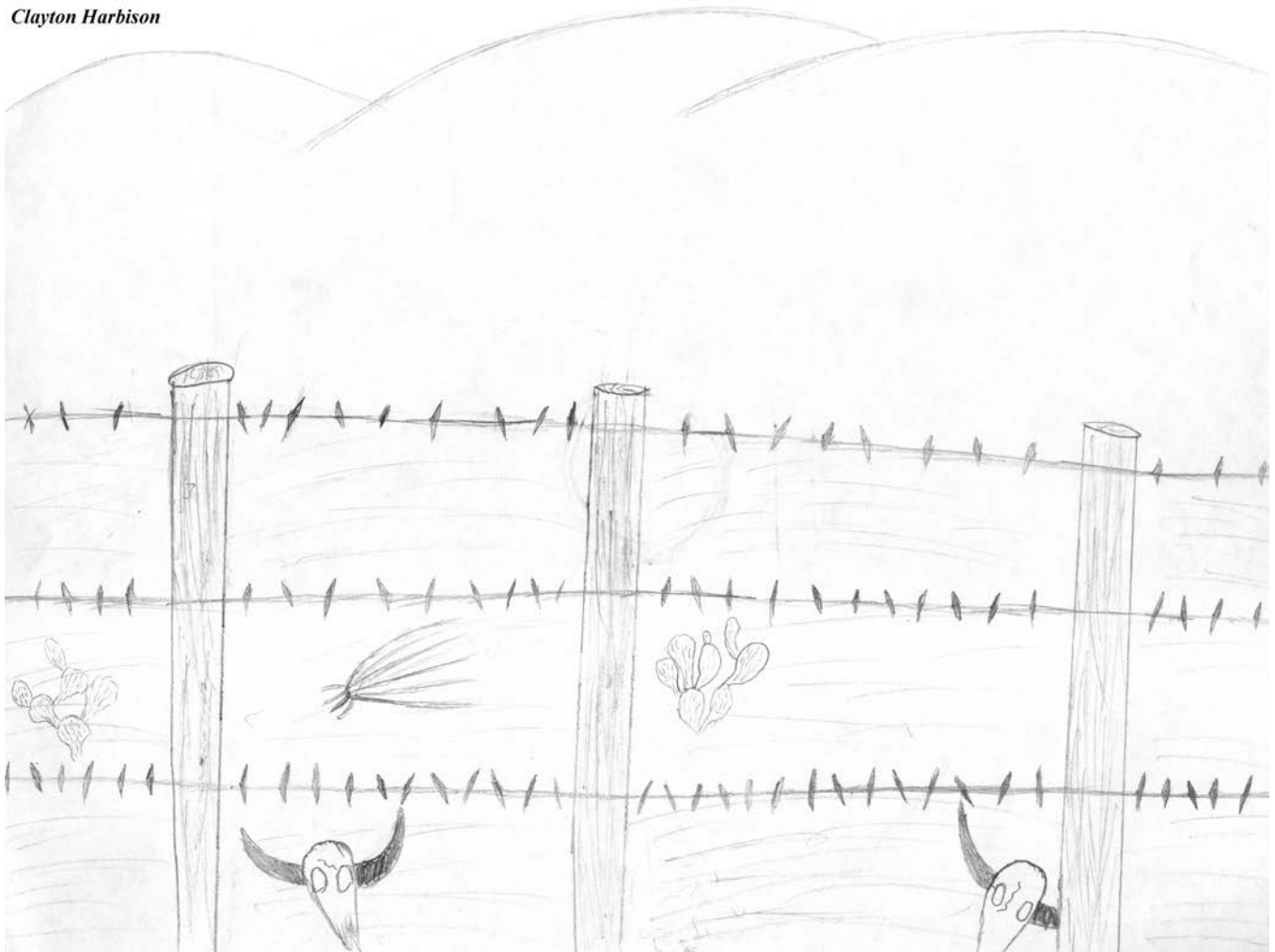

TEXAS REGISTER

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Clayton Harbison



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

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Open Meetings

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

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

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

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

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

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

<http://www.oag.state.tx.us/open/index.shtml>

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

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...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

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

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

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

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

Opinions

Opinion No. GA-0960

The Honorable Paul Johnson

Denton County Criminal District Attorney

Post Office Box 2850

Denton, Texas 76202

Re: Refund of cash bail bonds under article 17.02, Code of Criminal Procedure (RQ-1045-GA)

S U M M A R Y

Due to the recent legislative amendment to article 17.02 of the Code of Criminal Procedure, a county is no longer entitled to deduct a fee for accounting and administrative expense from the refund of a cash bail bond.

Attorney General Opinions JC-0163 and GA-0436 are superseded due to legislative enactment.

Opinion No. GA-0961

The Honorable Dennis Bonnen

Chair, Select Committee on Voter Identification and Voter Fraud

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether Conservation and Reclamation District Number Three in Brazoria County may conduct operations within the boundaries of another district (RQ-1046-GA)

S U M M A R Y

The Brazoria County Conservation and Reclamation District Number Three may generally act beyond its boundaries as necessary to accomplish its statutorily defined functions. Water Code section 56.144 requires that if the District shares a watershed with another district and determines that construction of improvements in the watershed would be a public benefit and would accomplish the purposes of article III, sections 52(b)(1), (2), and (3) of the Texas Constitution, the District may not exercise its authority without first proposing an inter-local agreement or receiving approval from the Texas Commission on Environmental Quality. Without specific facts regarding the project to be conducted within the boundaries of another district, we cannot opine

on whether the District is required to follow its own rules or those of the other district.

Opinion No. GA-0962

The Honorable R. Lowell Thompson

Navarro County Criminal District Attorney

300 West 3rd Avenue, Suite 203

Corsicana, Texas 75110

Re: Whether section 38.007 of the Texas Education Code, section 109.33 of the Texas Alcoholic Beverage Code, and the home-rule provision of the Texas Constitution authorize a home-rule municipality with a population of less than 900,000 to enact an ordinance prohibiting the sale of alcoholic beverages within 1,000 feet of a public school (RQ-1057-GA)

S U M M A R Y

The Texas Alcoholic Beverage Code does not authorize a home-rule municipality to enact an ordinance prohibiting the sale of alcoholic beverages by a dealer whose place of business is within 1,000 feet of a public school unless the municipality has received a petition from a school board of a district principally located in a municipality with a population of 900,000 or more.

Opinion No. GA-0963

The Honorable Jerry Patterson

Commissioner

Texas General Land Office

Post Office Box 12873

Austin, Texas 78711-2873

Re: Whether an application by a local organizing committee, endorsing municipality, or endorsing county to a site selection organization is a prerequisite to the expenditure of funds from the Major Events Trust Fund pursuant to section 5A, article 5190.14, Revised Civil Statutes (RQ-1043-GA)

S U M M A R Y

Section 5A, article 5190.14 of the Texas Revised Civil Statutes requires that a local organizing committee, an endorsing municipality, or an endorsing county submit an application to a site selection organization in order to initiate the process that governs the distribution of funds for an "event" from the Major Events Trust Fund (the "METF"). Unless an application for an event as defined in the statute is submitted to a

site selection organization, that event is ineligible for METF funding. Whether such an application was actually submitted in this case is a matter of factual dispute that cannot be resolved through the opinion process.

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

TRD-201204423

Katherine Cary
General Counsel
Office of the Attorney General
Filed: August 20, 2012



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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

4 TAC §§19.500 - 19.508

The Texas Department of Agriculture is renewing the effectiveness of the emergency adoption of new §§19.500 - 19.508 for a 60-day period. The text of the new sections was originally published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3257).

Filed with the Office of the Secretary of State on August 13, 2012.

TRD-201204266

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Original effective date: April 18, 2012

Expiration date: October 14, 2012

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



SUBCHAPTER X. CITRUS GREENING QUARANTINE

4 TAC §§19.615 - 19.622

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.615 - 19.622, which establish a quarantine to contain and combat a recently discovered infestation of citrus greening ("*Candidatus Liberibacter asiaticus*"), also known as Huanglongbing (HLB), an exotic incurable, lethal disease that is dangerous to citrus trees and many related plants. The newly detected infestation, which is the first known instance of citrus greening in Texas, represents a serious risk to the state's commercial citrus and citrus nursery plant industries. The department believes that establishment of this emergency quarantine is both necessary and appropriate in order to effectively combat and prevent the spread of citrus greening to non-infected areas, including to other commercial citrus groves and to citrus nursery plant production areas in Texas and other states.

This emergency quarantine is adopted because the Texas Department of Agriculture (TDA) and United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service

(APHIS) have confirmed the detection of citrus greening in a commercial orange grove and an adjacent commercial grapefruit grove in San Juan, Texas, in Hidalgo County.

New §19.615 states the basis for the quarantine and defines the quarantined pest. New §19.616 designates the areas subject to quarantine. New §19.617 provides that an article subject to the quarantine, or regulated article, is any article described as a regulated article by Title 7, Code of Federal Regulations (CFR) §301.76-2. New §19.618 provides restrictions on the movement of articles subject to the quarantine. New §19.619 provides consequences for failure to comply with quarantine restrictions. New §19.620 provides an appeal process for certain agency actions taken against a person for failure to comply with quarantine restrictions or requirements. New §19.621 provides procedures for handling discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations. New §19.622 provides requirements for treatment of citrus nursery stock in the citrus zone, prior to shipment within and outside of the citrus zone.

On March 14, 2012, the department filed an emergency quarantine which was published in the March 30, 2012, issue of the *Texas Register* (37 TexReg 2128). The new sections in this emergency filing will replace the emergency quarantine filed by the department on March 14. This filing of the emergency quarantine will make the department's quarantine consistent with USDA regulations found in 7 CFR, Part 301, Subpart--Citrus Greening and Asian Citrus Psyllid, §§301.76 - 301.76-11, and with Federal Order DA-2012-30 issued by USDA-APHIS on August 9, effective September 1, 2012. The new sections clarify what articles are regulated articles, redefine the limits of the quarantined area, clarify the basis for the quarantine, clarify restrictions on the production, movement or distribution of articles subject to the quarantine, and clarify mandatory treatment requirements for citrus nursery plants in the citrus zone. This updated emergency quarantine also provides for the department to designate additional quarantined infested areas and quarantined areas, as new infestations occur, or a reduction of the quarantined area, and provides methods of notifying affected producers of additional designated quarantined areas and core areas within an infested area.

The citrus and nursery industries in particular are in peril because without this emergency quarantine action, USDA could quarantine the entire state of Texas and, as a result, important export markets for citrus plants could be lost and all citrus plants would be subject to more costly production in enclosed structures under stringent requirements prior to export from the state. This emergency quarantine takes necessary steps to prevent the spread of the infection, thus protecting the state's citrus fruit and nursery crops, agricultural industries of vital importance to the state of Texas.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the department to establish emergency quarantines; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 71; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.615. Basis for Quarantine: Quarantined Pest - Dangerous Plant Disease (Proscribed Biological Entity).

(a) Quarantined pest is citrus greening. The department finds that citrus greening, "*Candidatus Liberibacter asiaticus*," is a dangerous plant disease that is not widely distributed in this state.

(b) Description of dangerous plant disease. Host plants. Citrus greening is a dangerous disease that can infect and be carried by all plant parts (including leaves and propagative seeds) except fruit of *Aegle marmelos*, *Aeglopsis chevalieri*, *Afraegle gabonensis*, *A. paniculata*, *Amyris madrensis*, *Atalantia* spp. (including *Atalantia monophylla*), *Balsamocitrus dawei*, *Bergera* (= *Murraya*) *koenigii*, *Calodendrum capense*, *Choisya ternata*, *C. arizonica*, *X Citroncirus webberi*, *Citropsis articulata*, *Citropsis gillettiana*, *Citrus madurensis* (= *X Citrofortunella microcarpa*), *Citrus* spp., *Clausena anisum-olens*, *C. excavata*, *C. indica*, *C. lansium*, *Eremocitrus glauca*, *Eremocitrus hybrid*, *Esenbeckia berlandieri*, *Fortunella* spp., *Limonia acidissima*, *Merrillia caloxylon*, *Microcitrus australasica*, *M. australis*, *M. papuana*, *X Microcitronella* spp., *Murraya* spp., *Naringi crenulata*, *Pamburus missionis*, *Poncirus trifoliata*, *Severinia buxifolia*, *Swinglea glutinosa*, *Tetradium ruticarpum*, *Toddalia asiatica*, *Triphasia trifolia*, *Vepris* (= *Toddalia*) *lanceolata*, and *Zanthoxylum fagara*. A majority of these plants also are hosts of Asian citrus psyllid *Diaphorina citri*, the vector of citrus greening in the United States. Citrus greening is a bacterial disease that attacks the vascular system of plants. Once infected, there is no cure for a tree with citrus greening disease. In areas of the world where citrus greening is endemic, citrus trees decline and die within a few years. Citrus greening is considered a serious disease by the United States Department of Agriculture (USDA) as well as many states.

(c) Establishment of quarantine. The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous plant disease, citrus greening, identified in this section.

§19.616. Infested Geographical Areas Subject to the Quarantine.

(a) Quarantined infested areas.

(1) Quarantined infested areas, or quarantined areas (infested geographical areas subject to the quarantine), are those locations within this state in which the dangerous plant disease is currently found, from which dissemination of the disease is to be prevented, and within which the disease is to be managed or eradicated.

(2) The quarantine boundaries found in subsection (b) of this section are declared to be the boundaries of quarantined infested areas, or quarantined areas. The department may designate additional or expanded quarantined infested areas or quarantined areas, or a reduction of the quarantined area based upon the confirmation of the presence or absence of the citrus greening. The designations will be effective upon the posting of the notification of the quarantined infested areas or quarantined areas on the department's website (<http://www.TexasAgriculture.gov>). Notification consists of a map and a description of the quarantined infested areas or quarantined areas. A printed copy of the notification is available at the department's Valley Regional Office,

900-B East Expressway 83, San Juan, Texas 78217, (956) 787-8866. In addition, notification will be made through press release by the department. Each quarantined area is bounded on all sides by a line drawn using the World Geographic Coordinate System of 1984.

(b) The Quarantine Boundary in Hidalgo County is described as: Starting at a point described as N26.092345 degrees and W98.143389 degrees, then West to a point described as N26.091944 degrees and W98.151891 degrees, then West to a point described as N26.092451 degrees and W98.161387 degrees, then West to a point described as N26.095246 degrees and W98.176367 degrees, then North West to a point described as N26.102571 degrees and W98.194316 degrees, then North West to a point described as N26.112126 degrees and W98.207752 degrees, then North West to a point described as N26.119346 degrees and W98.214906 degrees, then North West to a point described as N26.127551 degrees and W98.221651 degrees, then North West to a point described as N26.130722 degrees and W98.223631 degrees, then North to a point described as N26.147012 degrees and W98.230526 degrees, then North to a point described as N26.163728 degrees and W98.232918 degrees, then North to a point described as N26.16734 degrees and W98.232894 degrees, then North to a point described as N26.177266 degrees and W98.231828 degrees, then North East to a point described as N26.19214 degrees and W98.227227 degrees, then North East to a point described as N26.202493 degrees and W98.221654 degrees, then North East to a point described as N26.215525 degrees and W98.210556 degrees, then North East to a point described as N26.222527 degrees and W98.201611 degrees, then North East to a point described as N26.227622 degrees and W98.193957 degrees, then East to a point described as N26.232083 degrees and W98.184415 degrees, then East to a point described as N26.23386 degrees and W98.179397 degrees, then East to a point described as N26.237379 degrees and W98.163353 degrees, then East to a point described as N26.237807 degrees and W98.159345 degrees, then East to a point described as N26.237712 degrees and W98.143327 degrees, then East to a point described as N26.237237 degrees and W98.139326 degrees, then East to a point described as N26.233989 degrees and W98.124833 degrees, then South East to a point described as N26.228947 degrees and W98.112357 degrees, then South East to a point described as N26.223016 degrees and W98.102392 degrees, then South East to a point described as N26.221195 degrees and W98.099903 degrees, then South East to a point described as N26.214489 degrees and W98.092725 degrees, then South East to a point described as N26.211194 degrees and W98.08897 degrees, then South East to a point described as N26.206528 degrees and W98.085674 degrees, then South East to a point described as N26.205749 degrees and W98.084508 degrees, then South to a point described as N26.192155 degrees and W98.076608 degrees, then South to a point described as N26.18401 degrees and W98.07367 degrees, then South to a point described as N26.171354 degrees and W98.071269 degrees, then South to a point described as N26.15736 degrees and W98.07138 degrees, then South to a point described as N26.148793 degrees and W98.072948 degrees, then South West to a point described as N26.139332 degrees and W98.076024 degrees, then South West to a point described as N26.126285 degrees and W98.083128 degrees, then South West to a point described as N26.115956 degrees and W98.09171 degrees, then South West to a point described as N26.103864 degrees and W98.107304 degrees, then West to a point described as N26.097624 degrees and W98.120351 degrees, then West to a point described as N26.093646 degrees and W98.13438 degrees and then returning West to the Starting Point.

(c) A map of the quarantined area may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866, or by visiting the department's website at: <http://www.TexasAgriculture.gov>.

§19.617. Articles Subject to the Quarantine.

An article subject to the quarantine, or regulated article, is any article described as a regulated article by Title 7, Code of Federal Regulations (CFR) §301.76-2.

§19.618. Restrictions on Production, Movement or Distribution of Articles Subject to the Quarantine.

(a) In addition to other restrictions that may apply:

(1) In a quarantined area, any regulated article intended for interstate movement, distribution or sale shall conform to:

(A) the requirements of 7 CFR §301.76, and

(B) those requirements of §19.622 of this subchapter (relating to Mandatory Treatment of Citrus Nursery Plants in the Citrus Zone) that apply to all regulated articles intended for interstate movement; or

(2) In a quarantined area, any regulated article intended for intrastate movement, distribution or sale:

(A) shall not be moved, except as specified in this subchapter; and

(B) shall conform to the requirements of §19.622 of this subchapter that apply to any regulated article produced or under production in the citrus zone, that is intended either for intrastate sale or for commercial or noncommercial distribution or movement.

(3) Regulated articles currently under seizure under the Deputy Commissioner of Agriculture's emergency seizure order of January 18, 2012, shall either be:

(A) held without further movement within or outside the quarantined area and treated with a department approved systemic pesticide (soil drench) labeled for the control of Asian citrus psyllid and for use on those plants, in accordance with that label, for the duration of the quarantine maintaining the plants free of Asian citrus psyllid; or

(B) moved within the quarantined area under the conditions of a special permit or compliance agreement issued by the department; or

(C) destroyed.

(b) Transitory movement of regulated articles through a quarantined area shall be done only in a sealed, insect-proof container that shall not remain in the quarantined area beyond the time required for simple transit.

(c) Movement of regulated articles into a quarantined area shall be conducted as follows.

(1) Except as covered by subsection (b) of this section, movement of regulated articles into a quarantined area must be performed under a compliance agreement with the department.

(2) Retail purchasers who take regulated articles purchased outside of a quarantined area directly to their home or business inside the quarantined area and permanently plant the regulated article promptly at that address are exempt from paragraph (1) of this subsection.

(d) Propagation, sale or distribution of regulated articles.

(1) Any person who propagates regulated articles in a quarantined area, other than for personal noncommercial use on the same property, or who sells, distributes or moves regulated articles, shall do so only under a special permit or a compliance agreement with the department.

(2) Under a special permit or compliance agreement from the department, regulated articles may be moved intrastate out of a quarantined area, if the regulated articles are compliant with all production, treatment, recordkeeping and shipment requirements that apply to regulated articles intended for interstate movement, as provided in 7 CFR §301.76 and in the "Interstate Movement of Citrus and other Rutaceous Plants For Planting From Areas Quarantined for Citrus Canker, Citrus Greening, or Asian Citrus Psyllid" as published by the United States Department of Agriculture, Animal and Plant Health Inspection Service (USDA-APHIS), Plant Protection and Quarantine. A copy of the requirements may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

(e) Detached citrus fruit originating within a quarantined area may be moved outside the quarantined area provided the fruit is treated, harvested, transported and packed under the conditions outlined in the August 9, 2012, Federal Order (DA-2012-30) issued by the USDA-APHIS, Plant Protection and Quarantine, entitled "Quarantine for *Candidatus Liberibacter Asiatics'* Causal Agent of Citrus Greening".

(f) To request a special permit, a compliance agreement, or a copy of applicable departmental or federal requirements, contact the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

§19.619. Consequences for Failure to Comply with Quarantine.

Restrictions. A person who fails to comply with quarantine restrictions or requirements or a department order relating to the quarantine is subject to administrative or civil penalties up to \$10,000 per day for any violation of the order and to the assessment of costs for any treatment or destruction that must be performed by the department in the absence of such compliance. Additionally, the department is authorized to seize and treat or destroy, or order to be treated or destroyed, any quarantined article that is found to be infested with the quarantined pest or, regardless of whether infected or not, transported within, out of, or through the quarantined area in violation of these rules.

§19.620. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.621. Conflicts Between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for avoiding the requirements of this subchapter.

§19.622. Mandatory Treatment of Citrus Nursery Plants in the Citrus Zone.

(a) Treatment Requirements:

(1) Interstate sale, distribution or movement. Any regulated article produced or under production in the citrus zone, as specified in §21.4 of this title (relating to Citrus Zone), that is intended for

interstate sale, distribution or movement shall be treated as provided in 7 CFR §301.76, and as specified in the "Interstate Movement of Citrus and other Rutaceous Plants For Planting From Areas Quarantined for Citrus Canker, Citrus Greening, or Asian Citrus Psyllid" as published by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine. A copy of the requirements may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866; and

(2) Intrastate sale, distribution or movement. Any regulated article produced or under production in the citrus zone, as specified in §21.4 of this title, that is intended for intrastate sale, distribution or movement, either within or outside of the Citrus Zone:

(A) Prior to any sale, distribution or movement shall be treated as specified in the "Interstate Movement of Citrus and other Rutaceous Plants For Planting From Areas Quarantined for Citrus Canker, Citrus Greening, or Asian Citrus Psyllid" as published by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine; and

(B) If any maximum treatment period specified under subparagraph (A) of this paragraph expires before all regulated articles have been sold, distributed or moved, the required treatment shall be re-applied, as necessary. No regulated article that is not compliant with all treatment requirements may be sold, distributed, or moved.

(C) A copy of the requirements in this subsection may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

(b) Treatment records. Records of the lot numbers treated and of the treatment materials and treatment dates for each treatment re-

quired under subsection (a) of this section shall be maintained by the nursery for a period of not less than two years following the last treatment date for a given lot of regulated articles, and records shall be made available to an authorized department or USDA employee, upon request during normal business hours.

(c) Exemptions. For regulated articles intended for intrastate sale or for intrastate commercial or noncommercial distribution or movement, the following are exempt from the requirements of this section:

(1) Any retail location that possesses a valid Class 1 nursery/floral registration, as required by §22.3 of this title (relating to Nursery/Floral Registration Classifications and Fees); or

(2) Any person who purchases or otherwise receives a regulated article for that person's own use and not for further sale, distribution or movement, is exempt from the requirements of this section.

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

Filed with the Office of the Secretary of State on August 14, 2012.

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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Expiration date: December 11, 2012

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



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 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

1 TAC §55.119

The Office of the Attorney General, Child Support Division, proposes amendments to §55.119, regarding forms for child support enforcement pursuant to Texas Family Code Chapters 157 and 231. The proposed amendments amend the forms for Release of Child Support Lien and Partial Release of Child Support Lien.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Key has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be the clarification of terms of the forms for release of lien. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments should be submitted to John O'Connell, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code §231.003, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Texas Family Code Chapter 231.

