 to the west and to the east of the Atchison, Topeka and Santa Fe Railroad tracks, Brazoria County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (17), by failing to submit the annual sludge report to the TCEQ Central Office for the reporting period ending July 31, 2008, by September 1, 2008; and TPDES Permit Number WQ0012935001, 30 TAC §305.125(1) and §319.7(d), by failing to submit monthly DMRs by the 20th day of the following month; PENALTY: $34,510; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Mohammad Saeed dba Park N Shop; DOCKET NUMBER: 2011-0343-PST-E; TCEQ ID NUMBER: RN102350568; LOCATION: 1200 North Main Street, Cleburne, Johnson County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Robert E. Hunt, III dba Trey Hunt Cutting Horses; DOCKET NUMBER: 2010-1655-AGR-E; TCEQ ID NUMBER: RN105897540; LOCATION: 110 Hereford Lane, Millsap, Parker County; TYPE OF FACILITY: animal feeding operation that includes a horse training facility; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent the discharge of agricultural waste into or adjacent to water in the state; PENALTY: $2,625; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201104607
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 25, 2011

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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; 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 5, 2011.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of 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 5, 2011.** 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: Bhaskar R. Patel; DOCKET NUMBER: 2011-0382-PST-E; TCEQ ID NUMBER: RN100929124; LOCATION: 1013 West South Street, Alvin, Brazoria County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.54(b)(2), by failing to plug, lock, and/or otherwise secure the UST system to prevent access, tampering or vandalism by unauthorized persons; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; PENALTY: $3,500; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201104608
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 25, 2011

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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 un-

derground storage tank (UST) system found to be noncompliant with release detection, spill and overfill 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 overfill 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 5, 2011.** 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 are 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 5, 2011.** 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: Ali Attayi dba Attayi Service Station; DOCKET NUMBER: 2011-0296-PST-E; TCEQ ID NUMBER: RN102648508; LOCATION: 6730 Telephone Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a used car lot and mechanic shop; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking correction action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to ensure that the USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $10,273; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201104609

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 25, 2011

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Notice of Public Hearing on Proposed New 30 TAC Chapter 36

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed new 30 Texas Administrative Code (TAC) Chapter 36, Suspension or Adjustment of Water Rights During Drought or Emergency Water Shortage, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill 2694, §5.03, 82nd Legislature, 2011, relating to the executive director's suspension or adjustment of water rights during drought or emergency water shortage. The proposed rulemaking would define "drought" and "emergency shortage of water," set out procedures for the executive director's order under this chapter, provide the terms of the order and conditions that must be met before an order can be issued, and establish an appeal of the executive director's order to the commission.

The commission will hold a public hearing on this proposal in Austin on December 1, 2011 at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-033-036-LS. The comment period closes December 5, 2011. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Robin Smith, Environmental Law Division, (512) 239-0463.

TRD-201104484
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 21, 2011

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Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapter 114 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and

40 Code of Federal Regulations §51.102, and the United States Environmental Protection Agency (EPA) concerning SIPs.

The commission proposes to amend Chapter 114, Subchapter K, Division 3, Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles, to implement changes made to Texas Health and Safety Code, Chapter 386, Subchapter C, Diesel Emissions Reduction Incentive Program, by House Bill 3399, 82nd Legislature, 2011. The proposed changes and additions involve criteria for the use of grant-funded vehicles and engines, destruction of vehicles and engines replaced under the program, ownership or lease of vehicles to be replaced under the program, and waiver of certain eligibility requirements by the executive director. **(Rule Project Number 2011-050-114-EN)**

The commission proposes to amend Chapter 114, Subchapter K, Division 5, Texas Clean Fleet Program, to implement changes made to Texas Health and Safety Code, Chapter 391, Texas Clean Fleet Program, by House Bill 3399, 82nd Legislature, 2011. The proposed changes and additions involve the number of vehicles that must be registered and operated in Texas by an eligible grant applicant, the number of vehicles that must be replaced under a grant, the period of commitment by a grant recipient for use of the grant-funded vehicles, requirements on the ownership or lease of the vehicles being replaced, and the destruction requirements for the vehicles and engines being replaced. **(Rule Project Number 2011-051-114-EN)**