The proposed amendments implement the Texas Family Code Chapters 157 and 231.

§55.119. Forms for Notice of Lien, for Release of Child Support Lien, and for Partial Release of Child Support Lien.

(a) (No change.)

(b) The following form is to be used [filed with the county clerk of a county in which a child support lien has been filed] when

the payment in full of all child support, costs, and attorney fees has been made.

Figure: 1 TAC §55.119(b)

[Figure: 1 TAC §55.119(b)]

(c) The following form is to be used when not [filed with the person in possession of property to which a child support lien has attached, when the payment in full of] all child support, costs and attorney fees have been paid [has not been made,] but the claimant agrees [has agreed] to release the lien on specific property [to the obligor].

Figure: 1 TAC §55.119(c)

[Figure: 1 TAC §55.119(c)]

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

Filed with the Office of the Secretary of State on August 20, 2012.

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Katherine Cary

General Counsel

Office of the Attorney General

Earliest possible date of adoption: September 30, 2012

For further information regarding this publication, please contact Diane Morris, Agency Liaison, at (512) 936-1180.



SUBCHAPTER L. FINANCIAL INSTITUTION DATA MATCHES

1 TAC §55.552, §55.556

The Office of the Attorney General, Child Support Division, proposes amendments to §55.552 and §55.556, regarding the financial institute data matches definitions for account and financial institution, and liability of financial institutions for disclosure of information pursuant to Texas Family Code Chapters 157 and 231. The proposed amendments clarify the definition of account, the definition of financial institution and the liability of a financial institution for disclosure of information.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Ms. Key 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 enforcing the amended sections will be the clarification of terms and liability associated with the rules. There will not be an effect on small businesses. There is no anticipated economic

cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments should be submitted to John O'Connell, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code Chapters 157 and 231, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Texas Family Code Chapter 231.

The proposed amendments implement the Texas Family Code Chapters 157 and 231.

§55.552. *Definitions.*

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

(1) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, ~~[or money-market]~~ mutual fund account, certificate of deposit, or any other instrument of deposit in which an individual has a beneficial ownership either in its entirety or on a shared or multiple party basis, including any accrued interest and dividends.

(2) "Account owner record" means the record used by a financial institution to report account owner information including payee identification information, account balance and account type.

(3) "Account file" means an electronic file submitted to the Title IV-D agency listing all accounts of the financial institution under the option provided by Match Method 1 (infra).

(4) "Authorized representative" means an officer or executive of a financial institution authorized to sign a memorandum of agreement (infra) on behalf of the institution.

(5) "FEIN" means the federal employer identification number.

(6) "Financial institution" means:

(A) a depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(B) an institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u));

(C) any federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752), including an institution-affiliated party of such a credit union, as defined in Section 206(r) of such Act (12 U.S.C. 1786(r)); ~~[or]~~

(D) any benefit association, insurance company, safe deposit company, ~~[money-market]~~ mutual fund, or similar entity authorized to do business in the State; ~~or~~[-]

(E) a depository institution holding company, as defined in Section 3(w) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)).

(7) "Financial institution record" means the record used by a financial institution to report identifying information about the financial institution including name, address, service bureau and reporting agent.

(8) "Inquiry file" means electronic files sent by the Title IV-D agency or OCSE (infra) to financial institutions electing to report

under Match Method 2 (infra) that contain records of delinquent child support obligors that the institution will use to match against its records.

(9) "Match Method 1" means the process used by a financial institution to submit an electronic file containing all its open accounts to the Title IV-D agency or its agent that is matched against records of delinquent child support obligors.

(10) "Match Method 2" means the process used by a financial institution to conduct matches against an inquiry file (supra).

(11) "Match file" means electronic files sent by a financial institution to the Title IV-D agency or OCSE (infra) that report accounts matched against an inquiry file supplied by the Title IV-D agency or OCSE to the financial institution under Match Method 2 (supra).

(12) "Memorandum of agreement" means a form completed and signed by an authorized representative (supra) and the Title IV-D agency or its agent for the purpose of exchanging information by way of an automated data exchange system that serves as the official agreement between the financial institution and the Title IV-D agency.

(13) "Multi-state financial institution" means any financial institution operating in two or more states that maintains accounts for its customers.

(14) "OCSE" means the Office of Child Support Enforcement within the federal Department of Health and Human Services.

(15) "Record" has the meaning given such term in Section ~~[section]~~ 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401).

(16) "Reporting agent" means a service provider who has a contract with a financial institution to report data match information.

(17) "Single-state financial institution" means a financial institution doing business exclusively within the State or a multi-state financial institution declining the option to process data matches through OCSE.

(18) "Total record" means the entire file submitted by a financial institution to report individual accounts and the dollar amount associated with each account, the total number of accounts and total dollar amount of the records contained in the file.

§55.556. *Liability of Financial Institutions for Disclosure of Information.*

(a) The federal Social Security Act (42 U.S.C. ~~[USC]~~ 666(a)(17)) provides that a financial institution shall not be liable under any federal or state law to any person:

(1) for any disclosure of information to the State child support enforcement agency₂[-];

(2) for encumbering or surrendering any assets they hold in response to a notice of lien or levy issued by the state child support enforcement agency₂[-] or

(3) for any other action taken in good faith to comply with the requirements of Section 466(a)(17)(A) of the Act. Section 469A of the Act also provides protection from liability for multi-state financial institutions disclosing information to the federal parent locate service through the multi-state financial institution data match.

(b) ~~A~~ [Subsection 231.307(d) of the Texas Family Code provides that a] financial institution providing information in compliance with Texas Family Code §231.307(d) or responding to a notice of child support lien provided under Texas Family Code Chapter 157, Subchapter G ~~[Subchapter G, Chapter 157]~~, or otherwise acting in good faith to comply with the Title IV-D agency's procedures under this section may not be held liable under any federal or state law for any damages

that arise from those acts other than the liability for failure to comply with the lien under Texas Family Code §157.324 or a levy under Texas Family Code §157.330.

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 August 20, 2012.

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Katherine Cary

General Counsel

Office of the Attorney General

Earliest possible date of adoption: September 30, 2012

For further information regarding this publication, please contact Diane Morris, Agency Liaison, at (512) 936-1180.



SUBCHAPTER M. INTERCEPT OF INSURANCE CLAIMS

1 TAC §§55.601 - 55.605

The Office of the Attorney General, Child Support Division, proposes amendments to §§55.601 - 55.605, regarding insurance reporting and intercept pursuant to Texas Family Code §231.015. The proposed amendments are revised to comply with statutory changes by the 82nd Legislative Session and to clarify the scope provisions, the child support lien reporting data match options, the automated data match process, interactive lookup options, the protection from liability, and the remittance of funds.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Ms. Key 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 enforcing the amended sections will be the clarification of the process for intercept of insurance claims. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on this proposed amendments should be submitted to John O'Connell, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code §231.015, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Texas Family Code Chapter 231.

The proposed amendments implement the Texas Family Code Chapters 157 and 231.

§55.601. *Scope.*

(a) Under Texas Family Code §231.015, [Section 231.015 of the Family Code requires] the Child Support Division (CSD) of the Office of the Attorney General, in consultation with the Texas Department of Insurance and representatives of the insurance industry, is required

to operate by rule a program under which insurers must [whereby an insurer shall] cooperate with the CSD [Child Support Division] in matching the names of [insuree] claimants with the names of child support obligors who owe past-due [child] support. When such an individual is identified, the insurer [Child Support Division] will receive either [file] a notice of child support lien or an income withholding order [on the claim] to secure the payment of the amount of past-due support. This subchapter explains how the matching process and the lien process work.

(b) Except as provided by subsection (c) of this section, as [As] used in this subchapter, a "claim" that must be reported is any which seeks an economic benefit for the claimant/obligor, including a request: ["claims" to be reported are claims]

(1) involving personal injury, personal damages, employment, workers compensation, wrongful or accidental death;[-]

(2) [and claims] by a life insurance beneficiary; or [beneficiaries.]

(3) by a life insurance policy owner seeking to surrender or terminate a policy to obtain cash value from the policy.

(c) A claim [Claims] involving payment for the actual repair or replacement of [only] property damaged [damage] or payment of actual medical expenses paid to a medical provider [costs] need not be reported. "Actual medical expenses" is limited to the amount actually paid to the provider and does not include any amounts billed but not paid.

(d) [(e)] All insurers [doing business in Texas, including, but not limited to domestic, foreign and alien companies, self-insurers, and surplus line insurers;] are subject to the reporting requirements under this subchapter and must[- All insurers shall] report any claim, whether made by a third or a first party [all claims] in which:

(1) the policy was issued in Texas; [or]

(2) [in which] the claimant resides in Texas; or [and]

(3) the claim arises or is filed in Texas.

(e) To determine whether a recipient of funds paid under a claim owes child support arrearages or is subject to a lien for child support arrearages, insurers are encouraged to report all claims [regardless of the State where the claim arises or is filed. As used in this subchapter, the term "insurers" includes all "agents" and "administrators" employed by or associated with the insurer].

(f) As used in this subchapter, "insurer" means:

(1) a domestic, foreign, or alien company which provides insurance coverage of any kind, including:

(A) life insurance;

(B) health insurance;

(C) liability insurance for an occurrence;

(D) an annuity; or

(E) any combination of the above.

(2) a Lloyd's plan;

(3) a reciprocal or interinsurance exchange;

(4) a fraternal benefit society;

(5) a mutual aid association, including a mutual insurance company;

(6) a surplus lines insurer; or

(7) an entity, sometimes referred to as a "self-insurer", that provides payment for losses ordinarily covered by an insurance company.

(g) Except as otherwise provided, "claimant" under this subchapter means:

(1) any person asserting a claim for loss under coverage by an insurer identified under subsection (f) of this section;

(2) a beneficiary of a policy issued by an insurer identified under subsection (f) of this section;

(3) an annuitant of an annuity issued by an insurer identified under subsection (f) of this section; or

(4) a life insurance policy owner seeking to surrender or terminate a policy to obtain cash value from the policy.

§55.602. Child Support Lien Reporting [Network].

(a) The CSD [Office of the Attorney General] has contracted [contracts] with the State of Rhode Island and Providence Plantations to participate in the Child Support Lien Network (CSLN). CSLN provides an insurer with two methods of matching: an Automated Data Match, or an Interactive Lookup. An insurer subject to the requirements of this subchapter [this matching process] may choose to provide or obtain matching information using either or both the CSLN Automated Data Match process and [or] the CSLN Interactive Lookup.

(b) As an alternative to an automated data match with CSLN, an insurer can participate in a similar automated data match with the federal Office of Child Support Enforcement (OCSE). An insurer may obtain information about the OCSE match program, including enrollment in it, by going to the OCSE website at <http://www.acf.hhs.gov/programs/cse/> and opening "Insurance Match Program" under "Federal/State Systems" on the website's main page or the insurer may access the program directly at insurance-match@afc.hhs.gov. An insurer or agent of an insurer participating in OCSE's automated, data match process may either submit information on claims to OCSE or receive a file from OCSE containing information about individuals who owe past-due support (delinquent obligor information) and generate a match file to OCSE.

§55.603. Automated Data Match.

(a) An insurer can conduct an automatic data match [electronic interface] of its pending claims against a [the] list of delinquent child support obligors maintained by the [through] Insurance Service Office (ISO). ISO is an industry service provider located[, headquartered] in New Jersey[;] which provides [maintains] a claim search service [system] to assist subscribing insurers in fraud detection. ISO can be contacted by email at njsupport@iso.com.

(b) An insurer participating in the automated data matching process must give ISO permission to match the insurer's [its] claim data with CSLN or OCSE. [ISO may be contacted by email at njsupport@iso.com.]

(c) CSLN matches its list of child support obligors daily against the ISO claim data. ISO returns matches to OCSE to distribute to the State child support agency(ies) responsible for collecting past-due support.

(d) A participating insurer will receive a notice of child support lien (or withholding instrument for a workers' compensation claim) only on those claims that the insurer has registered with ISO and that match the name of an obligor who owes past-due child support. Claims information that does not match individuals who owe past-due support is discarded.

§55.604. Interactive Lookup.

(a) By accessing the CSLN data base an [An] insurer may determine whether a [check the name of an individual insurance] claimant owes past-due child support [to see if there are outstanding child support obligations by accessing the CSLN database of child support obligors].

(b) To register for access to this database, an insurer must:

(1) go to the CSLN [Child Support Lien Network] web page at www.childsupportliens.com/;

(2) click on the FAQ tab at the top of the web page and select the question regarding registration;

(3) complete and electronically submit the registration form and confidentiality statement.

(c) Secure access to the CSLN database will be approved once [Once] the [insurer] registration information and confidentiality statement have [has] been received and reviewed[, secure access to the database of child support obligors will be approved]. The insurer will be notified by [via] e-mail of access approval and at that time will be provided with a[- This notice will include the] user ID [that has been assigned], the web site address, and basic instructions.

(d) Unless the insurer is participating in the CSLN or OCSE Automated Data Match, the insurer must query the database prior to payment of the claim [should query the CSLN database of child support obligors as early as possible in the claims process, and shall query the CSLN database not later than 15 days before a claim is paid]. For periodic payments, the query must only be prior to the initial payment.

(e) The insurer receives immediate notification of the status of the match:[-]

(1) if [If] there is no match, the insurer is informed;[-]

(2) if [If] there is a positive match, the insurer is informed and provided the basic match data:[-]

(3) if [If] there are multiple possible matches within one state, the insurer is asked to call CSLN to identify the correct obligor:[-]

(4) if [If] there are multiple possible matches within more than one state, the insurer is notified that CSLN will work with the insurer and the affected states to determine the appropriate course of action.

(f) When an interactive match occurs, CSLN notifies the State child support enforcement agency of a match. CSLN or the [The] State child support agency will send a notice of child support lien (or, in the case of a worker's compensation claim, a withholding instrument) to the insurer.

(g) As an alternative to CSLN, a life insurance company can use OCSE's web-based application, the Debt Inquiry Service (DIS), to submit information about life insurance beneficiaries prior to making a payout to determine if a beneficiary owes past-due support. The information may be provided through individual look-ups or by uploading a single file containing information about multiple individuals. The information provided by the life insurance companies is compared with individuals who owe past-due child support. If there is a match, the life insurance company receives the name of the State(s) where the individual owes past-due support and contact information for that State. If the match identifies an individual subject to a child support order being enforced by the CSD, the life insurance company may either contact the CSD or await notice from the CSD concerning the match.

(h) Apart from life insurance claims, the OCSE Debt Inquiry Services portal does not provide enough information to satisfy the insurance data match requirements under this subchapter.

§55.605. *Protection from Liability; Remittance of Funds.*

(a) An insurer that provides information required by this subchapter or acts in good faith to comply with procedures established by the CSD for the operation of the program under this subchapter, including the remittance of funds as specified under this rule, or [otherwise] responds to a notice of child support lien or levy under Texas Family Code Chapter 157, Subchapter G, [~~Subchapter G, Chapter 157,~~ or acts in good faith to comply with procedures established in the program under ~~§231.015~~] is not liable for those acts under any law to any person; including, but not limited to, any claims asserted under Chapter 541 or Chapter 542 of the Insurance Code. However an insurer who fails to comply with a child support lien, including the remittance of funds as specified under this rule, may be liable to the CSD as the child support lien claimant in an amount equal to the amount of funds payable under an insurance claim, not to exceed the amount of the child support arrearages for which the lien was issued. (See Texas Family Code §157.324) An insurer who has questions or concerns about a child support lien, including the appropriate remittance of funds under a policy to which the lien attaches, must contact the Texas Special Collections Unit, P.O. Box 12027, Austin, Texas 78711-2027, before paying out any funds under the policy.

(b) An insurer should remit funds in satisfaction of a child support lien in one of the following ways:

(1) On [is not liable, upon] receipt of a signed agreement [made] between the CSD [Child Support Division of the Office of the Attorney General] and a claimant and/or claimant's attorney, [if] the insurer should remit [remits] the funds agreed to be paid to satisfy the child support lien to: Texas State Disbursement Unit, Insurance Intercept, P.O. Box 245996, San Antonio, Texas 78224-5996. The funds should be made [with the remittance] payable to the Office of the Attorney General, and the remittance should identify [documentation submitted includes] the name of the claimant/obligor and the CSD's [IV-D] case number(s) as shown on the Notice of Lien.

(2) If the claimant is represented by an attorney but the insurer has not received a copy of any signed agreement between the attorney and the CSD, the insurer must remit all the funds directly to the claimant's attorney and include the Office of the Attorney General as a payee to whom the funds are payable.

(3) If the claimant has no attorney and the insurer has not received a copy of any signed agreement between the claimant and the CSD, the insurer must remit all the funds to the Texas Special Collections Unit, P.O. Box 12027, Austin, Texas 78711-2027 with the funds being made payable to both the Office of the Attorney General and the claimant and the remittance providing the name of the claimant/obligor and the CSD's case number(s) as shown on the Notice of Lien.

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 August 20, 2012.

TRD-201204400

Katherine Cary

General Counsel

Office of the Attorney General

Earliest possible date of adoption: September 30, 2012

For further information regarding this publication, please contact Diane Morris, Agency Liaison, at (512) 936-1180.



PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 95. UNIFORM COMMERCIAL CODE

SUBCHAPTER F. OTHER NOTICES OF LIENS

1 TAC §95.602, §95.607

The Office of the Secretary of State proposes amendments to §95.602 and §95.607, concerning other notices of liens.

The purpose of the amendments of the Uniform Commercial Code rules is to reflect current filing policies and procedures due to statutory requirements and to make minor corrections to rule language.

Randy Moes, Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state or local government as a result of the rule adoption.

Mr. Moes also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated will be clarification in matters related to filing of Uniform Commercial Code documents with the Secretary of State and the submission of information requests. There will be no effect on large businesses, small businesses or micro-businesses. There will be no anticipated economic cost to individuals.

Comments on the proposals may be submitted to Randy Moes, Director, Uniform Commercial Code Section, P.O. Box 13193, Austin, Texas 78711-3193. The public comment period ends on September 28, 2012 at 5:00 p.m.

The amendments are proposed under the authority of §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act; Subtitle H of Title 5, Texas Agriculture Code; Subtitle E of Title 6, Texas Agriculture Code; Subchapter D of Chapter 70, Texas Property Code; Subchapter E of Chapter 70, Texas Property Code; and Subchapter J of Chapter 51, Texas Government Code.

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

§95.602. *Notice of Utility Security Instrument.*

(a) Filing. A utility security instrument, an instrument that supplements or amends a utility security instrument, or a statement of name change, merger, or consolidation will be accepted for filing as defined in Chapter 261, Texas Business and Commerce Code. A separate notice is submitted for each utility security instrument and is filed and indexed within the UCC information management system. An instrument that supplements or amends a utility security instrument, or a statement of name change, merger, or consolidation is filed and indexed within the UCC information management system as though it were a financing statement amendment and must include the identification of the initial file number (as defined in §9.519(b), Texas Business and

Commerce Code). An amendment to a utility security instrument shall be refused if the document's identification of the initial filing does not correspond to the identification number of a utility security instrument then active in the UCC information management system.

(1) Where to file. Utility security instruments, instruments supplementary or amendatory thereto, or a statement of name change, merger, or consolidation are filed with the filing office pursuant to §261.004, Texas Business and Commerce Code.

(2) Fee. The required fee for filing and indexing each utility security instrument, an instrument that supplements or amends a utility security instrument, or a statement of name change, merger, or consolidation is pursuant to §261.008, Texas Business and Commerce Code.

(3) Duration. The perfection and notice provided by the filing of a utility security instrument take effect on the date of filing and remain in effect without any renewal, refiling, or continuation statement until the interest granted as security is released by the filing of a termination statement, or a release of all or a part of the property, signed by the secured party pursuant to §261.005, Texas Business and Commerce Code.

(b) Mechanics of search. Search requests and reports are conducted pursuant to §261.009, Texas Business and Commerce Code and as described in §§95.500 - 95.505 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to §261.009, Texas Business and Commerce Code and §95.104 and §95.105 of this title (relating to Fees and Expedited Services).

(d) Judicial Finding of Fact filing fee. The fee for a judicial finding of fact is pursuant to §51.905, Texas Government Code.

§95.607. Notice of Contract Agricultural Liens.

(a) Filing. Contract agricultural liens will be accepted for filing as defined in Chapter 70, Subchapter E, Texas Property Code. Contract agricultural liens are filed and indexed within the UCC information management system. A separate notice of claim of lien is submitted for each contract agricultural lien.

(1) Where to file. Contract agricultural liens are filed with the filing office pursuant to §70.404 [~~Chapter 70, Subchapter E~~], Texas Property Code.

(2) Fee. The required fee for filing and indexing each notice of claim of lien is pursuant to [~~Chapter 70, Subchapter E~~], §70.404, Texas Property Code.

(3) Duration. The notice of claim of lien is effective until the lien is satisfied pursuant to [~~Chapter 70, Subchapter E~~], §70.407, Texas Property Code.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.500 - 95.505 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to [~~Chapter 70, Subchapter E~~], §70.404, Texas Property Code, and §95.104 and §95.105 of this title (relating to Fees and Expedited Services).

(d) Judicial Finding of Fact filing fee. The fee for a judicial finding of fact is pursuant to §51.905, Texas Government Code.

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

Filed with the Office of the Secretary of State on August 16, 2012.

TRD-201204328

Wroe Jackson

General Counsel

Office of the Secretary of State

Earliest possible date of adoption: September 30, 2012

For further information, please call: (512) 463-5562



TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 12. LOANS AND INVESTMENTS

SUBCHAPTER A. LENDING LIMITS

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes the repeal of §12.2; new §12.2 and §12.12; and amendments to §§12.3, 12.6, and 12.10, concerning lending limits.

The new and amended rules are proposed for the purpose of applying the lending limit of Finance Code, §34.201, to certain credit exposures arising from derivative and securities financing transactions, to enhance safety and soundness of state banks through quantifying and limiting credit risk incurred in off-balance sheet investment and financing activity, as well as to accommodate new requirements and other changes in federal law.

BACKGROUND

Derivative and securities financing transactions can range from relatively simple to extremely complex. The following descriptions are very general and for the limited purpose of aiding the reader in understanding the intent of the proposed amendments.

Derivative Transactions

A derivative transaction is a financial contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivatives, and any other instrument that poses similar counterparty credit risks.

Derivatives are risk-shifting devices initially created and used to reduce exposure to changes in foreign exchange rates, interest rates, or stock indexes. For example, to mitigate risks that occur from ordinary lending activities, smaller, non-complex banks typically use and rely almost exclusively on derivatives known as "swaps," a simultaneous buying and selling of the same security or obligation. In a low interest rate environment, most borrowers desire fixed rate loans. Most banks prefer making floating rate loans to better match the inevitable changes in interest rates they pay for deposits and wholesale loans that serve as the funding source for customer loans. To allow the borrower to pay a fixed rate, a bank can enter into an interest rate swap with a counterparty, i.e., "swap" its fixed rate loan payment stream for a floating rate payment stream based on the identical principal amount, as a hedge to better control fluctuations in its borrowing costs. In

this manner, both the bank and its customer get what they want, risks are contained, and mismatches are avoided.

Thus, derivative investments can be highly useful in managing or hedging existing risk in a bank's loan or investment portfolio. However, because a derivative product can be created by means of an agreement, the types of derivative products that can be developed are limited only by the imagination. Many derivative products available today possess a bewildering complexity and lack of transparency that can result in poor investment decisions by the occasional user. In some instances, a derivative contract may appear to hedge a particular risk but actually increase risk to the institution. Even "plain vanilla" derivatives carry potentially excessive risk if a bank relies too heavily on a single counterparty.