The commission proposes to amend Chapter 114, Subchapter K, to add a new Division 6, Alternative Fueling Facilities Program. The proposed rulemaking would implement a portion of Senate Bill 385, 82nd Legislature, 2011, by adding the criteria that may be used by the executive director for prioritizing facilities eligible to receive grants under the Alternative Fueling Facilities Program, established under Texas Health and Safety Code, Chapter 393. **(Rule Project Number 2011-052-114-EN)**

The commission proposes to amend Chapter 114, Subchapter K, to add a new Division 7, Texas Natural Gas Vehicle Grant Program. The proposed rulemaking would implement a portion of Senate Bill 385, 82nd Legislature, 2011, by adding the criteria that may be used by the executive director for prioritizing qualifying vehicles eligible to receive grants under the Texas Natural Gas Vehicle Grant Program, established under Texas Health and Safety Code, Chapter 394. **(Rule Project Number 2011-053-114-EN)**

A public hearing on these proposals will be held in Austin on November 29, 2011, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral and written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Interested persons may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs should contact Sandy Wong, Texas Register Team, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments on Rule Project Numbers 2011-050-114-EN and 2011-051-114-EN may be submitted to Charlotte Horn, and written comments on Rule Project Numbers 2011-052-114-EN and 2011-053-114-EN may be submitted to Bruce McAnally, at Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference the rule project number that the comment pertains to: Rule Project Number 2011-050-114-EN for the proposed Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles rule amendments; Rule Project Number 2011-051-114-EN for the proposed Texas Clean Fleet Program rule amendments; Rule Project Number 2011-052-114-EN for the proposed Alternative Fueling Facilities Program rule; and Rule Project Number 2011-053-114-EN for the proposed Texas Natural Gas Vehicle Grant Program rule. The comment period closes December 5, 2011. Copies of the proposed rules can be obtained from the commission's website at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For additional information regarding the proposed rulemaking, please contact Stephen Dayton, Implementation Grants Section, at (512) 239-6824.

TRD-201104480
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 21, 2011

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Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Amendment

APPLICATION. Liquid Environmental Solutions of Texas, LLC, 7651 Esters Boulevard, Suite 200, Irving, Dallas County, Texas 75063, a Type V, liquid waste processing facility that de-waters, recycles, and pre-treats non-hazardous liquid waste from municipal and industrial generators, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize an increase in the permitted liquid waste treatment capacity from 6 million gallons per month (200,000 gallons per day) to 354,500 gallons per day; the extension of waste acceptance hours from 7:30 a.m. - 5:30 p.m. to 6:30 a.m. - 6:30 p.m.; a variance from buffer zone requirements; and a name change for the owner/operator from Liquid Environmental Solutions of Texas, L.P., to Liquid Environmental Solutions of Texas, LLC. The facility is located at 250 Gellhorn Drive, Houston, Harris County, Texas 77013. The TCEQ received the application on August 16, 2011. The permit application is available for viewing and copying at the Harris County Public Library, 1026 Mercury Drive, Houston, Harris County, Texas 77029. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.785555&ing=-95.260833&zoom=13&type=r. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html. If you need more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from Liquid Environmental Solutions of Texas, LLC at the address stated above or by calling Mr. Bob Keplinger at (713) 671-4800.

Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Limited Scope Major Permit Amendment Permit No. 2225

APPLICATION. The City of Carrizo Springs, P.O. Box 329, Carrizo Springs, Dimmit County, Texas 78834, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Municipal Solid Waste Type I AE and Type IV AE Limited Scope Major Permit Amendment to authorize allowable changes to the Facility Operating Hours and to revise the Site Signs which will reflect actual hours along with adding Special Waste from development of Oil Gas and Resources as allowable for disposal at the facility. The facility is located approximately 1.6 miles SE of intersection of US Highway 83 and FM 1917, Carrizo Springs, Dimmit County, Texas 78834. The TCEQ received the application on July 22, 2011. The permit application is available for viewing and copying at the Carrizo Springs City Hall, 308 West Pena Street, Carrizo Springs, Dimmit County, Texas 78834-3262. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=28.490278&ing=-99.831944&zoom=13&type=r. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive

Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html. If you need more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from the City of Carrizo Springs at the address stated above or by calling Mr. Mario A. Martinez, City of Carrizo Springs Manager, at (830) 876-3476.