The past decade revealed a series of serious financial losses suffered by county and municipal governments, well-known corporations, banks and mutual funds that had invested in these products. As the prevalence and complexity of the derivatives market ballooned, unexpected shifts in derivative values played a major role in the downturn of the world's financial system, leading to the recent recession.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010) (Dodd-Frank) was aimed at a financial regulatory overhaul that, among other matters, established a more regulated environment for derivatives trading. Because most insured banks use deposits to fund their lending and investment activities, and because catastrophic mistakes by banks can end up costing taxpayers, Dodd-Frank imposes additional requirements on banks to identify the risks being assumed in derivative transactions, evaluate and comprehend those risks, and continuously monitor and manage those risks. Part of the risk identification and management process is determining the potential monetary exposure of the parties under the terms of the derivative instrument, a step sometimes overlooked in the past because money is typically not due until the specified date of performance of a derivative contract. The proposed rules will require a state bank to make up-front determinations of potential credit exposure from a derivative transaction, as well as from a securities financing transaction. Federal rules will impose similar requirements on national banks.

Securities Financing Transactions

A securities financing transaction is collateralized lending or borrowing in the form of a repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. Each of these transaction types are defined and described in connection with discussion of §12.12(c) as proposed.

Both parties to a securities financing transaction are subject to credit risk because the market value of the collateral can change during the life of the loan. In addition, the lender must consider both the creditworthiness of the counterparty and the quality of the underlying collateral. Banks are already expected to maintain a risk management process to ensure that credit risk is effectively identified, measured, monitored, and controlled, but requiring that the aggregate credit exposure to a single counterparty be compared to the lending limit is anticipated to help in controlling this risk.

Dodd-Frank Requirements

Effective January 21, 2013, Section 611 of Dodd-Frank prohibits state banks from engaging in derivative transactions unless "the

law with respect to lending limits of the State in which the insured State bank is chartered takes into consideration credit exposure to derivative transactions." Banks have long been encouraged to quantify and limit the off-balance sheet credit risk inherent in a derivative contract, or to avoid over-reliance on a limited number of counterparties, but have not previously been required by law to compare that credit exposure to the lending limit.

Effective July 21, 2012, national banks are subject to similar but broader requirements. Section 610 of Dodd-Frank expanded the statutory definition of "loans and extensions of credit" in 12 U.S.C. 84 to include credit exposure arising from repurchase and reverse repurchase transactions and securities lending and borrowing transactions (collectively, securities financing transactions), as well as derivative transactions.

The problem with adding these transactions to lending limit considerations is that they do not fit squarely into any lending product category. For example, derivative transactions are not loans, do not arise from an advance of funds, and are not extensions of credit. Neither Section 610 nor Section 611 of Dodd-Frank provides guidance on how to measure the fluctuating credit exposure of derivative transactions and securities financing transactions for purposes of the lending limit.

Measuring and quantifying the potential credit exposure under a derivative transaction or a securities financing transaction is typically accomplished through the use of sophisticated computer models and simulations that only large banks can afford to purchase or develop. Because the department does not have the depth of capital markets expertise that the Office of the Comptroller of the Currency (OCC) possesses, these difficulties led the department to conclude that state action to implement Section 611 of Dodd-Frank should be postponed until the OCC issued its regulations implementing similar requirements under Section 610.

On June 20, 2012, the OCC released its interim final rule to implement Section 610 of Dodd-Frank. Published in the June 21, 2012, edition of the *Federal Register* (77 Fed. Reg. 37265), the rule sets out procedures and methodologies for calculating the credit exposure under these newly covered transactions and requests comments in response to a series of questions regarding how best to address certain ambiguities and difficulties raised by the requirements of Section 610. In order to reduce the practical burden of these calculations, particularly for smaller banks, the OCC commendably provided different options for measuring credit exposures in new 12 C.F.R §32.9. These alternatives would appear to implement the statutory changes, consistent with safety and soundness and the goals of the statute, but in a manner that should reduce unnecessary new regulatory burden.

Section 610 of Dodd-Frank became effective on July 21, 2012. The interim final rule adopted by the OCC is also effective on July 21, 2012. However, in recognition that national banks will need time to conform their operations to the amendments implementing Section 610, the OCC added a temporary exemption to the interim final rule (codified at 12 C.F.R. §32.1(d)) for the transactions covered by Section 610 until January 1, 2013, in order to allow institutions a sufficient period to make adjustments to assure compliance with the new requirements.

The 45-day comment period on the OCC interim final rule closes on August 6, 2012. The OCC may thereafter amend the interim final rule based on comments received. If the OCC determines that amendments are required, the OCC is anticipated to issue a

final amended rule as expeditiously as possible, and may adjust the compliance date if necessary.

Although Section 611 of Dodd-Frank only requires states to take derivative transactions into consideration for lending limits purposes, the department has recommended incorporating credit exposures arising from both derivative transactions and securities financing transactions in the proposed amendments for three reasons. First, as a safety and soundness measure, the significant credit exposure that can arise from a securities financing transaction should be measured, monitored and limited. Second, the department has recommended that new limits be modeled on the OCC approach under Section 610 of Dodd-Frank (which limits both derivative and securities financing transactions), to take advantage of the deeper capital markets expertise of the OCC and to discourage the potential for regulatory arbitrage (converting from national bank to state bank) based on a perception of weaker state regulation. Finally, the limits on a national bank's ability to engage in securities financing transactions may in any event be indirectly applicable to state banks through application of Section 24 of the Federal Deposit Insurance Act (12 U.S.C. §1831a) (prohibiting state banks from engaging in activities as principal that national banks cannot engage in, except under certain conditions).

The effective date for Section 611 of Dodd-Frank is January 21, 2013. In recognition that the OCC interim final rule may be amended prior to that date, the department has recommended that action by the commission to adopt this proposal be delayed until the commission meets on December 14, 2012. If possible, the department may amend the rules prior to adoption to incorporate amendments similar to the OCC, if such amendments further streamline its rule and reduce regulatory burden while still accomplishing the objectives imposed by Dodd-Frank.

DESCRIPTION OF THE PROPOSED RULES

Proposed new §12.12, relating to credit exposure arising from derivative and securities financing transactions, is the central provision in this proposal. Proposed §12.12 is modeled on 12 C.F.R. §32.9, the new OCC regulation relating to credit exposure arising from derivative and securities financing transactions. All other proposed changes with one minor exception are designed to conform other rules in Chapter 12, Subchapter A, to proposed §12.12. Finally, the explanation of the way the proposed amendments would work is largely drawn from the OCC explanation published at 77 FR 37265 (June 21, 2012).

Definitions pertaining to Chapter 12, Subchapter A, are contained in §12.2. For purposes of proposed §12.2, the existing definition of borrower must be amended and ten new definitions must be added. In order to arrange this large number of definitions in alphabetical order, existing §12.2 is proposed for repeal in connection with the proposal of new §12.2. However, six of the definitions in proposed §12.2 are unchanged from existing §12.2.

The definition of "borrower" in proposed new §12.2(1) is expanded to include a party to whom the bank has credit exposure arising from a derivative transaction or a securities financing transaction. Proposed new §12.2(5) and (14) add definitions of "derivative transaction" and "securities financing transaction," mirroring the definitions added to federal law by Section 610 of Dodd-Frank or by the OCC in revised 12 C.F.R. §32.2. To further implement detailed aspects of these definitions and proposed new §12.12, new definitions are added for "credit derivative," "effective margining arrangement," "eligible credit derivative,"

"eligible protection provider," "qualifying central counterparty," and "qualifying master netting agreement," similar to how these terms are defined in federal regulations. These terms are used in proposed new §12.12.

Section 12.3 is also a definitional section limited to articulating what is included and what is not included in "loans or extensions of credit" for purposes of the lending limit. The proposed amendment to §12.3 would add new §12.3(a)(10) to include any credit exposure arising from a derivative transaction or a securities financing transaction. Existing §12.3(a)(10) would be renumbered as §12.3(a)(11). Further, proposed new §12.3(b)(6) would add intraday credit exposures arising from a derivative transaction or securities financing transaction as an additional exception to the lending limits for state banks. This exception will help minimize the impact of the lending limit on the payment and settlement of financial transactions and is consistent with the current application of state bank lending limits to certain transactions. For example, existing §12.3(b)(4) and (5) provide that an intraday overdraft and a sale of Federal funds with a maturity of one day or less are not subject to the lending limit. Existing §12.3(b)(6) is proposed to be renumbered as §12.3(b)(7).

Unrelated to derivative or securities financing transactions, the proposal would also amend §12.3(b)(3)(A) to clarify that a relatively recent change in generally accepted accounting principles by Financial Accounting Standards No. 166 does not affect lending limit calculations pertaining to the use of participation agreements.

Section 12.6 relates to transactions not subject to lending limits. The proposed amendment to §12.6 would add new subsection (i) to except from the lending limit credit exposures arising from securities financing transactions in which the securities being financed are certain government securities, specifically those securities in which a state bank may invest without limit pursuant to Finance Code, §34.101(d). These transactions typically involve less risk because of the quality and marketability of the securities employed. This exception may reduce regulatory burden for smaller state banks because it is relatively uncommon for these banks to engage in a securities financing transaction involving securities other than the referenced government securities.

Section 12.10 relates to nonconforming loans. The proposed amendment would add new §12.10(a)(5) to provide that a credit exposure arising from a derivative transaction or securities financing transaction and determined by the internal model method will not be considered a violation of the lending limit and will be treated as nonconforming if the extension of credit was within the bank's legal lending limit at execution and is no longer in conformity because the exposure has increased since execution. (Credit exposure is always static or decreasing under non-model methods, as discussed in connection with proposed new §12.12.) The proposal would renumber the remaining paragraph in subsection (a) and also make a conforming change to subsection (b).

Proposed new §12.12 would set forth the methodology for calculating the credit exposure arising from a derivative transaction or a securities financing transaction entered into by a state bank for purposes of determining the bank's lending limit. Proposed subsection (b) addresses derivative transactions and proposed subsection (c) addresses securities financing transactions, as described in the following paragraphs.

Derivative Transactions

The credit exposure arising from a derivative transaction is commonly viewed as the sum of the current credit exposure on the contract or portfolio plus some measure of potential future exposure (PFE). Under proposed new §12.12, the current credit exposure is determined by the mark-to-market value (MTM) of the derivative contract. The current MTM is generally zero at execution of the contract. Subsequent to the execution of the contract, if the MTM value is positive, then the current credit exposure equals that MTM value. If the MTM value is zero or negative, then the current credit exposure is zero.

PFE, on the other hand, recognizes the possibility that the MTM amount may increase over time, based upon changes in market factors. The PFE, when added to the MTM amount, can be viewed as the anticipated ceiling of credit exposure at the execution of a derivative transaction.

Proposed new §12.12(b) provides three methods for calculating credit exposure of derivative transactions other than credit derivatives. Unless required to use a specific method by the commissioner pursuant to §12.12(b)(3), a state bank may choose which of these methods it will use. However, a state bank must use the same method for calculating credit exposure arising from all derivative transactions.

Under the first method, the "internal model method," state banks may model their exposures via an internal model. Under this method, the counterparty credit exposure of a derivative transaction would be measured by a model that estimates a credit exposure amount, inclusive of the current MTM. A bank using this approach would calculate its exposure by using the internal model that it considers most appropriate in evaluating the risk associated with derivative transactions. Like the OCC's rule for national banks, the proposal requires the bank's model to be approved for purposes of §53 of the federal capital adequacy guidelines codified as Appendix C to 12 C.F.R. part 325 (or Appendix F to 12 C.F.R. part 208 in the case of a bank that is a member of the Federal Reserve System), or another approved model. Comments are invited on whether this is an appropriate standard or whether another standard would be more suitable.

A state bank that elects to calculate its credit exposure by using the internal model method will be permitted to net credit exposure of derivative transactions arising under the same qualifying master netting agreement, thereby reducing the bank's exposure to the borrower to the net exposure under the master netting agreement.

Second, a state bank may choose to measure the credit exposure arising from a derivative transaction under the "conversion factor matrix method." Under this method, the credit exposure will equal and remain fixed at the PFE of the derivative transaction, as determined at execution of the transaction by reference to a simple look-up table (Table 1). This approach will be considerably less burdensome than the internal model method because a state bank would not have to establish statistical simulations of future PFE calculations.

While the simplicity and stability of the conversion factor matrix method will make it easy to apply, actual credit exposure can arise during the life of a derivative contract that is not captured under this method. The department believes that the potentially unmeasured risks can be addressed in the supervisory process by examiners appropriately responding to unsafe and unsound concentrations, and that the certainty and simplicity of allowing non-complex banks to "lock in" the attributable exposure at the execution of the contract balance the possible risks.

Under the third method, the "remaining maturity method," the measurement of the credit exposure incorporates both the current MTM and the transaction's remaining maturity (measured in years) as well as a fixed add-on for each year of the transaction's remaining life. Specifically, this method measures credit exposure by adding the current MTM value of the transaction to the product of the notional amount of the transaction, the remaining maturity of the transaction, and a fixed multiplicative factor. These multiplicative factors differ based on product type and are determined by a look-up table (Table 2).

The credit exposure calculated under the remaining maturity method accounts for the diminishing maturity of the transaction as well as the current MTM of the transaction. A state bank may find that any additional burden involved with determining the MTM under this optional method is balanced by the fact that, depending on the MTM, as the maturity decreases, the credit exposure also decreases, thereby permitting additional extensions of credit under the lending limit.

In the case of credit derivatives, in which a state bank buys or sells credit protection against loss on a third-party reference entity, a special rule would apply as set forth in proposed §12.12(b)(2). Specifically, a state bank that uses the conversion factor matrix method or remaining maturity method, or that uses the internal model method without entering an effective margining arrangement with its counterparty as defined in proposed §12.2(6), calculates the counterparty credit exposure arising from credit derivatives by adding the net notional value of all protection purchased from the counterparty on each reference entity. For example, Bank A buys and sells credit protection from and to Bank B on Firms X, Y and Z. No effective margining arrangement exists between the banks. Bank A's net notional protection purchased from Bank B is \$50 for Firm X and \$100 for Firm Y. Bank A's net protection sold to Bank B is \$35 for Firm Z. The lending limit exposure of Bank A to Bank B is \$150.

In addition, a state bank would calculate the credit exposure to a reference entity arising from credit derivatives by adding the notional value of all protection sold on the reference entity. For example, Bank C buys and sells credit protection on Firms 1, 2 and 3. Bank C's notional protection sold is \$100 for Firm 1, \$200 for Firm 2 and \$300 for Firm 3. The lending limit exposure of Bank C to Firm 1 is \$100, to Firm 2 is \$200 and to Firm 3 is \$300.

However, the bank may reduce its exposure to a reference entity by the amount of any "eligible credit derivative," defined in proposed §12.2(7), purchased on that reference entity from an "eligible protection provider," defined in proposed §12.2(8). In the last example, if Bank C purchases protection on Firm 3 from an eligible protection provider in the amount of \$25 via an eligible credit derivative, Bank C can reduce its \$300 lending limit exposure to Firm 3 to \$275.

Although the internal model method, the remaining maturity method, and the conversion factor matrix method will generally be available to all state banks, proposed §12.12(b)(3) provides that the commissioner may require use of a specific method to calculate credit exposure based on a finding that such method is necessary to promote the safety and soundness of the bank.

Securities Financing Transactions

Proposed §12.12(c) would provide state banks with two options for determining the credit exposure of securities financing transactions, defined as repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities bor-

rowing transactions by proposed §12.2(14). These methods recognize that the size of the state bank and complexity and volume of the securities financing transactions engaged in by the state bank may warrant different approaches. As with derivative transactions, unless required to use a specific method pursuant to proposed §12.12(c)(2), a state bank may choose which of the two methods it will use and would be required to use this same method for calculating credit exposure arising from all securities financing transactions.

The first option, the "internal model method," provides that a state bank may calculate the credit exposure of a securities financing transaction by using an internal model approved for purposes of §32(d) of the federal capital adequacy guidelines, or another approved model.

Calculation of the credit exposure under the second option, the "non-model method," is based on the type of securities financing transaction at issue. As with derivative transactions, the department finds that, for non-complex state banks engaged in these transactions, the simpler approach to measuring credit exposure in the non-model method adequately protects the safety and soundness of the state bank while mitigating regulatory burden. The specific method for calculating credit exposure under the non-model method for each type of securities financing transaction is addressed in the following discussion.

Repurchase agreements and securities lending transactions. In a repurchase agreement, also known as a liability repo, a state bank that owns securities borrows funds by selling the specified securities to another party under a simultaneous agreement to repurchase the same securities at a specified price and date. In a securities lending transaction, a state bank lends securities to a counterparty (who may use them to cover a short sale or satisfy some other obligation). A securities loan is collateralized, usually by cash but sometimes by other securities. The economics of a securities lending transaction are identical to a repurchase agreement when the collateral received by the state bank is cash. If the collateral is securities, the economics are slightly different because there is the risk of market price changes on both the securities loaned and the securities received as collateral. For example, the value of the security loaned could increase, and the value of the collateral received could decrease.

The non-model method provides that for a repurchase agreement or a securities loan where the collateral is cash, exposure under the lending limit will be equal to and remain fixed at the net current exposure, i.e., the market value at execution of the transaction of securities transferred to the other party, less cash received from the other party. For securities lending transactions where the collateral is other securities (i.e., not cash), the proposed rule provides that the exposure will be equal to and remain fixed at the product of the higher of the two "haircuts" associated with the securities, as determined by a look-up table included in the regulation (Table 3), and the higher of the two par values of the securities. (In finance, a "haircut" is a percentage that is subtracted from the market value of an asset that is being used as collateral. The size of the haircut reflects the perceived risk associated with holding the asset.)

Reverse repurchase agreements (asset repos) and securities borrowing transactions. In a reverse repurchase agreement, also known as an asset repo, a state bank lends money to a counterparty by purchasing a security and agreeing to resell the security to the counterparty at a future date. For example, a state bank may enter into an asset repo to invest excess liquidity or to obtain securities to use as collateral in other transactions, or

a state bank may need securities to cover short positions or to pledge against public funds to obtain a low-cost source of funding.

In a typical securities borrowing transaction, a state bank needing to borrow securities obtains the securities from a securities lender and posts collateral in the form of cash and/or marketable securities with the securities lender (or an agent acting on behalf of the securities lender) in an amount that fully covers the value of the securities borrowed plus an additional margin, usually ranging from two to five percent. The economics of a securities borrowing transaction are identical to a reverse repurchase agreement (asset repo) when the collateral posted by the state bank is cash.

Under the alternative, non-model method in proposed §12.12(c), the credit exposure arising from a reverse repurchase agreement or a securities borrowing transaction where the collateral is cash will equal and remain fixed at the product of the haircut associated with the collateral received, as determined in Table 3, and the amount of cash transferred to the other party. The credit exposure arising from a securities borrowed transaction where the collateral is other securities (i.e., not cash) must equal and remain fixed at the product of the higher of the two haircuts associated with the securities, as determined in Table 3, and the higher of the two par values of the securities.

Mandatory use of method. Finally, as with derivative transactions, §12.12(c)(2) provides that the commissioner may require a state bank to use a specific method to calculate the credit exposure of securities financing transactions if the commissioner finds that this method is necessary to promote the safety and soundness of the state bank.

Explanatory Table

The OCC provided an explanatory table to aid in understanding its interim final rule, published with the interim final rule in the June 21, 2012 edition of the Federal Register (77 Fed. Reg. 37265, at 37271-37273). The department has prepared a similar explanatory table that lists each transaction subject to proposed §12.12 by type, a description of what happens in the transaction, the nature of the credit risk assumed in the transaction, the purpose of the transaction, and how credit exposure would be calculated under §12.12 as proposed, followed by an illustrative example for each type.

The explanatory table is intended to aid in understanding the proposal and can be viewed at www.dob.texas.gov/legal/1212_table.pdf. Upon request, a copy of the table can be obtained by email, fax or U.S. mail. The table is not a substitute for reviewing proposed §12.12 itself.

FISCAL AND ECONOMIC IMPACT ANALYSIS

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

Mr. Bacon also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is improved risk management by state banks engaged in derivative or securities financing transactions, primarily through the routine capture and evaluation of, and limits placed upon, the aggregate credit exposure of the bank to each counterparty with whom the bank does business.

For each year of the first five years that the rules will be in effect, the economic costs to persons required to comply with the rules as proposed are anticipated to be minimal. State banks have long been expected to maintain a risk management process to ensure that credit risk is effectively identified, measured, monitored, and controlled. Accordingly, every state bank that actually participates in derivative or securities financing transactions should already be engaged in appropriate risk management activities.

However, additional steps may be required to comply with the rules as proposed. Banks that engage in derivative or securities financing transactions should be prepared to: (1) update their policies and procedures; (2) ensure that bank management information systems can capture and consolidate credit data by counterparty or borrower from all departments and lines of business, including lending, foreign exchange, trust, broker-dealer, etc.; (3) monitor and report on compliance with internal and legal lending limits; (4) monitor each derivative or securities financing transaction for the benefit of both customer and bank; and (5) be aware that credit exposure under a derivative or securities financing transaction must be combined with all other loans and extensions of credit to that counterparty for purposes of the legal lending limit.

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

Currently there are 297 state banks. Of these 297 state banks, 241 or 81.2% are small businesses (banks with less than 100 employees or less than \$6 million in annual gross receipts), and 92 or 31.0% are micro-businesses (banks with 20 or fewer employees) as those terms are defined in Government Code, §2006.001. Moreover, although all state banks will be subject to the rules as proposed, only state banks that actually engage in derivative or securities financing transactions will be obligated to comply. In determining whether the rules as proposed would have an adverse economic impact on small businesses, the department reviewed the March 2012 Reports of Condition and Income (Call Report) data to determine that only 60 state banks actually engaged in derivative or securities financing transactions during the first quarter of 2012. Of these 60 state banks, 24 banks qualify as small businesses.

To address the potential for adverse economic impact and regulatory burden, §12.12 as proposed will permit use in certain circumstances of look-up tables for measuring the exposures for each transaction type. The department believes that, for non-complex state banks engaged in these transactions, the simpler approach to measuring credit exposure by non-model methods using look-up tables adequately protects the safety and soundness of the state bank while mitigating regulatory burden.

Further, proposed §12.6(i) will exempt credit exposures arising from securities financing transactions in which the securities being financed are government securities in which a state bank may invest without limit pursuant to Finance Code §34.101(d). These transactions typically involve less risk because of the quality and marketability of the securities employed. This exception will aid smaller state banks because it is relatively uncommon for these banks to engage in a securities financing transaction involving securities other than the referenced government securities.

This approach will permit banks to adopt compliance alternatives that fit their size and risk management requirements, consistent with safety and soundness, and will reduce or eliminate any adverse economic impact on the 24 banks that qualify as small businesses.

REQUEST FOR COMMENTS

To be considered, comments on the proposed new and amended sections must be submitted no later than 5:00 p.m. on November 2, 2012. 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.

7 TAC §12.2

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

The repeal is proposed under Finance Code, §34.201(b), which authorizes the commission to adopt rules to administer the lending limit, including rules to: (1) define or further define terms used by Finance Code, §34.201; and (2) establish limits, requirements, or exemptions other than those specified by Finance Code, §34.201 for particular classes or categories of loans or extensions of credit. In addition, Finance Code, §31.002(b), authorizes the commission to adopt additional definitions by rule to accomplish the purposes of Finance Code, Title 3, Subtitle A.

Finance Code, §34.201, is affected by the proposed repeal.

§12.2. Definitions.