TRD-201104622
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 26, 2011

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Notice of Water Quality Applications

The following notices were issued on October 14, 2011 through October 21, 2011.

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

TIN INC. which operates the Diboll Complex, a wood and wood products manufacturing complex, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001153000, which authorizes the discharge of treated fiberboard process wastewater and storm water via Outfall 001 at a daily average flow not to exceed 170,000 gallons per day; remediated ground water, utility wastewater, log deck spray water, external kiln condensate, fire control water from Lumber and Fiber Products operations and boiler areas, storm water runoff, excess reclaimed waters from the City of Diboll WWTP, wash water from an RTO unit, and occasional Outfall 004 wastewaters on a flow variable basis via Outfall 003; boiler blowdown, cooling tower blowdown, steam condensate, miscellaneous washdown water, wash water and fire suppression water from an RTO unit, fire control water from Particleboard Operations, and storm water runoff on an intermittent and flow variable basis via Outfall 004; and storm water runoff from the north end of the laminating area and portions of the lumber operating area on an intermittent and flow variable basis via Outfall 006. The facility is located approximately 0.25 miles west of U.S. Highway 59, at the southwest quadrant of the intersection of Borden Drive and 1st Street, in the City of Diboll, Angelina County, Texas 75941.

CITY OF HEMPSTEAD has applied for a major amendment to TPDES Permit No. WQ0010948001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day to a daily average flow not to exceed 980,000 gallons per day. The request for authorization also includes construction of a new wastewater treatment facility approximately 0.2 mile north of the existing treatment facility, and a new Outfall 002 approximately 1,200 feet northeast of the existing Outfall 001. The domestic wastewater treatment facility is located on the 23rd Street, approximately 1000 feet northeast of the intersection of 25th and Colorado Street, City of Hempstead, Waller County, Texas. The proposed facility will be located approximately 0.2 mile north of the existing facility.

FREEDOM SHORES INVESTMENT PARTNERSHIP L.P. has applied for a renewal of TPDES Permit No. WQ0011350001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located at 6800 Farm-to-Market Road 356, on the south side of Farm-to-Market Road 356 and the west end of Farm-to-Market Road 356 Bridge over the White Rock Creek Arm of Lake Livingston in Trinity County, Texas 75862.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 221 has applied for a renewal of TPDES Permit No. WQ0012470001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,800,000 gallons per day. The facility is located at 15715 Grovedale Drive, approximately 3,000 feet northeast of the intersection of Richey Road and Imperial Valley Drive, and approximately 3,000 feet northwest of the intersection of Richey Road and Hardy Road in Harris County, Texas 77024.

HOLIDAY HARBOR WATER AND WASTE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013145001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 4,000 feet north of the intersection of State Highway 156 and Farm-to-Market Road 224, and approximately 4.2 miles southeast of the intersection of U.S. Highway 190 and State Highway 156 in San Jacinto County, Texas 77364.

TEXAS MILITARY FORCES has applied for a renewal of TPDES Permit No. WQ0013249001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day. The facility is located at 6351 U.S. Highway 271 North, in the City of Powderly in Lamar County, Texas 75473.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 304 has applied for a renewal of TPDES Permit No. WQ0013564001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The facility is located at 12603 Wellington Parkway, 2.0 miles southeast of the intersection of Stuebner-Airline Road and Farm-to-Market Road 1960 in Harris County, Texas 77014.

DIA DEN LTD has applied for a renewal of TPDES Permit No. WQ0013893001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 18,000 gallons per day. The facility is located at 24310 Tomball Parkway, east of State Highway 249, approximately 2,500 feet north of the intersection of State Highway 249 and Coons Road in Harris County, Texas 77375.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 371 has applied for a renewal of TPDES Permit No. WQ0014028001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located at 16770 House Hahl Road, approximately 5,000 feet south-southwest of the intersection of House Hahl Road and U.S. Highway 290 in Harris County, Texas 77433.

SCURRY ROSSER INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0014471001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 1,700 feet south of the intersection of Farm-to-Market Road 148 and State Highway 34 in Kaufman County, Texas 75158.