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

Filed with the Office of the Secretary of State on August 17, 2012.

TRD-201204335

A. Kaylene Ray
General Counsel

Texas Department of Banking

Proposed date of adoption: December 14, 2012

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



7 TAC §§12.2, 12.3, 12.6, 12.10, 12.12

The new and amended sections are proposed under Finance Code, §34.201(b), which authorizes the commission to adopt rules to administer the lending limit, including rules to: (1) define or further define terms used by Finance Code, §34.201; and (2) establish limits, requirements, or exemptions other than those specified by Finance Code, §34.201 for particular classes or categories of loans or extensions of credit. In addition, Finance Code, §31.002(b), authorizes the commission to adopt additional definitions by rule to accomplish the purposes of Finance Code, Title 3, Subtitle A.

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

§12.2. Definitions.

Definitions in the Finance Code, Title 3, Subtitles A and G, are incorporated herein by reference. As used in this subchapter and in Finance Code, Chapter 34, concerning investments and loans, the following

words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Borrower--A person who is named as a borrower, obligor, or debtor in a loan or extension of credit; a person to whom a state bank has credit exposure arising from a derivative transaction or a securities financing transaction, entered by the bank; or any other person, including but not limited to a drawer, endorser, or guarantor who is considered to be a borrower under the direct benefit, source of repayment, or common enterprise tests set forth in §12.9 of this title (relating to Aggregation and Attribution).

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

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

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

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

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

(4) Credit derivative--As defined in §2 of the federal capital adequacy guidelines.

(5) Derivative transaction--Includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(6) Effective margining arrangement--A master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds \$1 million created by the derivative transactions covered by the agreement.

(7) Eligible credit derivative--A single-name credit derivative or a standard, non-tranched index credit derivative provided that:

(A) the derivative contract meets the requirements of an eligible guarantee, as defined in §2 of the federal capital adequacy guidelines, and has been confirmed by the protection purchaser and the protection provider;

(B) any assignment of the derivative contract has been confirmed by all relevant parties;

(C) if the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or

admission in writing of its inability generally to pay its debts as they become due and similar events;

(D) the terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(E) if the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(F) if the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

(G) if the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(8) Eligible protection provider--An entity that is:

(A) a sovereign entity (a central government, including the U.S. government; an agency; department; ministry; or central bank);

(B) the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(C) a Federal Home Loan Bank;

(D) the Federal Agricultural Mortgage Corporation;

(E) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. §1813(c);

(F) a bank holding company, as defined in section 2 of the Bank Holding Company Act, as amended, 12 U.S.C. §1841;

(G) a savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act, 12 U.S.C. §1467a;

(H) a securities broker or dealer registered with the SEC under the Securities Exchange Act of 1934, 15 U.S.C. §§78o et seq.;

(I) an insurance company that is subject to the supervision of a State insurance regulator;

(J) a foreign banking organization;

(K) a non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; or

(L) a qualifying central counterparty.

(9) Federal capital adequacy guidelines--The federal reference entitled "Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches," codified as Appendix C to 12 C.F.R. part 325 (or Appendix F to 12 C.F.R. part 208 in the case of a bank that is a member of the Federal Reserve System).

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

(11) Qualifying central counterparty--As defined in §2 of the federal capital adequacy guidelines.

(12) Qualifying master netting agreement--As defined in §2 of the federal capital adequacy guidelines.

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

(14) Securities financing transaction--A repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.

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

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

§12.3. Loans and Extensions of Credit.

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

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

(9) aggregate cash surrender value of life insurance policies from any one insurance company; ~~and~~

(10) any credit exposure to a person arising from a derivative transaction or a securities financing transaction between a state bank and the person, as determined pursuant to §12.12 of this title (relating to Credit Exposure Arising from Derivative and Securities Financing Transactions); and

(11) ~~(10)~~ another category of transactions that is the equivalent of a loan or extension of credit as determined by the banking commissioner in the exercise of discretion.

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

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

(3) that portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided the participation results in a pro rata sharing of credit risk proportionate to respective interests of the originating and participating lenders, except that:

(A) notwithstanding any requirement of Statement of Financial Accounting Standards No. 166 (Financial Accounting Standards Bd. 2009), for lending limit purposes, if the participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be considered to exist only if, in the event of default or comparable event provided in the agreement, the participants share in all subsequent repayments and collections in proportion to their actual percentage participation at the time of the occurrence of the event;

(B) - (D) (No change.)

(4) (No change.)

(5) the sale of Federal funds with a maturity of one day or less, or Federal funds sold under a continuing contract, including contracts that provide for weekly settlement if the parties have the contractual right to obtain their funds at maturity of each transaction; ~~or~~

(6) intraday credit exposures arising from a derivative transaction or a securities financing transaction; or

(7) ~~(6)~~ a renewal or restructuring of a nonconforming loan as a new loan or extension of credit, subject to compliance with §12.10(b) of this title (relating to Nonconforming Loans).

§12.6. Loans Not Subject to Lending Limits.

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

(i) Credit exposures arising from transactions financing certain government securities. Pursuant to Finance Code, §34.201(b)(2), credit exposures arising from securities financing transactions in which the securities financed are securities in which a state bank may invest without limit pursuant to Finance Code, §34.101(d), are not subject to the limitations of Finance Code, §34.201, and this subchapter.

§12.10. Nonconforming Loans.

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

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

(4) the lending limit or capital definitions or standards have changed after the date the loan or extension of credit was originated; ~~or~~

(5) in the case of a credit exposure arising from a transaction identified in §12.12(a) of this title (relating to Credit Exposure Arising from Derivative and Securities Financing Transactions) and measured by the internal model method specified in §12.12(b)(1)(A) or (c)(1)(A) of this title, an increase in the credit exposure subject to the lending limits of Finance Code, §34.201, or this subchapter after execution of the transaction; or

(6) ~~(5)~~ collateral securing the loan or extension of credit to satisfy the requirements of a special lending limit or lending limit exception has declined in value.

(b) A bank must exercise reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of circumstances described in subsection (a)(1) - (5) ~~(a)(1) - (4)~~ of this section into conformity with the legal lending limit, consistent with safe and sound banking practices. As a last resort, a bank may renew or restructure an existing, nonconforming loan or extension of credit as a new, nonconforming loan or extension of credit without violating the Finance Code or this subchapter, unless:

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

(c) (No change.)

§12.12. Credit Exposure Arising from Derivative and Securities Financing Transactions.

(a) Scope. This section sets forth the rules for calculating the credit exposure arising from a derivative transaction or a securities financing transaction entered into by a state bank for purposes of determining the bank's lending limit pursuant to Finance Code, §34.201, and this subchapter.

(b) Derivative transactions.

(1) Non-credit derivatives. Subject to paragraphs (2) and (3) of this subsection, a state bank shall calculate the credit exposure to a counterparty arising from a derivative transaction by one of the following methods. Subject to paragraph (3) of this subsection, a bank shall use the same method for calculating counterparty credit exposure arising from all of its derivative transactions.

(A) Internal model method.

(i) Credit exposure. The credit exposure of a derivative transaction under the internal model method shall equal the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.

(ii) Calculation of current credit exposure. A bank shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-market value is zero or negative, then the current credit exposure is zero.

(iii) Calculation of potential future credit exposure. A bank shall calculate its potential future credit exposure by using an internal model that has been approved for purposes of §53 of the federal capital adequacy guidelines, or another approved model.

(iv) Net credit exposure. A bank that calculates its credit exposure by using the internal model method pursuant to this subparagraph may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.

(B) Conversion factor matrix method. The credit exposure arising from a derivative transaction under the conversion factor matrix method shall equal and remain fixed at the potential future credit exposure of the derivative transaction as determined at the execution of the transaction by reference to the following Table 1.

Figure: 7 TAC §12.12(b)(1)(B)

(C) Remaining maturity method. The credit exposure arising from a derivative transaction under the remaining maturity method shall equal the greater of zero or the sum of the current mark-to-market value of the derivative transaction added to the product of the notional amount of the transaction, the remaining maturity in years of the transaction, and a fixed multiplicative factor determined by reference to the following Table 2.

Figure: 7 TAC §12.12(b)(1)(C)

(2) Credit derivatives.

(A) Notwithstanding paragraph (1) of this subsection, a state bank that uses the conversion factor matrix method or remaining maturity method, or that uses the internal model method without entering an effective margining arrangement as defined in §12.2 of this title (relating to Definitions), shall calculate the counterparty credit exposure arising from credit derivatives entered by the bank by adding the net notional value of all protection purchased from the counterparty on each reference entity.

(B) A state bank shall calculate the credit exposure to a reference entity arising from credit derivatives entered by the bank by adding the notional value of all protection sold on the reference entity. However, the bank may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.

(3) Mandatory use of method. The commissioner may require a state bank to use the internal model method set forth in paragraph (1)(A) of this subsection, the conversion factor matrix method set forth in paragraph (1)(B) of this subsection, or the remaining maturity method set forth in paragraph (1)(C) of this subsection to calculate the credit exposure of derivative transactions if the commissioner finds that such method is necessary to promote the safety and soundness of the bank.

(c) Securities financing transactions.

(1) In general. Except as provided by paragraph (2) of this subsection, a state bank shall calculate the credit exposure arising from a securities financing transaction by one of the following methods. A state bank shall use the same method for calculating credit exposure arising from all of its securities financing transactions.

(A) Internal model method. A state bank may calculate the credit exposure of a securities financing transaction by using an internal model approved for purposes of §32(d) of the federal capital adequacy guidelines, or another approved model.

(B) Non-model method. A state bank may calculate the credit exposure of a securities financing transaction as follows:

(i) Repurchase agreement. The credit exposure arising from a repurchase agreement shall equal and remain fixed at the market value at execution of the transaction of the securities transferred to the other party less cash received.

(ii) Securities lending.

(I) Cash collateral transactions. The credit exposure arising from a securities lending transaction where the collateral is cash shall equal and remain fixed at the market value at execution of the transaction of securities transferred less cash received.

(II) Non-cash collateral transactions. The credit exposure arising from a securities lending transaction where the collateral is other securities shall equal and remain fixed as the product of the higher of the two haircuts associated with the two securities, as determined in the following Table 3, and the higher of the two par values of the securities.

(iii) Reverse repurchase agreements. The credit exposure arising from a reverse repurchase agreement shall equal and remain fixed as the product of the haircut associated with the collateral received, as determined in the following Table 3, and the amount of cash transferred.

(iv) Securities borrowing.

(I) Cash collateral transactions. The credit exposure arising from a securities borrowed transaction where the collateral is cash shall equal and remain fixed as the product of the haircut on the collateral received, as determined in the following Table 3, and the amount of cash transferred to the other party.

(II) Non-cash collateral transactions. The credit exposure arising from a securities borrowed transaction where the collateral is other securities shall equal and remain fixed as the product of the higher of the two haircuts associated with the two securities, as determined in the following Table 3, and the higher of the two par values of the securities.

Figure: 7 TAC §12.12(c)(1)(B)(iv)(II)

(2) Mandatory use of method. The commissioner may require a state bank to use either the internal model method set forth in paragraph (1)(A) of this subsection or the non-model method set forth in paragraph (1)(B) of this subsection to calculate the credit exposure of securities financing transactions if the commissioner finds that such method is necessary to promote the safety and soundness of the bank.

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 August 17, 2012.

TRD-201204336



CHAPTER 15. CORPORATE ACTIVITIES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to Chapter 15 (Corporate Activities), Subchapter A, §§15.2, 15.3, 15.5 and 15.7, concerning Fees and Other Provisions of General Applicability; Subchapter C, §15.41 and §15.42, concerning Bank Offices; Subchapter E, §15.81, concerning Change of Control Applications; and Subchapter F, §§15.101, 15.103 - 15.108, 15.110 and 15.113, concerning Applications for Merger, Conversion, and Purchase or Sale of Assets.

The amendments are proposed to: update statutory and Texas Administrative Code references; reorganize, clarify, and eliminate unnecessary text; provide consistency with statutory provisions; expand options for public notice regarding applications; revise requirements for expedited handling of applications; and allow extension of application processing deadlines for some situations.

The proposed amendment to §15.2(b)(6) will clarify and identify which sale transactions require a fee to be paid for processing an application for approval. The current language is unclear and could be read to conflict with the statute. The language has been clarified by tracking the language used in Finance Code §32.405.

The proposed amendment to §15.5(a) provides for an alternative form of publication acceptable to the banking commissioner in lieu of publication in a newspaper. Newspaper publication can be expensive and in some areas few newspapers remain in business. The current language of the rule prevents the use of non-newspaper media which is often more readily available and more effective. The amendment would allow the applicant more flexibility in choosing a method of publishing notice that fits the particular circumstance, as long as it is acceptable to the commissioner.

The proposed amendments to §15.103 will add two additional requirements with regard to applications submitted to the department requesting expedited processing. These additional requirements involve completion of two worksheets that are already being used in expedited filings. The proposed amendments will also add two additional reasons the banking commissioner may deny a request for expedited filing and processing of an application or withdraw an application from expedited processing. These are situations where the application presents an issue of regulatory concern and/or requires a conversion examination. Such situations typically require longer than 30 days to resolve and complete and therefore are not candidates for expedited processing.

The proposed amendments to §15.106 are intended to reorganize existing text of the current rule for clarity and consistency with Finance Code §32.405, to delete outdated reference to the Texas Business Corporation Act and replace it with reference to the Texas Business Organizations Code, and to correct references to other sections of the Texas Administrative Code. The amendments would also delete application requirements

that were made obsolete by the passage of the Riegle-Neal Interstate Banking and Branching Act of 1994.

The proposed amendment to §15.113 would allow the commissioner to extend the time frames for processing any application, when the specific conditions listed in §15.103(d) exist. This change would add needed flexibility for institutions that are large or have particularly complex transactions that must be reviewed. This extended processing time would also be needed for applications that require an examination of the institution.

All other proposed amendments are non-substantive changes to delete outdated references to the Texas Business Corporation Act and replace them with references to the Texas Business Organizations Code, to correct title references to other sections of the Texas Administrative Code, and to conform the rule to Texas Register format.

Deputy Commissioner Robert Bacon, 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.

Mr. Bacon also has determined that, for each year of the first five years the rules as proposed are in effect, the public will benefit by having clearer and updated rules. The change to notice publication requirements will provide applicants with added flexibility when choosing a publication method and can provide the public with better access to the notice information. The ability to extend processing times will allow sufficient review of more complex applications.

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 amendments must be submitted no later than 5:00 p.m. on October 1, 2012. 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.

SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

7 TAC §§15.2, 15.3, 15.5, 15.7

The amendments are proposed under Finance Code, §31.003, which authorizes the Finance Commission to adopt banking rules.

Finance Code, §§32.004, 32.405 and 33.002, are affected by the proposed amendments.

§15.2. *Filing Fees and Cost Deposits.*

(a) (No change.)

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

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

(6) \$1,000 for an application to authorize the sale of assets exceeding three times the amount of unimpaired capital and surplus [substantially all assets] (including an interstate transaction) pursuant

to Finance Code, §32.405, and §15.106 of this title (relating to Application for Authority to Sell Assets);

(7) - (23) (No change.)

(c) - (f) (No change.)

§15.3. *Expedited Filings.*

(a) An eligible bank may file an expedited filing according to forms and instructions provided by the department solely for the following matters:

(1) a branch application pursuant to Finance Code, §32.203, and §15.42 of this title (relating to Establishment and Closing of a Branch Office [Facility]);

(2) branch relocations less than one mile with no abandonment of the community pursuant to the Finance Code, §32.203(b), and §15.42 of this title [(relating to Establishing and Closing of a Branch Office)]; and

(3) (No change.)

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

(e) Unless the applicant is otherwise notified by the department, an expedited filing is approved on the 15th day after the later of the date the application is complete and accepted for filing, or expiration of the period for filing a comment, protest, response or reply, whichever is the last to occur, unless a protest is filed. If a protest is filed, the application will be processed under §15.41 or §15.42 of this title [(relating to Written Notice or Applications for Change of Home Office) or §15.42], whichever is applicable.

§15.5. *Public Notice.*

(a) General. A person or entity required or authorized to file public notice, including a person or entity requesting authorization for a merger, purchase of assets, a conversion, an applicant for a foreign bank agency, or another application requiring public notice, shall publish notice in a newspaper of general circulation in its specified community or in an alternative form of publication acceptable to the banking commissioner and in such other locations as may be required by the banking commissioner.

(b) - (e) (No change.)

§15.7. *Submission of Reproductions.*

(a) Scope. This section governs submission of specified forms of copies of original documents to the Texas Department of Banking (the department) for processing by the corporate activities division of the department pursuant to this chapter, and does not permit, prohibit, or affect correspondence with or documents submitted to the department for another purpose, including:

(1) (No change.)

(2) documents submitted to the department as required or permitted by Government Code, Chapter 2001, and Chapter [chapter] 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings [Rulemaking]).

(b) - (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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A. Kaylene Ray
General Counsel
Texas Department of Banking
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SUBCHAPTER C. BANK OFFICES

7 TAC §15.41, §15.42

The amendments are proposed under Finance Code, §31.003, which authorizes the Finance Commission to adopt banking rules.

Finance Code, §32.202 and §32.203, are affected by the proposed amendments.

§15.41. *Written Notice or Application for Change of Home Office.*

(a) (No change.)

(b) Relocation by application.

(1) A state bank relocating its home office must file an application setting forth the information required by subsection (c) of this section, accompanied by the required filing fee pursuant to §15.2 of this title [(relating to Filing Fees and Cost Deposits)] if it is a relocation pursuant to:

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

(2) An eligible bank may file an expedited application pursuant to §15.3 of this title (relating to Expedited Filings [Filing]).

(3) - (5) (No change.)

(c) (No change.)

(d) Public notice.

(1) (No change.)

(2) The notice must contain the content required by §15.5(b) of this title [(relating to Public Notice)], the current home office address, and the proposed home office address.

(e) Public comment and protest. For 14 days after publication of the notice or longer if the banking commissioner allows more time for good cause shown, the public may submit written comments or protests regarding an application under subsection (b) of this section. There is no fee or cost for submitting a comment, but persons commenting are not entitled to further notice of or participation in the proceedings. In the event of a properly filed protest, each protesting party has the rights and responsibilities of a protesting party to a branch application under §15.42 of this title [(relating to Establishment and Closing of a Branch Office)].

(f) (No change.)

§15.42. *Establishment and Closing of a Branch Office.*

(a) Forms. If a state bank wants to establish and operate a branch office in this state or an interstate branch office pursuant to Finance Code, §32.203 and §203.001(a), then a branch application must be completed and filed on forms prescribed by the department. An application for an interstate branch must also provide information regarding applicable host state law and evidence of compliance with the law. Eligible banks may file an expedited application pursuant to §15.3 of this title (relating to Expedited Filings [Filing]).

(b) (No change.)

(c) Public notice.

(1) (No change.)

(2) The notice must comply with the content requirement of §15.5(b) of this title [~~(relating to Public Notice)~~] and include the proposed location of the branch or service area.

(3) With respect to an application to establish an interstate branch office pursuant to Finance Code, §32.203 and §203.001(a), the applicant must inform the department of the publication requirements in the host state for the banking commissioner to determine, pursuant to §15.5(e) of this title [~~(relating to Public Notice)~~], whether those requirements satisfy the publication requirements of this subsection.

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

(g) Hearing.

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

(5) A proposal for decision, exceptions and replies to the proposal for decision, the final decision of the banking commissioner, and motions for rehearing are governed by Chapter 9 of this title [~~(relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~].

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

(j) Branch relocation. With prior written approval of the banking commissioner, a bank may relocate an approved branch. The bank must file an application to relocate a branch accompanied by the required application fee pursuant to §15.2 of this title [~~(relating to Filing Fees and Cost Deposits)~~]. The bank must publish notice pursuant to §15.5 of this title [~~(relating to Public Notice)~~] in the community of the current branch and of the proposed branch. With respect to relocating an interstate branch office maintained pursuant to Finance Code, §32.203 and §203.001(a), the applicant must provide information regarding applicable host state law and evidence of compliance with the law.

(k) (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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Texas Department of Banking

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SUBCHAPTER E. CHANGE OF CONTROL APPLICATIONS

7 TAC §15.81

The amendments are proposed under Finance Code, §31.003, which authorizes the Finance Commission to adopt banking rules.

Finance Code, §§33.001 and §33.002, are affected by the proposed amendments.

§15.81. Application for Acquisition or Change of Control of State Bank.

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

(g) Exemptions. In addition to the acquisitions specifically exempted pursuant to the Finance Code, §33.005, these involuntary acquisitions of control do not require prior written approval of the banking commissioner pursuant to the Finance Code, §33.001:

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

(5) the acquisition of control of a state bank or bank holding company as a result of a gift made in good faith, provided:

(A) the donee is related to the donor within the second degree of consanguinity or affinity;²[~~5~~]

(B) neither the donor nor donee is under an enforcement order;²[~~5~~] and

(C) notice of the gift is given to the banking commissioner pursuant to subsection (h) of this section; and

(6) (No change.)

(h) Notices in lieu of filing. If an applicant is not required to file an application because of an exemption under the Finance Code, §33.005, or subsection (g) of this section, but is required to file an application with a federal regulatory authority or a regulatory authority of another state, a copy of that application must be filed with the banking commissioner within seven days of the date of filing it with the federal or state agency. A notice in lieu of filing is required of a person claiming an exemption under the Finance Code, §33.005(1) or (3), or subsection (g)(5) or (6) of this section. This notice must be filed before the securities acquired are voted and must be accompanied by a completed authorization pursuant to subsection (c)(2) of this section. No filing fees are required for notices filed under this section; however, if the banking commissioner determines that an application is required, the appropriate filing fee pursuant to §15.2 of this title [~~(relating to Filing Fees and Cost Deposits)~~] is required.

(i) - (m) (No change.)

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

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SUBCHAPTER F. APPLICATIONS FOR MERGER, CONVERSION, AND PURCHASE OR SALE OF ASSETS

7 TAC §§15.101, 15.103 - 15.108, 15.110, 15.113

The amendments are proposed under Finance Code, §31.003, which authorizes the Finance Commission to adopt banking rules.

Finance Code, §§32.003, 32.405, and 33.002, are affected by the proposed amendments.

§15.101. Definitions.

(a) (No change.)

(b) When these words and terms are used in this subchapter [subsection] they will have these meanings, unless the context clearly indicates otherwise.

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

(4) Corporation or domestic corporation--A corporation for profit subject to the provisions of the Texas Business Organizations Code [~~Corporation Act~~], except a foreign corporation.

(5) - (11) (No change.)

(12) Merger--A transaction that is:

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

(C) another transaction involving a financial institution or other entity, at least one of which is a state bank, which is considered a merger under the Texas Business Organizations Code [~~Corporation Act, Article 1.02(12)(g)~~].

(D) (No change.)

(13) - (18) (No change.)

(19) Share exchange--A transaction by which one or more financial institutions, domestic or foreign corporations, or other entities acquire all of the outstanding shares of one or more classes or series of one or more state banks under the authority of the Finance Code, §32.008, and the Texas Business Organizations Code [~~Corporation Act, Article 5.02~~].

(20) - (21) (No change.)

§15.103. *Expedited Filings.*

(a) (No change.)

(b) An expedited filing consists of a letter application including, except to the extent waived by the banking commissioner, these items:

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

(3) a completed Worksheet to Determine Eligibility form as prescribed by the commissioner;

(4) a completed Worksheet for Expedited Filings form as prescribed by the commissioner;

(5) [(3)] an executed opinion of counsel conforming to the requirements of the section of this subchapter that would apply had the applicant not filed an expedited filing;

(6) [(4)] copies of all other required regulatory notices or filings submitted concerning the transaction; and

(7) [(5)] a copy of the public notice published in conformity with the section of this subchapter that would apply had the applicant not filed an expedited filing.

(c) (No change.)

(d) The banking commissioner, in the exercise of discretion, may withdraw an application from expedited processing or may deny expedited filing treatment to an otherwise eligible applicant [in the exercise of discretion], if the banking commissioner finds that the application involves one or more of these issues:

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

(5) the proposed transaction would cause the assets of a resulting state bank to increase more than:

(A) (No change.)

(B) 35% if it had total assets of more than one billion dollars prior to the proposed transaction;[-]

(6) the proposed transaction involves a state bank that has experienced, since the last commercial examination by a state or federal regulatory agency, asset growth, through acquisition or otherwise, greater than:

(A) (No change.)

(B) 35% if it had total assets of more than one billion dollars at the last examination;[-]

(7) ~~the~~ [The] proposed transaction involves a resulting state bank that would not be well capitalized as defined in 12 CFR §325.103;[-]

(8) the proposed transaction involves an issue of regulatory concern as determined by the banking commissioner in the exercise of discretion; or

(9) the banking commissioner determines that a conversion examination is necessary for financial institutions converting into a state bank.

(e) - (f) (No change.)

§15.104. *Application for Merger or Share Exchange.*

(a) (No change.)

(b) Form of application. The applicant must submit a fully completed, verified application on a form prescribed by the banking commissioner and simultaneously tender the required filing fee pursuant to §15.2 of this title (relating to Filing Fees and Cost Deposits). The Interagency Bank Merger Act application may be used in lieu of the commissioner prescribed form if it is accompanied by the signature page and supplemental page of the commissioner prescribed form. The application must, except to the extent waived by the banking commissioner, include:

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

(3) articles and plan of merger or share exchange in accordance with the Texas Business Organizations Code [~~Corporation Act, Part V~~], which must include:

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

(4) - (12) (No change.)

(13) an opinion of legal counsel that conforms with §15.109 of this title (relating to Opinion of Legal Counsel), concluding:

(A) the merger or share exchange has been duly authorized by the board and shareholders or participants of each participating state bank in accordance with the Finance Code, §32.301, and the Texas Business Organizations Code [~~Corporation Act~~];

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

(14) - (22) (No change.)

(c) (No change.)

(d) Public notice. Within 14 days prior to or 14 days after submission of the initial application, the applicant must publish notice in accordance with the requirements of §15.5 of this title (relating to Public Notice) in the specified communities where the home office of the applicant, the target entity, and the resulting bank are or will be located. With respect to an interstate merger transaction, the applicant must inform the department of the publication requirements in the host state for the banking commissioner to determine, pursuant to §15.5(e)

of this title [(relating to Public Notice)], whether those requirements satisfy the publication requirements of this subsection.

(e) (No change.)

§15.105. Application for Authority to Purchase Assets of Another Financial Institution.

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

(d) Public notice. Within 14 days prior to or 14 days after submission of the initial application, the applicant must publish notice in accordance with the requirements of §15.5 of this title (relating to Public Notice) in the specified communities where the home offices of the applicant and other financial institutions involved in the transaction are located. With respect to an interstate merger transaction, the applicant must inform the department of the publication requirements in the host state for the banking commissioner to determine, pursuant to §15.5(e) of this title [(relating to Public Notice)], whether those requirements satisfy the publication requirements of this subsection.

§15.106. Application for Authority to Sell Assets.

(a) Scope. This section governs an application for the sale of assets pursuant to the Finance Code, §32.405. A state bank that seeks to continue engaging in the business of banking after selling assets for a sales price exceeding an amount equal to three times the bank's unimpaired capital and surplus, pursuant to Finance Code, §32.405(a), may not consummate the sale of assets without the written approval of the banking commissioner. A state bank seeking to sell all or substantially all of its assets after obtaining approval of its shareholders must submit a plan of voluntary dissolution and liquidation to the banking commissioner for approval under the Finance Code, §32.405(c) and §§36.101 et seq, and the transaction is outside the scope of this section. A sale of assets requiring shareholder approval in which all liabilities of the seller are assumed by a depository institution, which is in substance and intent a merger, is considered to be a merger subject to §15.104 of this title (relating to Application for Merger or Share Exchange) or §15.107 of this title (relating to Notice of Merger, Reorganization, or Conversion of a State Bank into Another Form of Financial Institution). [Subsection (e) of this section specifically addresses a sale of assets without shareholder approval under the Finance Code, §32.405(a) or Finance Code §203.003.]

(b) Subsection (f) of this section specifically addresses a sale of assets without shareholder approval under the Finance Code, §32.405(a)(7) or Finance Code, §203.003.

(c) [(b)] Form of application. [A state bank seeking to sell all or substantially all of its assets after obtaining approval of its shareholders must submit a plan of voluntary dissolution and liquidation to the banking commissioner for approval under the Finance Code, §§32.405(c) and 36.101 et seq; and the transaction is outside the scope of this section. However, a sale of assets requiring shareholder approval in which all liabilities of the seller are assumed by a depository institution, which is in substance and intent a merger, is considered to be a merger subject to §15.104 of this title (relating to Application for Merger or Share Exchange) or §15.107 of this title (relating to Notice of Merger, Reorganization, or Conversion of a State Bank into Another Form of Financial Institution). A state bank that seeks to continue engaging in the business of banking after selling substantially all of its assets, as that term defined in §15.101(b)(18) of this title (relating to Definitions), may not consummate the sale of assets without the written approval of the banking commissioner.] The applicant must submit a fully completed, verified application on a form prescribed by the banking commissioner and simultaneously tender the required filing fee pursuant to §15.2 of this title (relating to Filing Fees and Cost Deposits). The application must, except to the extent waived by the banking commissioner, include:

(1) a summary of the proposed transaction, including a description of the types and total dollar amounts of assets and liabilities transferred;

(2) a copy of all agreements related to the proposed transaction executed by an authorized representative of each party to the transaction;

(3) for each party to the transaction, a certified copy of those portions of the minutes of board meetings and shareholder or participant meetings at which action was taken regarding approval of the transaction, or a certificate of an officer verifying the action taken by the board of directors and the shareholders or participants approving the transaction, or an explanation of the basis for concluding that this action was not required;

(4) an assessment of the continuing viability of the applicant, including a description of its future prospects, proposed officers and directors, and proposed branches and other locations;

(5) an assessment of the current regulatory and financial condition of each party to the transaction;

(6) if the proposed transaction will change the existing CRA delineated community of the applicant, a copy of the proposed CRA map depicting the proposed delineated community of the applicant;

(7) a copy of current financial statements for each entity involved in the proposed transaction, accompanied by an affidavit of no material change dated no earlier than 30 days prior to the date of submission of the application;

(8) a copy of the latest annual report for each financial institution and bank holding company involved in the proposed transaction;

(9) that portion of the watch list of the applicant that identifies low-quality assets being sold or related liabilities being transferred;

(10) a description of all material, legal or administrative proceedings involving the applicant;

(11) an opinion of legal counsel that conforms with §15.109 of this title (relating to Opinion of Legal Counsel), concluding:

(A) the sale of assets by the applicant has been duly authorized by the board and shareholders or participants of the applicant in accordance with the Texas Business Organizations Code [Corporation Act], or that such authorization is not required, stating the basis for that conclusion;

(B) the transaction will not cause or result in a material violation of the laws of this state relative to the organization and operation of state banks;

(C) all deposit liabilities transferred in the transaction will be discharged or otherwise assumed or retained by a financial institution that is authorized by law to do so;

(D) each purchasing entity that is not a financial institution will not be engaged in the unauthorized business of banking; and

(E) all conditions with respect to the transaction imposed by the banking commissioner have been satisfied or otherwise resolved or, to the best knowledge of legal counsel, no conditions have been imposed;

(12) a copy of each filing regarding the proposed transaction that is required by another governmental authority, complete with all related attachments, exhibits, and correspondence;

(13) a current pro forma balance sheet and income statement of the applicant, with adjustments, reflecting the proposed sale of assets as of the most recent quarter ended immediately prior to the filing of the application;

(14) a copy of the applicant's strategic plan that complies with the department's Memorandum 1009, including projections of the balance sheet and income statement of the applicant as of the quarter ending one year from the date of its current pro forma financial statement required in accordance with paragraph (13) of this subsection;

(15) an explanation of compliance with or nonapplicability of the provisions of governing law relating to the rights of dissenting shareholders;

(16) an explanation of the manner and basis of valuing any of the shares or other evidences of ownership of a party that will constitute part of the consideration received for the sold assets;

(17) for antitrust purposes, an analysis of the anticipated competitive effect of the proposed transaction in the affected markets and a statement of the basis of the analysis of the competitive effects, or alternatively, a copy of the analysis of competitive effects of the proposed transaction addressed in the companion federal regulatory agency application, if applicable; and

(18) other information that the banking commissioner, in the exercise of discretion considers necessary to make an informed decision to approve or deny the proposed transaction. ~~and~~

~~[(19) in addition to all other requirements of this subsection, with respect to an interstate merger transaction:]~~

~~[(A) any additional opinions and information the applicant, by contacting the department, determines the banking commissioner requires; and]~~

~~[(B) information regarding applicable host state law and evidence of compliance with the law.]~~

~~(d) [(e)] Applicant's duty to disclose. The applicant must supply all material information necessary for the banking commissioner to make a fully informed decision on the application.~~

~~(e) [(d)] Public notice. Within 14 days prior to or 14 days after submission of the initial application, the applicant must publish notice in accordance with the requirements of §15.5 of this title (relating to Public Notice) in the community where its home office is located and in other communities as the banking commissioner may direct. [With respect to an interstate merger transaction, the applicant must inform the department of the publication requirements in the host state for the banking commissioner to determine, pursuant to §15.5(e) of this title (relating to Public Notice), whether those requirements satisfy the publication requirements of this subsection.]~~

~~(f) [(e)] Sale of assets without shareholder approval under the Finance Code, §32.405(a). The board of a state bank, with the prior written approval of the banking commissioner, may cause a bank to sell all or substantially all of its assets without shareholder or participant approval if the banking commissioner finds the interests of depositors and creditors are jeopardized because of insolvency or imminent insolvency and that the sale is in their best interest.~~

(1) To obtain approval of the banking commissioner under this subsection, the applicant must submit a verified application on a form prescribed by the banking commissioner and simultaneously tender the required filing fee pursuant to §15.2 of this title. The application must, except to the extent waived by the banking commissioner under §15.12 [§15.112] of this title (relating to Waiver of Requirements), include:

(A) a copy of each filing regarding the sale that is required by another governmental authority, complete with all related attachments, exhibits, and correspondence;

(B) a copy of the transaction agreement executed by an authorized representative of each party to the transaction, which must include an assumption and promise by the buyer to pay or otherwise discharge:

(i) all of the applicant's liabilities to depositors;

(ii) all of the applicant's liabilities for salaries of the applicant's employees incurred before the date of the sale;

(iii) obligations incurred by the banking commissioner arising out of the supervision or sale of the applicant; and

(iv) fees and assessments due the department;

(C) for each party to the transaction, a certified copy of those portions of the minutes of board meetings and, with respect to the purchaser, shareholder or participant meetings at which action was taken regarding approval of the transaction or a certificate of an officer verifying the action taken by the board of directors and the shareholders or participants approving the transaction, or in the alternative, an explanation of the basis for concluding that this action was not required;

(D) a copy of current financial statements for each entity involved in the proposed transaction, accompanied by an affidavit of no material change dated no earlier than 30 days prior to the date of submission of the application;

(E) that portion of the most recent watch list of the applicant that identifies low-quality assets;

(F) a description of all material legal or administrative proceedings involving the applicant; and

(G) other information that the banking commissioner, in the exercise of discretion, considers necessary to make an informed decision to approve or deny the proposed transaction. With respect to a proposed interstate merger transaction, the applicant must contact the department to determine additional information that the banking commissioner requires in the application.

(2) The banking commissioner will expedite processing of an application under this subsection to the extent required to protect the interests of the depositors and creditors of the applicant. An application under this subsection is not subject to the notice and publication requirements of §15.5 of this title except as may otherwise be required by the banking commissioner.

§15.107. Notice of Merger, Reorganization, or Conversion of a State Bank into Another Form of Financial Institution.

(a) (No change.)

(b) Form of notice. A state bank does not cease to be subject to the jurisdiction of the banking commissioner until the banking commissioner is given written notice of intent to merge, reorganize, or convert before the 31st day preceding the date of the proposed transaction and the merger, reorganization, or conversion has otherwise become effective. The notice must, except to the extent waived by the banking commissioner, include:

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

(5) Opinion of legal counsel. An opinion of legal counsel that conforms with the requirements of §15.109 of this title (relating to Opinion of Legal Counsel), concluding:

(A) the merger, reorganization, or conversion of the state bank has been duly authorized by its board and shareholders or

participants in accordance with the Finance Code, §32.501(b), and the Texas Business Organizations Code [~~Corporation Act~~];

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

(6) (No change.)

(7) an explanation of compliance with the provisions of the Texas Business Organizations Code [~~Corporation Act~~] relating to rights of dissenting shareholders or participants; and

(8) (No change.)

(c) Notices, publication, and certificate of authority.

(1) (No change.)

(2) With respect to an interstate merger application, the banking commissioner must determine whether the notice required by the successor regulatory authority is considered adequate notice in accordance with Finance Code, §32.501(c)(2). The applicant must inform the department of the publication requirements in the host state of the acquiring financial institution for the banking commissioner to determine, pursuant to §15.5(e) of this title [~~(relating to Public Notice)~~], whether those requirements satisfy the publication requirements of this subsection.

(3) (No change.)

(d) (No change.)

§15.108. *Conversion of a Financial Institution into a State Bank.*

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

(d) Public notice. Within 14 days prior to or 14 days after submission of an initial application under this section, the applicant must publish notice in accordance with §15.5 of this title (relating to Public Notice) in the specified communities where the home office of the applicant is located, and where the home office of the proposed state bank will be located, if different. With respect to a conversion of an out-of-state financial institution into a Texas state bank, the applicant must inform the department of the publication requirements in the host state for the banking commissioner to determine, pursuant to §15.5(e) of this title [~~(relating to Public Notice)~~], whether those requirements satisfy the publication requirements of this subsection.

(e) (No change.)

§15.110. *Rights of Dissenting Shareholders.*

The rights of dissenting shareholders or participants to a merger, share exchange, or conversion under this subchapter are governed by the Finance Code, §32.303, and the Texas Business Organizations Code [~~Corporation Act~~] or other applicable law relating to the rights of dissenters, and applicants must provide evidence of compliance with or inapplicability of these provisions of law.

§15.113. *Approval; Conditional Approval; Denial of Application; Hearings.*

(a) Approval, conditional approval, or denial. Except for expedited filings and applications for change of control governed by Finance Code, §33.003, [~~governed by §15.103 of this title (relating to Expedited Filings)~~], the banking commissioner will approve or deny an application [~~filed under this subchapter~~] on or before a date that is 60 days after the date the application is accepted for filing pursuant to §15.4 of this title (relating to Required Information and Abandoned Filings). Provided, however, that the banking commissioner shall have the discretion to extend the timeframe for processing any application, if one of the conditions listed in §15.103(d) of this title (relating to Expedited Filings) exists.

(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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Texas Department of Banking

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) proposes amendments to 7 TAC Chapter 84, §§84.102, 84.105, 84.203, 84.204, 84.205, 84.301, 84.308, 84.504, 84.601, 84.602, 84.603, 84.604, 84.605, 84.607, 84.608, 84.609, 84.610, 84.611, 84.613, 84.614, 84.702, 84.704, 84.705, 84.706, 84.707, 84.708, 84.709, 84.801, 84.802, 84.803, 84.805, and 84.806, concerning Motor Vehicle Installment Sales. The proposed amendments affect rules contained in Subchapter A, concerning General Provisions; Subchapter B, concerning Retail Installment Contract; Subchapter C, concerning Insurance and Debt Cancellation Agreements; Subchapter E, concerning Holder's Rights, Duties, and Limitations; Subchapter F, concerning Licensing; Subchapter G, concerning Examinations; and Subchapter H, concerning Retail Installment Sales Contract Provisions.

The majority of the rules in Chapter 84 are being amended. Any Chapter 84 rule not included in this proposal will be maintained in its current form.

In general, the purpose of the amendments to 7 TAC Chapter 84 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 84 was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6097). If any comments are received on the notice of intention to review, the agency will address those comments in conjunction with the adoption of this proposal. The agency circulated an early draft of these proposed changes to interested stakeholders and has incorporated certain revisions to address issues raised by stakeholders.

Most of the changes are technical in nature and relate to improvements in consistency, grammar, punctuation, capitalization, and formatting. Additional changes provide clarification, more precise legal citations, and improved references to other state agencies. These technical corrections have been modeled after improvements made during the rule review of Chapter 89, Property Tax Lenders. The major formatting changes serve to implement streamlining improvements in the licensing process similar to those used for the newly licensed credit access businesses.

The individual purposes of the amendments to each section are provided in the following paragraphs. Specific explanation is included with regard to new language, changes in language, and significant formatting amendments. The remaining changes throughout all sections consist of minor technical revisions and will be summarized more generally.

Section 84.102 contains general definitions used throughout Chapter 84. Revisions are proposed in paragraphs (15) "Scheduled installment earnings method," (20) "True daily earnings method," and (21) "U.S. Rule." These amendments provide updated citations for Regulation Z in accordance with the relocation and renumbering of these provisions by the Consumer Financial Protection Bureau (CFPB). Similar changes are proposed in the recordkeeping rules to these and other federal regulations as reorganized by the CFPB. In addition, in paragraph (17) "Sales tax deferred transaction," "Texas" has been inserted at the beginning of the agency title to more accurately refer to the "Texas Comptroller of Public Accounts."

Technical corrections have been made to §84.105, Indigency Affidavit for Appeal of Conditional Delivery Determination; §84.203, Deferment Charge; and §84.204, Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle. In particular, these changes provide a corrected statutory citation and improved grammar and punctuation.

Also in §84.204, regarding disclosure of equity, additional readable typefaces for the standard form have been added to subsection (e). This revision offers greater flexibility to retail sellers when formatting the disclosure.

In §84.205, Documentary Fees Reasonableness Standards, a clarifying change has been made to subsection (e) concerning reasonableness standards. The revision proposes a new sentence to be included as the next to last one in paragraph (3), as follows: "A retail seller has the burden of showing that all included costs are specified and supported by adequate documentation." This change conforms the rule to current agency practice and provides better clarity and guidance to licensees.

The following sections contain technical corrections: §84.301, Definitions; §84.308, Debt Cancellation Agreements Not Requiring Insurance; and §84.504, Collection Contacts. Of note, the revisions provide consistent terminology, remove unnecessary language, provide clarification, and update federal legal citations.

Section 84.601, which contains the licensing definitions, has experienced several minor revisions relating to grammar and punctuation. Two of these changes are recurring throughout the rules. First, the verb "shall" has been changed to "will" in the introductory paragraph and to "must" in paragraph (2)(E). Similar changes have been made to numerous rules in Chapter 84 by replacing "shall" with either "will" or "must," as appropriate, since the latter language is reflective of a more modern and plain language approach in regulations. Second, the hyphens have been removed from the phrases "privately held" and "publicly held," as these hyphens are deemed unnecessary by modern usage guides.

Also in §84.601, two definitions are proposed for addition in new paragraphs (3) "Commissioner" and (6) "OCCC." These additions provide clarification on basic terminology used throughout the subchapter and afford consistency with the regulations of other licensed industries. The agency believes that references to the OCCC or OCCC staff taking certain actions or requiring certain items provide better clarity and a more plain language

approach in regulations. Additionally, the remaining definitions have been renumbered accordingly.

Section 84.602 regarding the filing of new applications 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: §84.602(1)(E) concerning statutory or registered agent has been relocated to proposed paragraph (1)(A)(iii), paragraph (2)(C)(vii)(II) concerning statement of records has been relocated to proposed paragraph (1)(D)(iii), paragraph (1)(A)(iii) concerning authorized signatures has been renamed "Consent form" and relocated to proposed paragraph (1)(E), and paragraph (1)(L) concerning assumed names has been relocated to paragraph (2)(D).

In particular, one of the relocated provisions relates to the creation of a new separate licensing form, which is the consent form. This provision involves some minor wording changes in addition to its relocation. In proposed §84.602(1)(E), 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. . . ."

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 proposed provisions: §84.602(1)(A), (1)(A)(iii) - (v), (1)(B), (1)(C), (1)(C)(i) - (iii), (1)(D), (1)(D)(i) - (iii), (1)(E), (1)(F), and (2)(D). Other changes relating to form titles may be found in §84.603(a) and (b) and §84.604(d). Additionally, any surrounding provisions affected by the relocations have been renumbered or relettered as appropriate, along with other technical corrections.

In conjunction with the reorganization of §84.602, certain provisions have experienced revised language to improve clarity and flexibility. In proposed §84.602(1)(A)(iii), the term "statutory agent" has been replaced with "registered agent" throughout this clause. Parallel changes have also been made to §84.602(2)(C)(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 Office of 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 current language requiring certified minutes of the appointment.

In proposed §84.602(1)(A)(v)(III) concerning disclosure of partners for limited partnerships, 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 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."

Section 84.602(1)(C)(iii) concerning employment history has been revised 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 84.602(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 §84.602(2)(C), several changes have been made in order to increase the efficiency of the licensing process. The provisions under current (2)(C)(ii)(II) and (III) and (2)(C)(iv)(II) and (III) require 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 relocated provisions are proposed in §84.602(2)(C)(ii)(IV) and (V) and (2)(C)(iv)(IV) and (V).

To further streamline the licensing process, the current requirements in §84.602(2)(C)(ii)(IV)(-a-) and (2)(C)(iv)(IV)(-a-) are proposed for deletion. The current provisions require applicants to provide minutes electing the statutory agent. Upon review of the licensing process, the agency can streamline the process for verification of the registered agent by certification from the secretary of the company. Additionally, the verification of good standing may be obtained either directly from the Texas Comptroller of Public Accounts or upon request to the licensee if the Comptroller does not have an online record of the company. Thus, the phrase "if requested" has been added to proposed §84.602(2)(C)(ii)(VI) and (2)(C)(iv)(VI).

Updates have been made to proposed §84.602(2)(D) to include revised citations to the Texas Business and Commerce Code provisions concerning assumed name certificates, as relocated during the 2009 legislative session. Parallel changes have been made to update the citations contained in §84.603 concerning registered offices.

Technical corrections have been made to §84.603, New Registered Offices; §84.604, Transfer of License; and to §84.607, Reportable Actions After Application. In particular, these changes provide parallel formatting and improve grammar, punctuation, and internal references.

Revisions have been made to §84.605, Change in Form or Proportionate Ownership, and §84.609, Relocation of Licensed Offices, to minimize unnecessary transfer applications and revise the procedure to notify the agency of certain business changes. In cases involving changes in organizational form and mergers resulting in different parent entities, the current language in §84.605(a) and (b) requiring a transfer has been revised to instead only require a license amendment and payment of the accompanying fee under §84.611. Similarly, a license amendment and fee requirement have been added to §84.605(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), as well as §84.609(c) when a licensed office is relocated.

In §84.605 and §84.607, the deadlines for licensees to notify the agency of certain actions have been revised. In both sections

the deadline for notifying the agency has been extended to 14 days rather than the current 10 days after the date of the event.

Section 84.608 describes how an application for a motor vehicle sales finance 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. Subsection (a) has been revised for this proposal to clarify when a response will be provided by the agency, as follows: "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." In addition, technical corrections to improve grammar and citations have been made to §84.608.