TWO RIVERS REALM GP LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014986001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility will be located 900 feet north of and 1,150 feet west of the intersection of U.S. Highway 60 and Farm-to-Market Road 521 in Matagorda County, Texas 77483.

RIO REALM LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014999001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility will be located 5,000 feet west of Farm-to-Market Road 2668; approximately 1,150 feet north of Riverside Park Road in Matagorda County, Texas 77414.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a minor amendment of TPDES Permit No. WQ0012446001, to increase the Interim II phase peak flow from 97,222 gallons per minute (gpm) to 111,111 gpm. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 64,000,000 gallons per day in the final phase. The facility is located southwest of Wilson Creek at the confluence with Lake Lavon and approximately five miles southeast of the City of McKinney in Collin County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201104623
Bridget Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 26, 2011

♦ ♦ ♦

October 2011 Draft Water Quality Management Plan Update

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft October 2011 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) updates.

A copy of the draft October 2011 WQMP update may be found on the commission's Web site located at *http://www.tceq.texas.gov/waterquality/assessment/WQmanagement_updates.html.* A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on December 5, 2011. For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *Nancy.Vignali@tceq.texas.gov.*

TRD-201104596
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 25, 2011

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Texas Facilities Commission

Request for Proposals #303-2-30309

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-2-30309. TFC seeks a five (5) or ten (10) year lease of approximately 12,727 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is November 23, 2011 and the deadline for proposals is December 7, 2011 at 3:00 p.m. The award date is February 1, 2012. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=97423.

TRD-201104621
Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 26, 2011

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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 TX" 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
Houston	Memorial Hermann Medical Group	L06430	Houston	00	09/29/11

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Panhandle Nuclear Rx, Ltd.	L04683	Amarillo	26	09/30/11
Austin	Thermo Finnigan, L.L.C.	L01186	Austin	47	09/30/11
Austin	Texas Oncology, P.A.	L05108	Austin	24	10/05/11
Austin	Texas Oncology, P.A	L06206	Austin	05	10/03/11
Bay City	Equistar Chemicals, L.P.	L03938	Bay City	28	10/03/11
Cedar Park	Cedar Park Health System, L.P. dba Cedar Park Regional Medical Center	L06140	Cedar Park	07	10/06/11
Cleburne	Texas Health Harris Methodist Hospital Cleburne	L02039	Cleburne	42	10/05/11
Dallas	Methodist Hospitals of Dallas Radiology Services	L00659	Dallas	87	10/04/11
Dallas	Cardinal Health	L02048	Dallas	139	10/05/11
Dallas	IBA Molecular North America, Inc. dba IBA Molecular	L06174	Dallas	10	10/07/11
Denton	Columbia Medical Center of Denton Subsidiary, L.P. dba Denton Regional Medical Center	L02764	Denton	67	10/04/11
El Paso	Providence Memorial Hospital	L02353	El Paso	102	09/30/11
El Paso	Rio Grande Nuclear Pharmacy, L.L.C.	L06362	El Paso	01	10/05/11
Ferris	Fred Maese, M.D., P.A. dba Ferris Heart Center	L05409	Ferris	07	10/07/11
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	166	10/05/11
Houston	Bernardo Treistman, M.D., P.A. dba Cardiology Specialists of Houston	L05083	Houston	12	10/05/11
Houston	Methodist Health Centers dba Methodist Willowbrook Hospital	L05472	Houston	42	10/04/11
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	68	10/07/11
Houston	Cardinal Health	L05536	Houston	30	09/28/11
Houston	Petnet Houston, L.L.C.	L05542	Houston	28	09/30/11
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	22	10/05/11
Lamesa	Dawson County Hospital District dba Medical Arts Hospital	L06244	Lamesa	08	09/30/11
Lewisville	Columbia Medical Center of Lewisville Subsidiary, L.P. dba Medical Center of Lewisville	L02739	Lewisville	59	09/30/11
Midland	Texas Oncology, P.A. dba Allison Cancer Center	L04905	Midland	13	09/30/11
San Antonio	South Texas Cardiovascular Consultants, P.L.L.C.	L03833	San Antonio	34	10/10/11