Section 84.610, License Status, includes technical amendments to improve clarity and grammar. Clarification has been added with regard to license expiration in §84.610(d) in order to better track the statutory provisions found in Texas Finance Code, §348.507.

As discussed earlier, proposed 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, §84.611(d) has been amended with the following phrases added before "or relocating a licensed location": "changing the organizational form or proportionate ownership, providing notification of a new parent entity." In subsection (e), the phrase "not to exceed" has been added so that annual fees may be discounted when appropriate. Additionally, technical corrections to §84.611 include changes to improve punctuation and grammar.

The following sections contain technical corrections: §84.613, Effect of Criminal History Information on Applicants and Licensees; §84.614, Crimes Directly Related to Fitness for License; Mitigating Factors; §84.702, Prohibited Advertising; §84.704, Correction of Errors or Violations; §84.705, Unclaimed Funds; and §84.706, Follow-up Examination Fees. Of note, the revisions remove unnecessary language, revise internal regulation references, provide updated federal legal citations, provide clarification, and improve grammar and punctuation.

Several parallel changes are proposed throughout the record-keeping rules, §§84.707 - 84.709. In §84.707 (applicable to dealers that assign their contracts) and §84.708 (applicable to dealers that collect on their contracts), a clarification regarding the retention of certain retail installment contracts is proposed for addition at the end of each respective subsection (b). The proposed addition reads as follows: "This requirement includes any retail installment sales contract signed by a retail buyer for a vehicle that has been delivered, including contracts that are subsequently voided or canceled after a seller regains possession and ownership of the vehicle."

The proposed language refers to situations where a buyer has signed the contract and the vehicle has already been delivered, but an event occurs resulting in the seller regaining possession and ownership of the vehicle and voiding or canceling the contract. In other words, this amendment is intended to capture situations where a retail installment transaction must be "unwound." The addition clarifies that these consummated contracts should be maintained, regardless of any subsequent actions that later void or cancel them. When conducting prior investigations or examinations, the agency has often not had access to these "unwound" contracts, which are frequent sources of complaints. Thus, the agency believes by clarifying which contracts must be

available during the investigation and examination process, it will benefit the agency's ability to resolve complaints and other compliance-related concerns.

Also in §§84.707 - 84.709, updates have been made to replace any references to the Texas Department of Transportation with the recently created Texas Department of Motor Vehicles. The remaining technical corrections throughout the recordkeeping rules include the following: citations as revised by the CFPB, more consistent references to the Texas Comptroller of Public Accounts, form title revised by the Texas Department of Public Safety, updated statutory and regulation references, streamlining of duplicated language, and improved grammar and punctuation.

Technical corrections have been made to §84.801, Purpose; §84.802, Non-Standard Contract Filing Procedures; §84.803, Relationship with Federal Law; and §84.805, Other Disclosures Required by Commission Rule. In particular, these changes provide updated federal legal citations, clarification, and improved grammar and punctuation.

In §84.806, regarding the format of the model motor vehicle retail installment contract, additional readable typefaces have been added to subsection (b). This revision is parallel to the one proposed in §84.204 and offers greater flexibility when formatting the contracts.

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 rules.

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the changes from the previously enacted version of these rules will be that the commission's rules will be more easily understood by licensees required to comply with the rules and will be more easily enforced. The general substance of these rules has already been in effect, as the majority of the amendments involve clarification and reorganization. Additionally, minor additions incorporate into rule form the actions that licensees should already be performing in order to fulfill existing statutory requirements. Thus, 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 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.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §84.102, §84.105

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

to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

§84.102. Definitions.

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

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

(15) Scheduled installment earnings method--The scheduled installment earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal balance. Under this method, a finance charge refund is calculated by deducting the earned finance charges from the total finance charges. If prepayment in full or demand for payment in full occurs between payment due dates, a daily rate equal to 1/365th of the annual rate is multiplied by the unpaid principal balance. The result is then multiplied by the actual number of days from the date of the previous scheduled installment through the date of prepayment or demand for payment in full to determine earned finance charges for the abbreviated period. In addition to the earned finance charges calculated in this paragraph, the creditor may also earn a \$25 acquisition fee so long as the total of the earned finance charges and the acquisition fee do not exceed the finance charge disclosed in the contract. The creditor is not required to refund unearned finance charges if the refund is less than \$1.00. The scheduled installment earnings method may be used with either an irregular payment contract or a regular payment contract. The computation of finance charges must comply with the U.S. Rule [rule] as defined in paragraph (21) of this section [Appendix J of 12 C.F.R. Part 226 (Regulation Z)].

(16) (No change.)

(17) Sales tax deferred transaction--A retail installment sales transaction in which a retail seller or a qualified related finance company collects sales tax from the retail buyer and remits the tax under Texas Tax Code, §152.047 to the Texas Comptroller of Public Accounts.

(18) - (19) (No change.)

(20) True daily earnings method--The true daily earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance. The daily rate is 1/365th of the equivalent contract rate. The earned finance charge is computed by multiplying the daily rate of the finance charge by the number of days the actual unpaid principal balance is outstanding. Payments are credited as of the time received; therefore, payments received prior to the scheduled installment date result in a greater reduction of the unpaid principal balance than the scheduled reduction, and payments received after the scheduled installment date result in less than the scheduled reduction of the unpaid principal balance. The computation of finance charges must comply with the U.S. Rule [rule] as defined in paragraph (21) of this section [Appendix J of 12 C.F.R. Part 226 (Regulation Z)].

(21) U.S. Rule--The ruling of the United States Supreme Court in *Story v. Livingston*, 38 U.S. (13 Pet.) 359, 371 (1839) that, in partial payments on a debt, each payment is applied first to finance charge and any remainder reduces the principal. Under this rule, accrued but unpaid finance charge cannot be added to the principal and interest cannot be compounded. The U.S. Rule is described in Regulation Z, 12 C.F.R. Part 226, Appendix J, and 12 C.F.R. Part 1026, Appendix J.

(22) (No change.)

§84.105. *Indigency Affidavit for Appeal of Conditional Delivery Determination.*

(a) Required information. An affidavit under Texas Finance Code, §348.013(m) [~~§348.103(m)~~] filed with the hearings officer must contain the following information:

(1) - (15) (No change.)

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

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

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: September 30, 2012

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



SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §§84.203 - 84.205

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

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

§84.203. *Deferment Charge.*

(a) (No change.)

(b) Bilateral or mutual deferment.

(1) General requirements. A retail buyer and a holder may mutually agree to defer all or a part of one or or [øf] more scheduled installments. Bilateral or mutual deferments must be agreed upon in writing as required by Texas Finance Code, §348.116. The retail buyer's written agreement to the bilateral or mutual deferment may be confirmed by an email signature, an electronic signature, a facsimile signature, a written notation made by the retail buyer on a signed check, or some other writing signed by the retail buyer.

(2) (No change.)

(c) (No change.)

(d) Limitation of number of installments being deferred per amendment. A holder may only defer the equivalent of three monthly installments per amendment. This limitation applies to the number of whole or partial installments that can be deferred, not the length of time an installment can be deferred.

(e) Computation of deferment charge. A holder of a retail installment sales contract under Texas Finance Code, Chapter 348 may calculate the deferment charge by any method of calculation as long as the deferment charge does not exceed the maximum amount permitted by Texas Finance Code, §348.114 and this section.

(1) Regular payment contract using sum of the periodic balances method.

(A) Base deferment charge. For a regular payment contract [~~contracts~~] employing the add-on method and the refunding method of the sum of the periodic balances, a holder may assess, charge, and collect a base deferment charge computed by:

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

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

(2) (No change.)

(f) - (h) (No change.)

§84.204. *Disclosure of Equity of Retail Buyer's Trade-in Motor Vehicle.*

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

(e) Typeface. The text of the disclosure of equity standard form must be set in an easily readable typeface. Typefaces considered to be readable include: Arial, Calibri, Caslon, Century Schoolbook, Garamond, Helvetica, Scala, and Times New Roman [~~Times New Roman, Scala, Caslon, Century Schoolbook, Helvetica, and Garamond~~].

(f) - (h) (No change.)

(i) Permissible changes. A retail seller must use the required disclosure of equity standard form, but may consider making only limited technical changes in the disclosure paragraph required by Texas Finance Code, §348.0091(c)(1)(H), as provided by the following exclusive list:

(1) substituting the following for the words "the dealer":

(A) the retail seller's name;

(B) the pronoun "we"; or

(C) "the seller[-]";

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

§84.205. *Documentary Fees Reasonableness Standards.*

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

(e) Reasonable documentary fee.

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

(3) The Office of Consumer Credit Commissioner will review any written notice of an increased documentary fee over \$125 provided by a seller. The review may include an analysis of the resources required by the seller to perform the seller's duties under state and federal law with respect to the handling and processing of documents relating to the sale and financing of a motor vehicle. The review may result in a determination of the maximum amount of a documentary fee that a specific seller may charge. A retail seller has the burden of showing that all included costs are specified and supported by adequate documentation. A retail seller must comply with the Truth in Lending Act when disclosing a documentary fee in cash and financed transactions.

(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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SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS

7 TAC §84.301, §84.308

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

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

§84.301. Definitions.

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

(g) Total Loss or Theft for Debt Cancellation Agreement Not Requiring Insurance [~~for Total Loss or Theft of Motor Vehicle~~].

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

§84.308. Debt Cancellation Agreements Not Requiring Insurance.

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

(c) Authorized debt cancellation agreement for total loss or theft of an ordinary vehicle provisions. A debt cancellation agreement under this section may only contain provisions or exclusions from either paragraph (1) or (2) of this subsection, language to implement any of the provisions or exclusions of either paragraph (1) or (2) of this subsection, and language to identify and obligate the parties to the debt cancellation agreement under Texas law if that language does not conflict with this subsection.

(1) Debt cancellation agreement for total loss or theft of ordinary vehicle in which holder bears complete responsibility for canceling the debt after total loss or theft must:

(A) contain a statement that the holder will cancel the amount currently owed by the retail buyer on the date of total loss or theft of the motor vehicle [~~on the date of the total loss or theft of the motor vehicle~~];

(B) - (M) (No change.)

(2) (No change.)

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

(f) Refund or credit of unearned debt cancellation agreement fee.

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

(4) Rounding of unearned debt cancellation agreement fee. The refund or credit for the unearned debt cancellation agreement fee can be rounded to the nearest whole dollar.

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

(g) - (k) (No change.)

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

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SUBCHAPTER E. HOLDER'S RIGHTS, DUTIES, AND LIMITATIONS

7 TAC §84.504

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

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

§84.504. Collection Contacts.

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

(e) Without the prior written consent of the retail buyer given directly to the licensee or the express permission of a court of competent jurisdiction, in connection with the collection of amounts due under a motor vehicle retail installment sales contract, a licensee may not communicate nonpublic personal information pertaining to a debt or obligation unless the person receiving the information is the retail buyer, the retail buyer's attorney, the retail buyer's designee, a co-buyer, endorser, surety, or guarantor of the obligation, a consumer reporting agency, another creditor, the attorney of the creditor, a guardian, executor, or administrator, or any party that may lawfully receive the information under the Gramm Leach Bliley Act, 15 U.S.C. §§6801 - 6827, [§6801, *et seq.*] and its implementing regulations, or the Fair Credit Reporting Act, 15 U.S.C. §§1681 - 1681x, [§1681, *et seq.*] and its implementing regulations, or other law or regulation. Unless notified pursuant to subsection (a) of this section, this prohibition does not apply to a licensee seeking information about the location of the retail buyer.

(f) - (h) (No change.)

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

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SUBCHAPTER F. LICENSING

7 TAC §§84.601 - 84.605, 84.607 - 84.611, 84.613, 84.614

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

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

§84.601. *Definitions.*

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 348, have the same meanings as defined in Chapter 348. The following words and terms, when used in this chapter, will [shall] have the following meanings, unless the context clearly indicates otherwise.

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

(3) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(4) [(3)] Foreign entity--An entity formed under the laws of a jurisdiction other than the State of Texas.

(5) [(4)] Licensed location--The central or main location of the entity.

(6) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(7) [(5)] Principal party--An individual with a substantial relationship to the proposed business of the applicant. The following individuals are [considered to be] principal parties:

(A) proprietors, to include spouses with community property interest;

(B) general partners;

(C) officers of privately held [privately-held] corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, and those with substantial responsibility for operations or compliance with Texas Finance Code, Chapter 348;

(D) directors of privately held [privately-held] corporations;

(E) individuals associated with publicly held [publicly-held] corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph [section] (as if the corporation was privately held [privately-held]); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 348. One of the persons designated must [shall] be responsible for assembling and providing the information required on behalf of the applicant and must [shall] sign the application for the applicant;

(F) voting members of a limited liability company [corporation];

(G) trustees and executors;

(H) officers of nonprofit organizations;

(I) individuals designated as [a] principal parties [party] 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; and

(J) individuals may be accepted as principal parties in compliance with this paragraph upon approval by the commissioner for certain privately held [privately-held] entities with complex ownership structures. Three officers or similar employees with significant involvement in the entity's activities governed by Texas Finance Code, Chapter 348 may be designated upon approval by the commissioner.

(8) [(6)] Privately held [Privately-held] corporation--A corporation that is not publicly held [publicly-held].

(9) [(7)] Publicly held [Publicly-held] corporation--A corporation:

(A) subject to the registration provisions of the Securities Act of 1933 in order to allow a public offering of voting stock; or

(B) owned directly or indirectly by a parent corporation that is subject to the registration provisions of the Securities Act of 1933.

(10) [(8)] Registered offices--Each location other than the licensed location where a licensee will originate, service, or collect on retail installment sales contracts subject to Texas Finance Code, Chapter 348. The term also includes any additional assumed name that the licensee uses at a single location to engage in a Chapter 348 transaction.

§84.602. *Filing of New Application.*

An application for issuance of a new motor vehicle sales finance license issued under Texas Finance Code, Chapter 348 or 353 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 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 [Motor Vehicle Sales Finance License].

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

(iii) Registered agent. The registered agent must be designated 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.

[(iii)] Signature(s). Electronic signatures will be accepted in a manner approved by the commissioner.

[(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.

~~(VI)~~ If the applicant is a nonprofit organization, an authorized officer must sign.

~~(iv)~~ ~~(B)~~ List of registered offices [Registered Offices for a Motor Vehicle Sales Finance License]. Each additional location, other than the licensed location shown on the application [Application for Motor Vehicle Sales Finance License], must be listed. The applicant should provide the assumed name (DBA), physical address, telephone number, and the person responsible for day-to-day operations for each registered office. A registered office is required for any additional assumed name that the licensee uses at a single location to engage in a Texas Finance Code, Chapter 348 or 353 transaction.

~~(v)~~ ~~(C)~~ [Disclosure of] Owners and principal parties [Principal Parties].

~~(I)~~ ~~(i)~~ Proprietorships. The applicant must disclose who owns and who is responsible for operating the business. All community property interests [interest] 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)~~ ~~(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)~~ ~~(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-)~~ ~~(H)~~ 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-)~~ ~~(H)~~ Limited partners. The applicant should provide a complete list of all limited partners owning 10% or more of the partnership.

~~(-c-)~~ ~~(HH)~~ Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

~~(IV)~~ ~~(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 [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)~~ ~~(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)~~ ~~(vi)~~ Trusts or estates. Each trustee or executor, as appropriate, must be listed.

~~(VII)~~ ~~(vii)~~ Nonprofit organizations. Each officer must be listed.

~~(VIII)~~ ~~(viii)~~ All entity types. If a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.

~~(IX)~~ ~~(ix)~~ Alternative filings for all entity types. The commissioner may also accept other filings submitted to a governmental authority that the commissioner deems to have information substantially equivalent in coverage and reliability to a filing under subclauses (I) - (VIII) of this clause [clauses (i) - (viii) of this subparagraph].

~~(B)~~ ~~(D)~~ Disclosure questions. [Application Questionnaire.] All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

~~(E)~~ Appointment of Statutory Agent and Consent to Service. The appointment of statutory agent and consent to service must be provided by each applicant. The statutory 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 statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or a limited liability company, the statutory agent should be the registered agent on file with the Texas Secretary of State. If the statutory agent is not the same as the registered agent filed with the Secretary of State, then the applicant must submit certified minutes appointing the new agent.]

(C) Personal information.

~~(i)~~ ~~(F)~~ Personal affidavit [Affidavit]. Each individual meeting the definition of "principal party" as defined in §84.601 of this title (relating to Definitions) must provide a personal affidavit. All requested information must be provided.

~~(ii)~~ ~~(G)~~ Personal questionnaire [Questionnaire]. Each individual meeting the definition of "principal party" as defined in §84.601 of this title 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)~~ ~~(H)~~ Employment history [History]. Each individual meeting the definition of "principal party" as defined in §84.601 of this title must provide an employment history. Each principal party should provide a continuous 10-year history, [with no gaps.] 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)~~ ~~(I)~~ Statement of experience [Experience]. Each applicant should provide information that relates to the applicant's prior experience in the motor vehicle sales finance business. If the applicant or its principal parties do not have significant experience in the same type of 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) ~~[(D)]~~ Business operating plan [Operation Plan]. An applicant must attach a brief narrative to the application explaining:

(I) ~~[(i)]~~ an estimate of how many motor vehicles will be financed by the applicant each year;

(II) ~~[(ii)]~~ whether the applicant will hold the retail installment sales contracts or whether the applicant will assign its retail installment sales contracts;

(III) ~~[(iii)]~~ whether the applicant will only be accepting contracts from another entity (assignor), and, if so, list the types of entities; and

(IV) ~~[(iv)]~~ whether the collections will occur at the licensed location.

(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.

(F) ~~[(K)]~~ Statement regarding previous installment transactions [Regarding Previous Installment Transactions]. Each applicant must submit a statement that it has or has not made or collected on any retail installment sales contract or accepted the cash payment for a motor vehicle in one or more installments from September 1, 2002, to date. This includes any contracts signed by applicant as seller that are subsequently assigned to a third party. If the applicant is purchasing another dealership and has permission to operate under an existing license, as described in §84.604 of this title (relating to Transfer of License), the statement outlined by this subparagraph is not required. If the applicant has engaged in any of the referenced activities, the applicant must provide the following information:

(i) A list of all contracts used to finance the sale of a motor vehicle in one or more installments (whether the applicant was the original seller or whether the applicant became a holder). The list should include the name of the buyer, contract date, vehicle cash price, amount of down payment, net trade-in amount, total amount financed, payment frequency (monthly, semi-monthly, bi-weekly, weekly), total number of payments, and payment amount(s).

(ii) From the list provided by the applicant, copies of ten (10) complete files. The complete file includes, but is not limited to, the buyer's order, signed retail installment sales contract, payment history, certificate of title, and other documents related to that transaction. If there are fewer than ten (10) accounts, provide a complete copy of each file.

~~[(L) Assumed Name Certificate. For any applicant that does business under an "assumed name" as that term is defined in Texas Business & Commerce Code, §36.02(7), 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 & Commerce Code, §36.10, as amended. 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 & Commerce Code, §36.11, as amended. Evidence of the filing bearing the filing stamp of the Texas Secretary of State must be submitted or, alternatively, a certified copy.]~~

(2) Other required filings.

(A) Fingerprints.

(i) (No change.)

(ii) For limited partnerships, if the owners and principal parties ~~[Disclosure of Owners and Principal Parties]~~ under paragraph ~~(1)(A)(v)(III)(-a-)~~ ~~[(1)(C)(iii)(1)]~~ 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) (No change.)

(iv) For individuals who have previously been licensed by the OCCC and 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 Motor Vehicles [Transportation]), 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~~]; as amended.~~

(B) (No change.)

(C) 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 [articles of incorporation and] any amendments;

~~[(II) a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation.]~~

~~(II)~~ ~~[(III)]~~ [a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties; or] 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 [on the Disclosure of Owners and Principal Parties];

~~(III)~~ ~~[(IV)]~~ if the registered [statutory] agent is not the same as the one on file [registered agent filed] with the Office of the Texas Secretary of State.[:]

~~[(a-)]~~ a copy of the minutes of corporate meetings that record the election of the statutory agent; or]

~~[(b-)]~~ a certification from the secretary of the corporation identifying the registered [statutory] agent; [and]

~~(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;

~~(VI)~~ ~~[(V)]~~ if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

~~(iii)~~ Publicly held [~~Publicly-held~~] corporations. In addition to the items required for corporations, a publicly held [~~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)~~ (No change.)

~~[(II)]~~ a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;:]

~~(II)~~ ~~[(III)]~~ [a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties; or] 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 [on the Disclosure of Owners and Principal Parties];

~~(III)~~ ~~[(IV)]~~ if the registered [statutory] agent is not the same as the one on file [registered agent filed] with the Office of the Texas Secretary of State.[:]

~~[(a-)]~~ a copy of the minutes of company meetings that record the election of the statutory agent; or]

~~[(b-)]~~ a certification from the secretary of the company identifying the registered [statutory] agent; [and]

~~(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;

~~(VI)~~ ~~[(V)]~~ if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

~~(v)~~ - ~~(vi)~~ (No change.)

~~(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.[: and]

~~[(II)]~~ a statement of where records of Texas loan transactions will be kept. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual assessment fee or agree to make all the records available for examination in Texas.}]

~~(viii)~~ - ~~(ix)~~ (No change.)

~~(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.

~~(3)~~ (No change.)

§84.603. *New Registered Offices.*

~~(a)~~ A licensee may conduct Texas Finance Code, Chapter 348 transactions at different locations or under additional assumed names at a single location by filing notice of a new registered office [a Notice of New Registered Office] and paying the applicable fee.

~~(b)~~ [The] Notice of a new registered office [New Registered Office] must be filed before a licensee can engage in a Chapter 348 transaction at the different location or under the additional assumed name.

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

~~(3)~~ Assumed name certificate [Name Certificate]. If the registered office is using an assumed name, as that term is defined in Texas Business and [&] Commerce Code, §71.002 [§36.02(7)], an assumed name certificate [Assumed Name Certificate] must be filed as provided in this paragraph.

~~(A)~~ Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name at a new registered office 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 [§36.10, as amended]. 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.

~~(B)~~ Incorporated applicants. Incorporated applicants using or planning to use an assumed name at a new registered office must file an assumed name certificate in compliance with Texas Business and [&] Commerce Code, Chapter 71 [§36.11, as amended]. 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.

(c) (No change.)

§84.604. *Transfer of License.*

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §84.605 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

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

(4) any change in ownership of a licensed corporation:

(A) in which a new stockholder obtains 10% or more of the outstanding voting stock in a privately held [~~privately-held~~] corporation;

(B) in which an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held [~~privately-held~~] corporation;

(C) any purchase or acquisition of control of 51% or more of a company which is the parent or controlling stockholder of a licensed privately held [~~privately-held~~] corporation; or

(D) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held [~~publicly-held~~] corporation;

(5) any change in the membership interest of a licensed limited liability company:

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

(C) in which a purchase or acquisition of control of 51% or more of any company that [~~which~~] is the parent or controlling member of a licensed limited liability company occurs;

(6) (No change.)

(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 [~~subsection (a)(1) - (6) of this section~~], and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

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

(d) Filing requirements. An application for transfer of a motor vehicle sales finance 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 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 §84.602 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §84.602 of this title are applicable to these filings. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection [~~subsection (d)(2) of this section~~] 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, and owners and principal

parties, as provided in §84.602 of this title [Application for Motor Vehicle Sales Finance License, Application Questionnaire, Disclosure of Owners and Principal Parties, Appointment of Statutory Agent and Consent to Service, and List of Registered Offices for a Motor Vehicle Sales Finance License]. The instructions in §84.602 of this title are applicable to these filings. The person responsible for the day-to-day operations listed on the application for license for the transfer event must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §84.602 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 [~~subsection (d)(2) of this section~~] must also be submitted.