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

San Antonio	The University of Texas Health Science Center at San Antonio	L05217	San Antonio	16	10/03/11
Throughout TX	Wilson Inspection X-Ray Services, Inc.	L04469	Corpus Christi	70	10/03/11
Throughout TX	NQS Inspection, Ltd.	L06262	Corpus Christi	03	10/03/11
Throughout TX	Amerapex Corporation	L06417	Houston	01	10/03/11
Throughout TX	Desert Industrial X-ray, L.P.	L04590	Odessa	119	09/29/11
Throughout TX	Petrochem Inspection Services, Inc.	L04460	Pasadena	111	10/03/11
Throughout TX	H. H. Holmes Testing Laboratories, Inc.	L06313	Richardson	04	10/03/11
Throughout TX	Pioneer Wireline Services, L.L.C.	L06220	Rosharon	14	10/03/11
Throughout TX	Professional Service Industries, Inc.	L03642	Spring	28	09/30/11
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	124	10/03/11
Throughout TX	Platinum Energy Solutions, Inc.	L06410	Waskom	03	10/03/11
Tomball	Clinic for Cardiovascular Care, P.A. dba Cardiovascular Clinic of Texas	L05670	Tomball	09	10/07/11

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Dallas Nephrology Associates dba Dallas Transplant Institute	L02604	Dallas	28	10/07/11
Lufkin	Pickett Heart Clinic	L05681	Lufkin	05	10/03/11
Throughout TX	Digirad Imaging Solutions, Inc.	L05414	Houston	34	10/07/11
Throughout TX	Texas Gamma Ray, L.L.C.	L05561	Pasadena	100	09/28/11

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Irving	Cor Specialty Associates of North Texas, P.A.	L05373	Irving	15	10/04/11
Houston	Cardiology of Houston	L05285	Houston	08	09/29/11

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201104464
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: October 20, 2011

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 1, 2011, at 9:00 a.m., to receive public comment on proposed payment rates for the assisted living/residential care (AL/RC) services under the Community Based Alternatives (CBA) program, CBA Personal Care III services (PCIII) and Residential Care (RC) program. The Department of Aging and Disability Services (DADS) operates these programs. The payment rates are proposed to be effective January 1, 2012.

The public hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed reimbursement rates. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring American with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to decrease the facility cost area rates for the CBA AL/RC, CBA PCIII services and RC programs to reflect the most recent increase in Federal Supplemental Security Income (SSI) payments in accordance with the rate setting methodologies listed below under Methodology and Justification. The methodologies require that when SSI is increased, the per diem reimbursement be decreased by an amount equal to that increase.

Methodology and Justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.509(c)(2) for the RC program, 1 TAC §355.503(c)(2)(B) for the CBA AL/RC service and 1 TAC §355.503(c)(2)(D) for the CBA PCIII service.

Briefing Package. A briefing package describing the proposed reimbursement rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on November 15, 2011. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Esther Brown by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written and Oral Comments. Written comments regarding the payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Esther Brown, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Esther Brown at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Esther Brown, HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201104624
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 26, 2011

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Notice of Public Hearing on Proposed Payment Rates for Medicaid Biennial Calendar Fee Review - Therapy Services Provided by Independent Practitioners and Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 21, 2011, at 1:00 p.m., to receive comment on proposed payment rates for the Medicaid Biennial Calendar Fee Review - Therapy Services provided by Independent Practitioners and Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORF/ORF).

The public hearing will be held in Health and Human Services Commission, Winters Building, Public Hearing Room, 701 West 51st Street, Austin, Texas. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Medicaid Biennial Calendar Fee Review - Therapy Services provided by Independent Practitioners and CORF/ORFs are proposed to be effective January 1, 2012.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services;

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

§355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician administered drugs/biologicals; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy.

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, House Bill 1, 82nd Legislature, Regular Session. Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after November 1, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201104620
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 26, 2011

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Notice of Public Hearing on Proposed Payment Rates for Medicaid Biennial Review - Therapy Services Provided by Home Health Agencies and Nursing Facilities

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 21, 2011, at 9:00 a.m., to receive comment on proposed payment rates for the Medicaid Biennial Calendar Fee Review - Therapy Services provided by Home Health Agencies and Nursing Facilities.