(2) (No change.)

(e) Permission to operate. No business under the license may [~~shall~~] 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 [~~shall~~] 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.

(f) (No change.)

§84.605. *Change in Form or Proportionate Ownership.*

(a) Organizational form. When any licensee or parent of a licensee desires to change the organizational form of its business (e.g., from proprietorship to corporation; or from corporation to limited partnership), the licensee must advise the commissioner in writing of the change within 14 [~~10~~] calendar days by filing a license amendment and paying the required fees [~~the appropriate transfer application documents~~] as provided in §84.611 [~~§84.604~~] of this title (relating to Fees [~~Transfer of License~~]). In addition, the licensee must submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of incorporation; or articles of conversion and partnership agreement) addressing the ownership and management of the new entity. Failure to meet the application filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

(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 §84.604 of this title (relating to Transfer of License). If the [A] 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 14 calendar days after the change, by filing a license amendment and paying the required fees as provided in §84.611 [~~requires a transfer application pursuant to §84.604 of this title~~]. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 [~~10~~] calendar days. Failure to meet the application filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

(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 14 [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 §84.611 of this title. This subsection does not apply to a legal entity that has filed with the OCCC the most recent Form 10-K or 10-Q filing of the licensee or of the parent entity, although a transfer application may be required under §84.604 of this title.

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

§84.607. *Reportable Actions After Application.*

Any action, fact, or information that would require a materially different answer than that given in the original license application and that ~~which~~ relates to the qualifications for license, must be reported within 14 [10] calendar days after the person has knowledge of the action, fact or information.

§84.608. *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 complete and accepted for filing or stating that~~ the application is incomplete and specifying the information required for acceptance.

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

(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 ~~shall~~ be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 9 ~~§9.1 et seq.~~ 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 ~~shall~~ be refunded to the applicant. The investigation fee and the fingerprint processing fee in §84.611 of this title (relating to Fees) will ~~shall~~ be forfeited.

(f) Processing time.

(1) (No change.)

(2) When a hearing is requested following an initial license application denial, the hearing will ~~shall~~ be held within 60 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 ~~shall~~ be made after receipt of the proposal for decision from the administrative law judge.

(3) (No change.)

§84.609. *Relocation of Licensed Offices.*

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

(c) Notice requirements. 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 location or registered office, ~~and~~

the approximate date of relocation, and the applicable fee as outlined in §84.611 of this title (relating to Fees). Failure to meet the notification deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

§84.610. *License Status.*

(a) Inactivation of active license. A licensee may cease operating under a motor vehicle sales finance license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 10 calendar days prior to the anticipated inactivation date. Registered offices will be designated as closed when a license is inactivated. Notification must be provided by filing a license amendment [filed on the Amendment to Motor Vehicle Sales Finance License] 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 §84.611 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 10 calendar days prior to the anticipated activation date. Registered offices must be listed and appropriate fees paid upon activation of a license. Notification must be provided by filing a license amendment [filed on the Amendment to Motor Vehicle Sales Finance License] 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 §84.611 of this title.

(c) (No change.)

(d) Expiration. A license will expire the later of [after] July 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been [a fee is] paid by the due date for license renewal. A licensee that pays the annual assessment fees [fee] will automatically be renewed even though a new license may not be issued.

(e) (No change.)

§84.611. *Fees.*

(a) New licenses.

(1) Investigation fees. A \$200 nonrefundable ~~[non-refundable]~~ investigation fee is assessed each time an application for a new license is filed.

(2) (No change.)

(b) License transfers. An applicant must pay a nonrefundable ~~[non-refundable]~~ investigation fee of \$200 for the transfer of a license.

(c) Fingerprint processing. A nonrefundable ~~[non-refundable]~~ fee as prescribed by the commissioner will be charged to recover the ~~[to]~~ costs of investigating each principal party's fingerprint record. This fee must be paid for each fingerprint record filed with an application for a new license or a license transfer.

(d) License amendments.

(1) License amendment fees. A fee of \$25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license, changing the assumed name of the licensee, changing the organizational form or proportionate ownership, providing notification of a new parent entity, or relocating a licensed location.

(2) (No change.)

(e) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each licensee consisting of:

(A) a licensed location fee not to exceed [øf] \$460;

(B) a registered office fee not to exceed [øf] \$430 per location; and

(C) if necessary, a variable fee based upon the annual dollar volume of contracts originated or acquired during the preceding calendar year.

(2) (No change.)

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

§84.613. *Effect of Criminal History Information on Applicants and Licensees.*

(a) Criminal history information. Upon submission of an application for a license, a principal party of an applicant for a license is investigated by the commissioner. In submitting an application for a license, a principal party of an applicant for a license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to the Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history record information. The commissioner will continue to receive information on new criminal activity reported after the fingerprints have been processed. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history record information obtained from law enforcement agencies, or other criminal history information provided by the applicant or other sources, to issue a denial or initiate an enforcement action. Criminal history information relates to the OCCC's assessment of good moral character, and the information gathered is relevant to the licensing or enforcement action decision as described in subsections (b) - (d) of this section [below].

(b) (No change.)

(c) Factors in determining whether conviction relates to occupation of motor vehicle sales finance dealer. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the commissioner will [shall] consider the following factors, as specified in Texas Occupations Code, §53.022:

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

(d) Effect of criminal convictions [~~conviction~~] on applicant or licensee.

(1) Effect of criminal convictions involving moral character. The commissioner may deny an application for a license, or suspend or revoke a license, if the applicant or licensee has a principal party who has been convicted of any felony or of a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 348. For purposes of this section, the crimes listed in subparagraphs (A) - (H) of this paragraph [below] are considered to be crimes involving moral character:

(A) - (H) (No change.)

(2) Effect of other criminal convictions. The commissioner may deny an application for a license[;] or revoke an existing license, if a principal party of the applicant or licensee has been convicted of a crime that directly relates to the duties and responsibilities of a motor vehicle sales finance dealer who originates or obtains retail installment sales contracts written under Texas Finance Code, Chapter 348. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant

or licensee, as found in §84.614 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

§84.614. *Crimes Directly Related to Fitness for License; Mitigating Factors.*

(a) Crimes directly related to fitness for license. Originating or obtaining retail installment sales contracts made under Texas Finance Code, Chapter 348 involves or may involve making representations to borrowers regarding the terms of retail installment sales contracts, maintaining accounts for retail installment sales contracts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and maintaining accurate vehicle title records. Consequently, crimes [~~a crime~~] involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the individual, [~~a crime involving~~] failure to file a governmental document or filing a false document, or [~~a crime involving~~] the use or threat of force against another person are[; ~~is a crime~~] directly related to the duties and responsibilities of a license holder and may be grounds for denial, suspension, or revocation.

(b) Mitigating factors. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a license holder, the commissioner will [shall] consider, in addition to the factors listed in §84.613 of this title (relating to Effect of Criminal History Information on Applicants and Licensees), the [~~following~~] factors listed in paragraphs (1) - (6) of this subsection, as specified in Texas Occupations Code, §53.023:

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

(5) the principal party's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(6) the principal party's current circumstances relating to the present fitness of the applicant or licensee, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the principal party[;] the sheriff or chief of police in the community where the principal party resides[;] and other persons in contact with the convicted principal party.

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

Earliest possible date of adoption: September 30, 2012

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



SUBCHAPTER G. EXAMINATIONS

7 TAC §§84.702, 84.704 - 84.709

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

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

§84.702. *Prohibited Advertising.*

(a) Under Texas Finance Code, Subtitle B, Chapter 348, each licensee must comply with Texas Finance Code, §341.403. A licensee may not, in any manner, advertise or cause to be advertised a false, misleading, or deceptive statement or representation relating to a rate, term, or condition of a motor vehicle retail installment sales contract, or advertise credit terms that the licensee does not intend to offer to retail buyers who qualify for those terms.

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

(d) Texas Finance Code, §348.009 requires licensees to comply with federal disclosure requirements. Licensees who advertise rates, terms, or conditions of a motor vehicle installment transaction must comply with the disclosure requirements of 15 U.S.C. §1662 and §1664 and Regulation Z, 12 C.F.R. §226.24 and 12 C.F.R. §1026.24 [(Regulation Z)].

§84.704. *Correction of Errors or Violations.*

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

(d) If the licensee applies the refund to an existing account of the retail buyer with the licensee, the licensee may be required to refund the amount due a retail buyer plus the amount of accrued time price differential on the correction or adjustment amount or a proportionate amount of time price differential originally charged on the amount being credited. If more than half of the precomputed time balance (regular transaction using the sum of the periodic balances method or scheduled installment earnings method) has been paid before applying the credit to the account, the licensee may be required to refund the proportionate amount of time price differential originally charged on the amount being credited.

(e) - (g) (No change.)

§84.705. *Unclaimed Funds.*

(a) (No change.)

(b) Required information. Evidence of a bona fide attempt to pay a refund to a retail buyer must be kept in the licensee's records of the retail buyer's account [buyer]. The licensee must place with the records of the retail buyer's account [buyer] any information received by the licensee that indicates the retail buyer has died leaving no will or heirs or has left the community and the retail buyer's whereabouts are unknown. If deemed necessary with respect to a specific retail buyer, a licensee may be required to send the unclaimed funds by registered or certified mail to the last known address of the retail buyer.

(c) (No change.)

(d) Escheat to state. At the end of three [(3)] years, the unclaimed funds must be paid to the [State of] Texas Comptroller of Public Accounts, Treasury Division, as required by Texas Property Code, §72.101, or must be paid to the appropriate state or other governmental entity under the time period provided by the other state's or entity's applicable law.

(e) (No change.)

§84.706. *Follow-up Examination Fees.*

If a follow-up examination visit is required within nine [(9)] months after a written deficiency report has been given as a result of a failure to comply with Texas Finance Code, Chapter 348, this chapter, or the special instruction section of the examination report, an examination fee at the hourly rate of \$100 per examiner may be assessed.

§84.707. *Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts).*

(a) (No change.)

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination. This requirement includes any retail installment sales contract signed by a retail buyer for a vehicle that has been delivered, including contracts that are subsequently voided or canceled after a seller regains possession and ownership of the vehicle.

(c) (No change.)

(d) Records required.

(1) Retail installment sales transaction report.

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

(C) Dealer's Motor Vehicle Inventory Tax Statement option.

(i) A licensee may utilize a copy of the Dealer's Motor Vehicle Inventory Tax Statement (VIT Statement) submitted to the Texas [Office of the] Comptroller of Public Accounts to satisfy the requirements of this paragraph if the following two conditions are met when the VIT Statement is provided to the commissioner's representative:

(I) - (II) (No change.)

(ii) (No change.)

(D) Required information. A retail installment sales transaction report must contain the following information:

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

(iii) a method of identifying the vehicle, such as the last six [(6)] digits of the vehicle identification number or the stock number; and

(iv) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

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

(iv) the Texas Department of Motor Vehicles' [Transportation's] Title Application Receipt (Form VTR-500-RTS), Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS), or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(v) - (vi) (No change.)

(B) for a vehicle titled in Texas, a copy of the completed Texas Department of Motor Vehicles' [~~Transportation~~]/Texas Comptroller of Public Accounts' Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.

(C) for a vehicle titled outside of Texas, a copy of the application for certificate of title for the buyer or the properly assigned evidence of ownership to the buyer including the Texas Comptroller of Public Accounts' Texas Motor Vehicle Sales Tax Exemption Certificate (Form 14-312).

(D) for a retail installment sales transaction in which a power of attorney is necessary to transfer title to the buyer, a copy of the Texas Department of Motor Vehicles' [~~Transportation's~~] Power of Attorney to Transfer a Motor Vehicle (Form VTR-271) or any other similar document used as a power of attorney.

(E) for a retail installment sales transaction in which the retail buyer elects to have the vehicle registered in another county as permitted by Texas Transportation Code, §501.0234, a completed copy of the Texas Department of Motor Vehicles' [~~Transportation's~~] County of Title Issuance form (Form VTR-136) signed by the retail buyer.

(F) - (K) (No change.)

(L) for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §226.18;~~et seq.~~

(ii) (No change.)

(M) (No change.)

(3) (No change.)

(4) General business and accounting records. General business and accounting records concerning retail installment sales transactions must be maintained. The licensee is not required to produce information protected under the attorney-client privilege or work product privilege. The business and accounting records must include receipts, documents, or other records for each disbursement made by the licensee at the retail buyer's direction or request, on his behalf, or for his benefit, that is charged to the retail buyer, including:

(A) Texas Comptroller of Public Accounts' Dealer Motor Vehicle Inventory Tax Statement (Form 50-246); and

(B) Texas Comptroller of Public Accounts' Texas Motor Vehicle Seller-Financed Sales Tax Report (Form 14-117).

(5) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §1002.12(b) [~~§202.12(b)~~, as amended]. The current retention periods are 25 months for consumer credit and 12 months for business credit.

(6) (No change.)

§84.708. *Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).*

(a) (No change.)

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination. This requirement includes any retail installment sales contract signed by a retail buyer for a vehicle that has been delivered, including contracts that are subsequently voided or canceled after a seller regains possession and ownership of the vehicle.

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

(e) Records required.

(1) Retail installment sales transaction report.

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

(C) Dealer's Motor Vehicle Inventory Tax Statement option.

(i) A licensee may utilize a copy of the Dealer's Motor Vehicle Inventory Tax Statement (VIT Statement) submitted to the Texas [~~Office of the~~] Comptroller of Public Accounts to satisfy the requirements of this paragraph if the following two conditions are met when the VIT Statement is provided to the commissioner's representative:

(I) - (II) (No change.)

(ii) (No change.)

(D) Required information. A retail installment sales transaction report must contain the following information:

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

(iii) a method of identifying the vehicle, such as the last six [~~(6)~~] digits of the vehicle identification number or the stock number; and

(iv) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) - (iv) (No change.)

(v) the Texas Department of Motor Vehicles' [~~Transportation's~~] Title Application Receipt (Form VTR-500-RTS), Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS), or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(vi) - (vii) (No change.)

(B) for a vehicle titled in Texas, a copy of the completed Texas Department of Motor Vehicles' [Transportation]/Texas Comptroller of Public Accounts' Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.

(C) for a vehicle titled outside of Texas, a copy of the application for certificate of title for the buyer or the properly assigned evidence of ownership to the buyer including the Texas Comptroller of Public Accounts' Texas Motor Vehicle Sales Tax Exemption Certificate (Form 14-312).

(D) for a retail installment sales transaction in which a power of attorney is necessary to transfer title to the buyer, a copy of the Texas Department of Motor Vehicles' [Transportation's] Power of Attorney to Transfer a Motor Vehicle (Form VTR-271) or any other similar document used as a power of attorney.

(E) for a retail installment sales transaction in which the retail buyer elects to have the vehicle registered in another county as permitted by Texas Transportation Code, §501.0234, a completed copy of the Texas Department of Motor Vehicles' [Transportation's] County of Title Issuance form (Form VTR-136) signed by the retail buyer.

(F) for a retail installment sales transaction involving a downpayment, a copy of any record or document relating to the downpayment including:

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

(iii) documents or forms signed by the retail buyer relating to a manufacturer's or distributor's rebate as permitted by [the] Texas Finance Code, §348.404(a); and

(iv) (No change.)

(G) (No change.)

(H) for a retail installment sales contract that has an itemized charge for the inspection of a new or used motor [the] vehicle, a copy of or access to the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(I) - (L) (No change.)

(M) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) (No change.)

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(I) - (IV) (No change.)

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's

"Crash Report" (Form CR-2) ["Driver's Accident Report" (Form ST-2)] filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(N) for a retail installment sales transaction involving the cancellation of a full or partial balance under a debt cancellation agreement for total loss or theft of an ordinary vehicle:

(i) the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles that include insurance coverage as part of the retail buyer's responsibility to the holder:

(I) - (IV) (No change.)

(V) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Crash Report" (Form CR-2) ["Driver's Accident Report" (Form ST-2)] filed in connection with the total loss of the motor vehicle; and

(VI) evidence of the credit for the debt cancellation applied to the account or a copy of the check reflecting the balance canceled by the licensee; or

(ii) the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles in which the holder bears complete responsibility for the balance canceled after the total loss or theft:

(I) (No change.)

(II) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Crash Report" (Form CR-2) ["Driver's Accident Report" (Form ST-2)] filed in connection with the total loss of the motor vehicle; and

(III) (No change.)

(O) for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §1026.18; [§226-18, et seq.];

(ii) (No change.)

(P) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.3 [§17-3(h)] (relating to Motor Vehicle Certificates of Title).

(Q) (No change.)

~~(R) for a retail installment sales contract that has an itemized charge for the inspection of a used motor vehicle, access to a copy of the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.~~

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

(5) General business and accounting records. General business and accounting records concerning retail installment sales transactions must be maintained. The licensee is not required to produce information protected under the attorney-client privilege or work product privilege. The business and accounting records must include receipts, documents, or other records for each disbursement

made by the licensee at the retail buyer's direction or request, on his behalf, or for his benefit, that is charged to the retail buyer, including:

(A) Texas Comptroller of Public Accounts' Dealer Motor Vehicle Inventory Tax Statement (Form 50-246);

(B) Texas Comptroller of Public Accounts' Texas Motor Vehicle Seller-Financed Sales Tax Report (Form 14-117); and

(C) (No change.)

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

(8) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §1002.12(b) [§202.12(b), as amended]. The current retention periods are 25 months for consumer credit and 12 months for business credit.

(9) (No change.)

(f) Repossession records.

(1) (No change.)

(2) Required information. For a retail installment sales transaction involving the repossession of the vehicle, the following records must be maintained, unless otherwise specified:

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

(C) for a vehicle disposed of in a public or private sale as permitted by the Texas Business and [&] Commerce Code, §9.610, the following documents:

(i) one of the three following notices:

(I) for a transaction not involving consumer goods, a copy of any Notification of Disposition of Collateral letter sent to the retail buyer and other obligors as required by Texas Business and [&] Commerce Code, §9.613;

(II) for a transaction involving consumer goods, a copy of any Notice of Our Plan to Sell Property as sent to the retail buyer and other obligors as required by Texas Business and [&] Commerce Code, §9.614; or

(III) (No change.)

(ii) - (v) (No change.)

(vi) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency as required by Texas Business and [&] Commerce Code, §9.616, if applicable;

(vii) (No change.)

(D) for a vehicle disposed of using the strict foreclosure method as permitted by the Texas Business and [&] Commerce Code, §9.620 and §9.621, the following documents:

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

(E) for a vehicle disposed by another authorized method pursuant to the Texas Business and [&] Commerce Code, Chapter 9, a copy of any and all records or documents relating to the disposition of the collateral.

§84.709. *Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).*

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

(e) Records required.

(1) Retail installment sales transaction report. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (9) of this subsection. The retail installment sales transaction report can be maintained either as a paper record or may be generated from an electronic system or systems so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is acquired. A retail installment sales transaction report must contain the following information:

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

(C) a method of identifying the vehicle, such as the last six [(6)] digits of the vehicle identification number or the stock number; and

(D) (No change.)

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) (No change.)

(B) for a vehicle titled in Texas, a copy of the completed Texas Department of Motor Vehicles' [Transportation]/Texas Comptroller of Public Accounts' Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.

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

(E) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) (No change.)

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(I) - (IV) (No change.)

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from

the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Crash Report" (Form CR-2) ["Driver's Accident Report" (Form SF-2)] filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(F) (No change.)

(G) for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §1026.18; [§226.18, *et seq.*]

(ii) (No change.)

(H) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.3 [§17.3(h)] (relating to Motor Vehicle Certificates of Title).

(I) (No change.)

(3) - (7) (No change.)

(8) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §1002.12(b) [§202.12(b), as amended]. The current retention periods are 25 months for consumer credit and 12 months for business credit.

(9) (No change.)

(f) Repossession records.

(1) (No change.)

(2) Required information. For a retail installment sales transaction involving the repossession of the vehicle, the following records must be maintained, unless otherwise specified:

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

(C) for a vehicle disposed of in a public or private sale as permitted by the Texas Business and [&] Commerce Code, §9.610, the following documents:

(i) one of the three following notices:

(I) for a transaction not involving consumer goods, a copy of any Notification of Disposition of Collateral letter sent to the retail buyer and other obligors as required by Texas Business and [&] Commerce Code, §9.613;

(II) for a transaction involving consumer goods, a copy of any Notice of Our Plan to Sell Property as sent to the retail buyer and other obligors as required by Texas Business and [&] Commerce Code, §9.614; or

(III) (No change.)

(ii) - (v) (No change.)

(vi) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency as required by Texas Business and [&] Commerce Code, §9.616, if applicable;

(vii) (No change.)

(D) for a vehicle disposed of using the strict foreclosure method as permitted by the Texas Business and [&] Commerce Code, §9.620 and §9.621, the following documents:

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

(E) for a vehicle disposed by another authorized method pursuant to the Texas Business and [&] Commerce Code, Chapter 9, a copy of any and all records or documents relating to the disposition of the collateral.

This agency hereby certifies that the 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 August 17, 2012.

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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



SUBCHAPTER H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§84.801 - 84.803, 84.805, 84.806

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

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

§84.801. *Purpose.*

(a) Purpose.

(1) Model provisions applicable to ordinary vehicles. The purpose of this subchapter is to provide model provisions and a model plain language contract in English for Texas Finance Code, Chapter 348 motor vehicle installment sales contract provisions for ordinary vehicles. The establishment of model provisions for these transactions will encourage the use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a seller is not mandatory. Except for retail installment sales contracts involving commercial vehicles, the seller, however, may not use a contract other than a model contract unless the seller has submitted the contract to the commissioner in compliance with §84.802 of this title (relating to Non-Standard Contract Filing Procedures). The commissioner will [shall] issue an order disapproving the contract if the commissioner determines the contract does not comply with this section or rules adopted under this

section. A seller may not claim the commissioner's failure to disapprove a contract constitutes approval.

(2) (No change.)

(b) (No change.)

§84.802. *Non-Standard Contract Filing Procedures.*

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

(d) Contact person. One person must [~~shall~~] be designated as the contact person for each filing submitted. Each submission must [~~should~~] provide the name, address, phone number, and [~~fax number,~~] if available, the email address and fax number of the contact person for that filing. If the contracts are submitted by anyone other than the company itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.

(e) (No change.)

§84.803. *Relationship with Federal Law.*

(a) The disclosure requirements of [~~12 C.F.R. Part 226 (Regulation Z) adopted under~~] the Truth in Lending Act, 15 U.S.C. §§1601 - 1667f, and its implementing regulation, Regulation Z, 12 C.F.R. Parts 226 and 1026, [~~(15 U.S.C. §1601 et seq.)~~] and specifically 12 C.F.R. §226.18(f) and §1026.18(f), regarding variable rate disclosures, apply according to their terms to some retail installment transactions subject to this chapter[, as more fully provided in the Truth in Lending Act and federal Regulation Z].

(b) (No change.)

(c) The term "time price differential" may be substituted for the term "finance charge" as used in the model disclosures provided by this subchapter [regulation], except in those instances where use of that term would be prohibited by controlling federal law, regulation, or interpretation.

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

§84.805. *Other Disclosures Required by Commission Rule.*

(a) (No change.)

(b) In a contract using the true daily earnings method, a brief description of the method of earning finance charge must be given. In a contract using the scheduled installment earnings method or the sum of the periodic balances method of refunding precomputed finance charges, the name of the method used must be given, and at the creditor's option, a description of that method may be given. If in the same contract form, the creditor uses the scheduled installment earnings method in certain circumstances and the sum of the periodic balances method in other circumstances, the creditor must [~~shall~~] provide a brief description of the circumstances under which each method will be used, along with the name of the method.