The public hearing will be held in Health and Human Services Commission, Winters Building, Public Hearing Room, 701 W. 51st St., Austin, Texas. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Medicaid Biennial Calendar Fee Review - Therapy Services provided by Home Health Agencies and Nursing Facilities are proposed to be effective January 1, 2012.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for durable medical equipment and expendable supplies in home health services;

§355.8081, which addresses payments for laboratory and x-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, psychologists' services, licensed psychological associates' services, maternity clinic services, and tuberculosis clinic services;

§355.8085, which addresses the reimbursement methodology for physicians and other medical professionals, including medical services, surgery, assistant surgery, and physician administered drugs/biologicals; medical services, surgery, assistant surgery, radiology, laboratory, and radiation therapy.

The reimbursement rates proposed reflect applicable reductions directed by the 2012-2013 General Appropriations Act, H.B. 1, 82nd Legislature, Regular Session. Detailed information related to specifics of the reductions can be found on the Medicaid fee schedules.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after November 1, 2011. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at esther.brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to esther.brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201104617
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 26, 2011

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Public Notice

The Texas Health and Human Services Commission intends to submit to the Centers for Medicare and Medicaid Services a request for an amendment to the Community-Based Alternatives (CBA) waiver program, under the authority of §1915(c) of the Social Security Act. The Community-Based Alternatives waiver program is currently approved for the five-year period beginning September 1, 2007, and ending August 31, 2012. The proposed effective date for the amendment is January 1, 2012.

The Community-Based Alternatives program provides home and community-based services to persons age 21 and older who qualify for nursing facility care and do not reside in STAR+PLUS 1915(c) waiver service areas. Services are offered in the participant's home, an adult foster care home, or a licensed assisted living facility. Personal assistance services; nursing; physical therapy; occupational therapy; speech, hearing, and language therapy; support consultation; and respite care are delivered using both provider-managed and participant-directed service delivery methods. This amendment proposes a change in requirements for nursing assessments from quarterly to semi-annually. Additionally, the waiver amendment will create a new target group to allow a limited number of applicants who are at risk of being admitted to a nursing facility to be given a priority for admission to the waiver. Lastly, the waiver amendment will reduce the frequency of contract and fiscal compliance monitoring reviews for high-performing Community Based Alternatives providers.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning January 1, 2012, and ending August 31, 2012. This amendment maintains cost neutrality for waiver year 2012.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by email at Christine.Longoria@hhsc.state.tx.us.

TRD-201104616
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 26, 2011

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Texas Department of Insurance

Company Licensing

Application for incorporation in the State of Texas by CATALYST RX INSURANCE COMPANY (TX), INC., a domestic life, accident and/or health company. The home office is in Frisco, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201104614
Sara Waitt
Acting General Counsel
Texas Department of Insurance
Filed: October 26, 2011

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Notice of Informal Stakeholder Meeting

The Texas Department of Insurance provides notice of an informal stakeholder meeting to discuss and gather information relating to the determination of rates of assessments for expenses of examination of: (1) foreign and domestic insurance companies and workers' compensation self-insurance groups; (2) examinations, investigations, and general administrative expenses for the regulation of insurance premium finance companies; and (3) insurance maintenance taxes.

Texas Insurance Code §§401.151 - 401.152 and 401.155 - 401.156 and Texas Labor Code §407A.252 require the Commissioner of Insurance to determine rates for the assessments for expenses of examination of foreign and domestic insurance companies and workers' compensation self-insurance groups. Texas Insurance Code §651.006 requires the Commissioner of Insurance to determine the rates for the assessments to cover the cost of examinations, investigations, and general administrative expenses for the regulation of insurance premium finance companies. Texas Insurance Code Title 3, Subtitles C and D and Labor Code Chapters 403, 405, 407, and 407A require the Commissioner of Insurance to determine the rates for the assessments of insurance maintenance taxes.

Additionally, legislative changes passed during the 82nd Legislative Session that will have an impact on rates and assessment costs include, but are not limited to, the following: (1) Senate Bill 1291, 82nd Legislative Session, Regular Session, effective September 1, 2011; and (2) Rider 17, page 1-26, Chapter 1355 (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act). The Department is gathering information to be utilized in adopting rules to establish the rates of each tax and assessment.

For these reasons, the Department has scheduled an informal stakeholder meeting to be held on Thursday, November 10, 2011, from 2:00 to 5:00 p.m. in Room 1264, at the William P. Hobby, Jr., State Office Building, Tower I, 333 Guadalupe Street, Austin, Texas. The purpose of the meeting will be to provide information, receive comments and information from all parties, and to informally discuss the preliminary estimates of the projected rates of assessment, the supporting documentation and methodology of the process related to determining the estimated projected rates of assessment and fees, and the draft rules to establish the rates of each tax and assessment.

Prior to the informal stakeholder meeting, the Department will make available the draft rules to establish the rates of assessments and fees and will post it on the Department's website at http://www.tdi.texas.gov/. Interested persons may view the draft rules at the website and may obtain copies of the draft rules by submitting a request to the Office of the Chief Clerk Texas Department of Insurance, MC113-1A, and P.O. Box 149104, Austin, Texas 78714-9104.

If you have any questions, please contact the Office of the Chief Clerk at (512) 475-1910.

TRD-201104534
Sara Waitt
Acting General Counsel
Texas Department of Insurance
Filed: October 21, 2011

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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 GLOBAL BENEFITS, INC., a foreign third party administrator. The home office is LIBERTYVILLE, ILLINOIS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register,* addressed to the attention of Godwin Ohaechesi, MC 305-2C, 333 Guadalupe, Austin, Texas 78701.

TRD-201104615
Sara Waitt
Acting General Counsel
Texas Department of Insurance
Filed: October 26, 2011

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Texas Lottery Commission

Notice of Hearing

A public hearing to receive public comments regarding proposed repeals of 16 TAC §402.703 (Books and Records Inspection), 16 TAC §402.704 (Tax Review Inspection), and 16 TAC §402.715 (Compliance Audit) will be held on Wednesday, November 16, 2011, at 10:00 a.m. at 611 E. 6th Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, and Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-201104461
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 20, 2011

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 20, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable to amend its State-Issued Certificate of Franchise Authority; to add Sachse, Texas, Project Number 39859.

The requested amendment is to expand the service area footprint to include the municipality of Sachse, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin,

Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (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) (800) 735-2989. All inquiries should reference Project Number 39859.

TRD-201104600
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 25, 2011

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On October 24, 2011, IntelePeer, Inc. (applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Certificate Number 60850. Applicant seeks to (1) insert one or more holding companies between applicant and current direct shareholders; (2) move applicant's subsidiary, IntelePeer Virginia, Inc. under the new holding company, making it an affiliate of applicant, rather than a subsidiary of applicant; and (3) assign certain assets into one or more affiliates of applicant.

The Application: Application of IntelePeer, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 39863.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than November 11, 2011. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 39863.

TRD-201104610
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 25, 2011

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Notice of Application for Waiver from Requirements in Automatic Dial Announcing Devices (ADAD) Application Form

Notice is given to the public of an application filed on October 18, 2011, with the Public Utility Commission of Texas (commission) for waiver from the requirements in the commission prescribed application for a permit to operate automatic dial announcing devices (ADAD).

Docket Style and Number: Request of Conn Appliances, Inc. for an Exception to the Federal Registration Number Requirement of the ADAD Application Form, Docket Number 39853.

The Application: Conn Appliances, Inc. filed a request for a waiver of the registration number requirement, in the Public Utility Commission of Texas prescribed application for a permit to operate ADAD. Specifically, Question 11(e) of the application requires the Federal Registration Number issued to the ADAD manufacturer or programmer either by the Federal Communications Commission or Administrative Council Terminal Attachments.

Conn Appliances, Inc. stated that its vendor is Noble Systems Corporation (NSC), a hosted service solution. NSC hosted platform connects to tier 1 telecom providers co-locating in data centers in the continental United States. NSC hosted platform uses standard off the shelf servers to connect to tier 1 providers via multiprotocol label switching or virtual private network.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39853.

TRD-201104598
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 25, 2011

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Notice of Application to Amend Designation as an Eligible Telecommunications Carrier and for Designation as an Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 20, 2011, to amend designation as an eligible telecommunications carrier (ETC) and for designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.418 and §26.417, respectively.

Docket Title and Number: Application of VTX Telecom, LLC. to Amend its Eligible Telecommunications Carrier Designation and Eligible Telecommunications Provider Designation, Docket Number 39857.

The Application: VTX-T requests an amendment to its ETC and ETP designations to expand the study area to include the Agua Dulce, Charlotte, Falfurrias, George West, Jourdanton, Lyford, Orange Grove, Premont, Raymondville, Santa Rosa and Three Rivers Exchanges of GTE Southwest d/b/a Verizon. The Company holds Service Provider Certificate of Operating Authority Number 60482.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is November 18, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 39857.

TRD-201104599
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 25, 2011

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Mesquite through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services

firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Mesquite Mesquite Metro Airport. TxDOT CSJ No. 1218MSQTE. Scope: Prepare an Airport Business Plan which includes, but is not limited to information and overviews regarding existing and future conditions, an airport target market analysis, a business and financial analysis, a business financial plan, review of minimum standards and airport rules and regulations, rates and charges reviews, contract provisions, standardized development provisions and site standards, and staffing recommendations. The Airport Business Plan should be tailored to the individual needs of the airport.

There is no DBE goal. TxDOT Project Manager is Daniel Benson.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning 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 http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note: Five completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **November 29, 2011, 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 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 consultants for airport planning projects can be found at http://www.txdot.gov/business/projects/aviation.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.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Daniel Benson, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201104625
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 26, 2011

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Public Hearing Notice - Statewide Transportation Improvement Program and Unified Transportation Program

The Texas Department of Transportation (department) will hold a joint public hearing on Tuesday, November 22, 2011 at 10:00 a.m. at 200 East Riverside Drive, Room 1A-2, in Austin, Texas to receive public comments on the November 2011 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2011-2014 and proposed updates to the 2012 Unified Transportation Program (UTP).

The STIP reflects the federally funded transportation projects in the FY 2011-2014 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 and STIP 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 public transit operators and to provide an opportunity for interested parties to participate in the development of the program. 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.

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission has adopted rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

A copy of the proposed November 2011 Quarterly Revisions to the FY 2011-2014 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, or (512) 486-5033, and on the department's website at: www.txdot.gov.

Information regarding the proposed update to the 2012 UTP will be available at each of the department's district offices, at the department's Finance Division offices located at 150 East Riverside Drive, Austin, Texas, or (512) 486-5043, and on the department's website at: http://www.txdot.gov/public_involvement/utp.htm.

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 21, 2011, or they may register at the hearing location beginning at 9:00 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 re-

strict 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 the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed November 2011 Quarterly Revisions to the FY 2011-2014 STIP to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. Comments regarding the proposed update to the 2012 UTP may be submitted to Brian Ragland, Director, Finance Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office or the Finance office by 4:00 p.m. on Monday, December 5, 2011.

TRD-201104612
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 26, 2011

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Texas Administrative Code, Title 43, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or (800) 68-PILOT.

TRD-201104547
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 24, 2011

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Texas Water Development Board

Public Hearing Notice

The Texas Water Development Board will hold a public hearing on a petition submitted under 31 TAC §356.44. The hearing will begin at 10:00 a.m. on November 16, 2011, in Johnson Hall, at the City of Wimberley Community Center, 14068 RR 12, Wimberley, Texas.

A Petition on the reasonableness of the Desired Future Conditions adopted by the Groundwater Management Area 9 Groundwater Conservation Districts for the Trinity Aquifer was submitted by the Wimberley Valley Watershed Association.

Interested persons are encouraged to attend the hearing, which is not a contested case hearing. Petitioners and Respondents will each have two hours in which to present their testimony. There will be no cross-examination of those making presentations and no objections to the testimony or exhibits. Testimony and evidence presented should address the claims asserted in the petitions.

Other interested persons will have 10 business days from the close of the hearing in which to submit written evidence. No time will be allotted for public comment during the hearing. Written evidence may be submitted during the 10-day period to the Board's General Counsel, Texas Water Development Board, 1700 N. Congress Ave., P.O. Box 13231, Austin, Texas 78711-3231.

TRD-201104593
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: October 24, 2011

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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 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*