§84.806. *Format.*

(a) (No change.)

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

(c) (No change.)

(d) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not

strictly defined but is expressed as a minimum size in the Times New Roman typeface for visual comparative purposes. Use of a larger typeface is encouraged. The typeface for the federal disclosure box or other disclosures required under federal law must be legible, but no minimum typeface is required. Generally, the typeface for the remainder of the contract must be at least as large as 8 point in the Times New Roman typeface. A point is generally viewed as 1/72nd of an inch.

(e) (No change.)

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

Filed with the Office of the Secretary of State on August 17, 2012.

TRD-201204351

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: September 30, 2012

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



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER H. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.801

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Subchapter H, §5.801 concerning Project Access Initiative. The purpose of the proposed amendments is to make several changes to the Project Access program, based on feedback from the Disability Advisory Workgroup, to maintain a pilot program with the Texas Department of State Health Services (DSHS) to assist persons with disabilities to transition out of State Psychiatric Hospitals, remove set asides for those over and under the age of 62 that will allow both age groups to access the same group of vouchers, and add persons with disabilities transitioning out of Texas state psychiatric hospitals to the list that can access the larger pool of vouchers if those set aside for the pilot program fill up.

Project Access was originally a housing voucher pilot program developed by the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Health and Human Services (HHS), and the Institute on Disability at the University of New Hampshire. The original goal of the pilot program was to assist low-income non-elderly persons with disabilities to transition from institutions into the community by providing access to affordable housing and necessary supportive services.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amended rule will be in effect, enforcing or administering the amended rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amended rule will be in effect, the public benefit anticipated as a result of the amended rule will be a program that better meets the needs of persons with disabilities. There will not be any economic cost to any individuals required to comply with the amended rule.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held August 31, 2012 to October 1, 2012 to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Kate Moore, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; by e-mail to kate.moore@tdhca.state.tx.us; or by fax to (512) 475-0070. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 1, 2012.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the amendments are proposed pursuant to Texas Government Code §2306.141, which specifically authorizes the Department to adopt rules governing the administration of the Department's housing programs.

The proposed amendments affect no other code, article, or statute.

§5.801. *Project Access Initiative.*

(a) Purpose. Project Access is a program that utilizes federal Section 8 Housing Choice Vouchers administered by the Texas Department of Housing and Community Affairs (the "Department") to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing.

(b) Definitions.

(1) Section 8--The U.S. [United States] Department of Housing and Urban Development Section 8 Housing Choice Voucher Program administered by the Department.

(2) At-Risk Applicant--Applicant that meets the criteria in subparagraphs (A) and (B) of this paragraph:

(A) current recipient of Tenant-Based Rental Assistance from the Department's HOME Investments Partnership Program; and

(B) within six (6) months [~~one-hundred-twenty (120) days~~] prior to expiration of assistance.

(c) Regulations Governing Program. All Section 8 Program rules and regulations apply to the program.

(d) Program Design.

(1) At least 90 [70] percent of Project Access Vouchers will be reserved for persons [~~under the age of sixty-two (62) at the time of voucher issuance~~] that meet the eligibility criteria of subsection (e)(1) and (2) of this section.

~~[(2) No more than 20 percent of Project Access Vouchers will be reserved for persons at or over the age of sixty-two (62) at the time of voucher issuance, meeting the Project Access eligibility criteria in subsection (e)(1) and (2) of this section.]~~

(2) ~~[(3)]~~ No more than 10 percent of Project Access Vouchers will be reserved for individuals eligible for a pilot program in partnership with the Department of State Health Services (DSHS) and the Department for [~~current residents of~~] Texas state psychiatric hospitals

that meet the criteria of subsection (e)(1) and (3) of this section at the time of voucher issuance.

~~(3) [(4)]~~ The total number of Project Access Vouchers will be determined each year in the Departmental Annual Public Housing Agency (PHA) Plan. The number of vouchers allocated to each sub-population listed in paragraphs (1) and (2) [~~(3)~~] of this subsection will be determined by the Department.

(e) Project Access Eligibility Criteria. A Project Access voucher recipient must meet all Section 8 eligibility criteria as well as meet all of the eligibility criteria in paragraph (1) of this subsection and either paragraph (2) or (3) of this subsection:

(1) have a permanent disability as defined in §223 of the Social Security Code or be determined to have a physical, mental, or emotional disability that is expected to be of long-continued and indefinite duration that impedes one's ability to live independently;

(2) meet one of the criteria in subparagraphs (A) and (B) of this paragraph:

(A) be an At-Risk Applicant and a previous resident of a nursing facility, Texas state psychiatric hospital, intermediate care facility, or board and care facility as defined by the U.S. Department of Housing and Urban Development (HUD); or

(B) be a current resident of a nursing facility, Texas state psychiatric hospital, intermediate care facility, or board and care facility at the time of voucher issuance as defined by HUD;

(3) be eligible for the DSHS pilot program for [~~residents of~~] Texas state psychiatric hospitals at the time of voucher issuance as described in subsection (d)(2) of this section.

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

Filed with the Office of the Secretary of State on August 20, 2012.

TRD-201204384

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 30, 2012

For further information, please call: (512) 475-3916



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 21. HISTORY PROGRAMS

The Texas Historical Commission ("the commission") proposes amendments to §§21.7, 21.9, and 21.15, relating to the Official Texas Historical Marker Program and the Museum Services Program.

The commission's Official Texas Historical Marker Program and the Museum Services Program are the agency's responsibility under Texas Government Code §442.006. The Official Texas Historical Marker Program works with county historical commissions throughout the state to mark and interpret local and state history. The marker program underwent a significant program redesign in 2006 which formalized the role of the county histori-

cal commissions in the marker application process and outlined program priorities and guidelines. The Museum Services Program works with history museums across the state to promote best practices in the care and preservation of their collections.

The purpose of the Official Texas Historical Marker Program is to promote Texas' history and encourage heritage tourism by commemorating diverse subjects including events that changed the course of local or state history and individuals who made a lasting contribution to the state.

The purpose of the Museum Services Program is to assist history museums throughout the state on various aspects of museum operations, including the preservation, management, and interpretation of museum collections.

The amendment to §21.7 will update the chapter and rule reference related to the Historic Texas Cemetery designation process. The current §21.7 refers to §21.12 of this chapter; the correct chapter reference is §22.6 due to changes in the code that were effective May 2010.

Amendments to §21.9 clarify the marker application evaluation procedures to reflect changes in the scoring criteria governing the evaluation for approval or rejection of applications for Official Texas Historical Markers, Recorded Texas Historic Landmarks (RTHLs), or Historic Texas Cemetery designations.

The amendment to §21.15 will strike a reference to the operation of the Sam Rayburn House Museum as part of the agency's Museum Services Program. The Sam Rayburn House Museum now operates under the jurisdiction of the agency's Historic Sites Division.

Mark Wolfe, Executive Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Wolfe also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be an increased clarity of the administration of the Official Texas Historical Marker Program. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276. Comments will be accepted for 30 days after publication in the *Texas Register*.

SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

13 TAC §21.7, §21.9

The amendments are proposed under §442.005(q) of Title 4, Subtitle D of the Texas Government Code, which provides the Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

The proposed amendments implement §442.006 of the Texas Government Code.

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

§21.7. Application Requirements.

(a) Any individual, group or county historical commission may apply to the commission for an Official Texas Historical Marker. The application shall include:

- (1) a completed current Official Texas Historical Marker application form;
- (2) supporting documentation as provided in program guidelines, criteria and procedures adopted by the commission;[-]
- (3) an application fee in the amount of \$100 [~~\$100.00~~].

(b) Historic Texas Cemetery markers. A marker may be awarded to a cemetery only if the commission has designated the cemetery as a Historic Texas Cemetery. See §22.6 [~~§21.12~~] of this title [~~chapter~~] for information concerning Historic Texas Cemetery designation. The marker must be located either at or immediately adjacent to the designated cemetery.

(c) The following procedures shall be observed for the marker application process. Potential sponsors should check the commission web site at www.thc.state.tx.us for current information on the Official Texas Historical Marker Program.

(1) The sponsor must contact the county historical commission (CHC) to obtain a marker application form, to review basic program requirements and to discuss the county's review process and procedures, which differ from county to county. The commission does not mandate a specific review process at the county level, so the sponsor will need to work closely with the CHC to be sure all local concerns and procedures are addressed properly. The CHCs cannot send the application forward until they can certify that the history and the application have been adequately reviewed.

(2) CHC reviews the marker application for accuracy and significance, and either approves the application or works with the sponsor to develop additional information as necessary.

(3) CHC-approved applications are forwarded online as a Word document to the History Programs Division of the commission. Once the application is received by the commission, additional notifications and correspondence will be between the CHC contact and the commission staff contact only, unless otherwise noted.

(4) Commission staff makes a preliminary assessment to determine if the topic is eligible for review and if all required elements are included. The commission will notify the applicant through the CHC whether the application is accepted.

(5) Upon notification the application has been accepted for review, a \$100 application fee is due within ten days.

(6) Eligible applications receive further review, and additional information may be requested via email. Failure to provide all requested materials as instructed within 45 days, unless a longer period is approved by the commission, will result in cancellation of the application.

(7) Commission staff and commissioners review applications and determine:

- (A) eligibility for approval;
- (B) size and type of marker for each topic; and
- (C) priorities for work schedule on the approved applications.

(8) CHC and sponsor will be notified via email of approval and provided a payment form for the casting of the marker.

(9) The payment must be received in commission offices within 45 days or the application will be cancelled.

(10) Commission staff will write the marker inscription. One review copy will be provided via email to the CHC contact only for local distribution as needed. Inscription review is for accuracy of content only; the commission determines the content, wording, punctuation, phrasing, etc.

(A) Upon approval of the inscription, the CHC contact provides additional copies as necessary for committee, commission, or sponsor review and conveys a single response to the commission.

(B) Upon receipt of emailed approval by the CHC, the commission proceeds with the order.

(C) If changes recommended by the CHC are approved by the commission, staff will send a revised copy for content review. Because inscription reviews are for content only, only two reviews should be necessary to complete this step of the process. Additional requests for revisions are subject to approval by the commission, which will be the sole determiner of warranted requests for changes. Excessive requests for change, or delays in response, may, in the determination of the commission, result in cancellation of the order.

(D) Only the authorized CHC contact - chair or marker chair - can make the final approval of inscriptions at the county level. Final approval will be construed by the commission to mean concurrence by any interested parties, including the sponsor.

(11) After final approval, the order is sent to marker supplier for manufacturing. Subject to the terms of the commission vendor contract, only authorized commission staff may contact the manufacturer relative to any aspect of Official Texas Historical Markers, including those in process or previously approved.

(12) Commission staff reviews galley proofs of markers. With commission approval, manufacturing process proceeds. Manufacturer inspects, crates and ships completed markers and notifies commission, which in turn notifies CHC contact.

(13) With shipment notice, planning can begin on marker dedication ceremony, as needed, in conjunction with CHC, sponsors and other interested parties.

(14) Information on planning and conducting marker ceremonies is provided by the commission through its web site.

(15) Once the planning is complete, the CHC posts the information to the commission web site calendar.

(16) Commission staff enters marker information into the Texas Historic Sites Atlas at website atlas.thc.state.tx.us, an online inventory of marker information and inscriptions.

(d) Application content.

(1) Each marker application must address the criteria specified in §21.9 of this chapter in sufficient detail to allow the commission to judge the merit of the application.

(2) Documentation. Each marker application must contain sufficient documentation to verify the assertions about the above criteria. If the claims in the application cannot be verified through documentation, the application will be rejected.

(e) Limitation of markers awarded.

(1) The commission will set a numerical limit on the number of markers that will be approved annually.

(2) No markers in excess of the limit may be approved except by vote of the commission to amend the limit.

§21.9. *Application Evaluation Procedures.*

(a) The commission adopts the following *criteria* governing evaluation for approval or rejection of applications for Official Texas Historical Markers, Recorded Texas Historic Landmarks (RTHLs), or Historic Texas Cemetery designations.

(1) Age: Structures eligible for the RTHL designation and marker must be at least 50 years old. Older structures may be awarded additional weight.

(2) Historical significance/Architectural Significance: Architectural significance alone is not enough to qualify a structure for the RTHL designation. It must have an equally significant historical association, and that association can come from an event that occurred at the site; through individuals who owned or lived on the property; or, in the case of bridges, industrial plants, schoolhouses and other non-residential properties, through documented significance to the larger community.

~~(3) [Architectural significance:]~~ Structures deemed architecturally significant are outstanding examples of architectural history through design, materials, structural type or construction methods. In all cases, eligible architectural properties must display integrity; that is, the structure should be in a good state of repair, maintain its appearance from its period of significance and be considered an exemplary model of preservation. Architectural significance is often best determined by the relevance of the property to broader contexts, including geography. Any changes over the years should be compatible with original design and reflect compliance with accepted preservation practices, e.g., the *Secretary of the Interior's Standards for Rehabilitation*.

~~(4) [(4)]~~ State of repair/Integrity: Structures not considered by the commission to be in a good state of repair are not eligible [ineligible] for RTHL designation. The commission reserves the sole right to make that determination relative to eligibility for RTHL markers. Subject marker topics placed at the appropriate site (site integrity) or topics that are documented and understood by the public maintain a high degree of integrity.

~~(5) [(5)]~~ Diversity of topic for addressing gaps in historical marker program. This criterion addresses the extent to which topic relates to an aspect or area of Texas history that has not been well represented by the marker program.

~~(6) [(6)]~~ Value of topic as an undertold or untold aspect of Texas history. This criterion addresses the extent to which topic addresses undertold facets of Texas history and increases the diversity of history and cultures interpreted through the marker program.

~~(7) [(7)]~~ Endangerment level of property, site or topic. This criterion addresses the extent to which the property (RTHLs), site or story is in danger of being lost if its history and significance are not addressed through the marker program.

~~(8) [(8)]~~ Available documentation and resources [CHC support and existing documentation]. This [this] criterion addresses [the extent to which the CHC has shown strong support and partnership in developing the topic and] the quality and balance of the research and documentation for the application.

~~(9) [(9)]~~ Diversity among this group of candidates. This criterion addresses the extent to which this topic represents an undertold story of Texas history among the applications received during that year's marker cycle.

~~(10) [(10)]~~ Relevance to other commission programs. This criterion addresses the extent to which the topic coordinates with other significant programs and initiatives of the agency.

(10) Relevance to the commission's current thematic priorities. This criterion addresses the extent to which the topic coordinates with the thematic priorities set by the commission each year (varies by year).

(b) Applications and topics with *exceptional significance* directly address established statewide themes, promote untold stories of Texas history and have exceptional ability to educate the public on aspects of Texas history not fully addressed by the marker program. Applications and topics with *high significance* address statewide themes, promote untold stories of Texas history and have some ability to educate the public on aspects of Texas history not fully addressed by the marker program. Applications and topics that *meet requirements* have been found to fulfill the basic application requirements and guidelines, relate to statewide themes but do not necessarily directly address topics that have not been widely addressed by the marker program. Applications and topics deemed *not eligible* do not relate to statewide themes and/or do not meet the basic program application requirements and guidelines. All markers must relate to the statewide themes established by the commission. These themes are available on the commission's web site at www.thc.state.tx.us. From time to time the commission may establish thematic priorities for the marker program. Additional points will be awarded to projects falling within these priorities.

(c) The scoring system for ranking applications is as follows:

- (1) Age - 5 pts. max;
 - (2) Historical Significance/Architectural Significance - 10 pts. max;
 - (3) State of Repair/Integrity - 10 pts. max;
 - (4) Diversity of topic for addressing gaps in historical marker program - 10 pts. max;
 - (5) Value of topic as an untold or untold aspect of Texas history - 15 pts. max;
 - (6) Endangerment level of property, site or topic - 10 pts. max;
 - (7) Available documentation and resources - 10 pts. max;
 - (8) Diversity among this group of candidates - 10 pts. max;
 - (9) Relevance to other commission programs - 5 pts. max;
- and
- (10) Relevance to the commission's current thematic priorities - 15 pts. max.
- ~~[(1) 15 pts. max. Relevance to the commission's current thematic priorities;]~~
- ~~[(2) 10 pts. max. Value of topic as an untold or untold aspect of Texas history;]~~
- ~~[(3) 10 pts. max. Endangerment level of property, site or topic;]~~
- ~~[(4) 10 pts. max. Age;]~~
- ~~[(5) 10 pts. max. Historical or architectural/site significance;]~~
- ~~[(6) 10 pts. max. Historical or architectural/site integrity (state of repair);]~~
- ~~[(7) 10 pts. max. Diversity of topic for addressing gaps in historical marker program;]~~
- ~~[(8) 10 pts. max. CHC support and existing documentation; and]~~

~~[(9) 10 pts. max. Diversity among this group of candidates; and]~~

~~[(10) 5 pts. max. Relevance to other commission 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 August 15, 2012.

TRD-201204302

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 30, 2012

For further information, please call: (512) 463-8817



SUBCHAPTER D. MUSEUM SERVICES PROGRAM

13 TAC §21.15

The amendments are proposed under §442.005(a) and (q) of Title 4, Subtitle D of the Texas Government Code, which provide the Commission with the authority to provide services to museums and to promulgate rules to reasonably effect the purposes of this chapter.

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

§21.15. *Museum Services.*

(a) All policies and procedures relating to museum services [and operation of the Sam Rayburn House Museum] shall be determined by the Commission.

(b) The Commission may establish a grant program to assist small history museums in the State of Texas.

(1) The conditions of eligibility, procedures for consideration, and criteria for evaluating applications for such grants shall be determined by the Commission and made available to members of the public.

(2) Decisions on the grants shall be made by vote of the Commission in a duly posted open meeting.

(3) Grants shall be made without regard to the race, religion, ethnicity, gender, political affiliation, or national origin of 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 August 15, 2012.

TRD-201204303

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 30, 2012

For further information, please call: (512) 463-8817



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.418

The Public Utility Commission of Texas (commission) proposes an amendment to §26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds. The proposed amendment will exclude commercial mobile radio service (CMRS) resellers from eligibility for designation by the commission as an eligible telecommunications carrier (ETC). Instead, a CMRS reseller will be able to seek designation as an ETC by the Federal Communications Commission (FCC). Project Number 40561 is assigned to this proceeding.

Liz Kayser, Market Economist, Competitive Markets Division, has determined that for each year of the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Kayser has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be more efficient ETC designation and oversight of CMRS resellers. The FCC requires a CMRS reseller to submit compliance plans to the FCC for approval before filing an application for ETC designation with a state commission. In addition, apart from interactions related to ETC designation, CMRS resellers have little interaction with the commission. As a result, it will be more efficient for a CMRS reseller to be designated by the FCC as an ETC rather than by the commission. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Ms. Kayser has also determined that for each year of the first five years the proposed amendment is in effect, there should be no effect on local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on Monday, September 24, 2012, if requested pursuant to the Administrative Procedure Act (APA), Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for public hearing must be received by Thursday, September 20, 2012.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments to the proposed amendment are re-

quired to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the amended rule. All comments should refer to Project Number 40561. Initial comments are due by Thursday, September 20, 2012 and reply comments are due by Monday, October 1, 2012.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §51.001, which provides that it is the policy of this state to promote diversity of telecommunications providers and interconnectivity; encourage a fully competitive telecommunications marketplace; and maintain a wide availability of high quality, interoperable, standards-based telecommunications services at affordable rates.

Cross Reference to Statutes: PURA §14.002 and §51.001.

§26.418. *Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.*

(a) Purpose. This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF) pursuant to 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service). ~~[Only common carriers designated by the commission pursuant to 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service) as eligible for federal universal service support may qualify to receive universal service support under the FUSF.]~~ In addition, this section provides guidelines for rural and non-rural carriers to meet the federal requirements of annual certification for FUSF support criteria and, if requested or ordered, for the disaggregation of rural carriers' FUSF support.

(b) Applicability. This section applies to a common carrier seeking designation as an ETC, except for commercial mobile radio service (CMRS) resellers. A CMRS reseller may not seek designation from the commission, but instead may seek designation as an ETC by the Federal Communications Commission (FCC). This section also applies to a common carrier that has been designated by the commission as an ETC, including a CMRS reseller.

(c) ~~[(b)]~~ Service areas. The commission may designate ETC service areas according to the following criteria.

(1) Non-rural service area. To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations (C.F.R.) §54.101 (relating to Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an ETC.

(2) Rural service area. In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services pursuant to 47 C.F.R. §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

(d) ~~[(e)]~~ Criteria for determination of ETCs. A common carrier shall be designated as eligible to receive federal universal service support if it:

(1) offers the services that are supported by the federal universal service support mechanisms under 47 C.F.R. §54.101 either us-

ing its own facilities or a combination of its own facilities and resale of another carrier's services; and

(2) advertises the availability of and charges for such services using media of general distribution.

(c) [(d)] Criteria for determination of receipt of federal universal service support. In order to receive federal universal service support, a common carrier must:

(1) meet the requirements of subsection (d) [(e)] of this section;

(2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and

(3) offer toll limitation services in accordance with 47 C.F.R. §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(f) [(e)] Designation of more than one ETC.

(1) Non-rural service areas. In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission shall designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of subsection (c)(1) [(b)(1)] of this section and subsection (d) [(e)] of this section.

(2) Rural service areas. In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an ETC a carrier that meets the requirements of subsection (c)(2) [(b)(2)] of this section and subsection (d) [(e)] of this section if the commission finds that the designation is in the public interest.

(g) [(f)] Proceedings to designate ETCs.

(1) At any time, a common carrier may seek commission approval to be designated an ETC for a requested service area.

(2) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC shall file an application, within 30 days after the date of the purchase, to amend its ETC service area to include those geographic areas that are eligible for support.

(3) If an ETC receiving support under this section sells an exchange to an unaffiliated carrier, it shall file an application, within 30 days after the date of the sale, to amend its ETC designation to exclude from its designated service area those exchanges for which it was receiving support.

(h) [(g)] Application requirements and commission processing of applications.

(1) Requirements for notice and contents of application.

(A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commis-

sion at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application for each common carrier seeking ETC designation. A common carrier that seeks to be designated as an ETC shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Regulatory Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

(i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an ETC;

(ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) to any consumer in the service area for which it seeks designation as an ETC;

(iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;

(iv) show the service area in which the applicant seeks designation as an ETC;

(v) contain a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the proposed notice is reasonable and in compliance with applicable law;

(vi) contain a copy of the text of the notice;

(vii) contain the proposed effective date of the designation; and

(viii) contain any other information which the applicant wants considered in connection with the commission's review of its application.

(C) Contents of application for each common carrier seeking ETC designation and receipt of federal universal service support. A common carrier that seeks to be designated as an ETC and receive federal universal service support shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

(i) comply with the requirements of subparagraph (B) of this paragraph;

(ii) show that the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and

(iii) show that the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.

(2) Commission processing of application.

(A) Administrative review. An application considered under this section may be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the telecommunications carrier.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide the commission staff with written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) Approval or denial of application.

(i) An application filed pursuant to paragraph (1)(B) of this subsection shall be approved by the presiding officer if the application meets the following requirements:

(I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c);

(II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;

(III) the applicant advertises the availability of, and charges for, such services using media of general distribution;

(IV) notice was provided as required by this section;

(V) the applicant satisfies the requirements contained in subsection (c) [(b)] of this section; and

(VI) if, in areas served by a rural telephone company, the ETC designation is consistent with the public interest.

(ii) An application filed pursuant to paragraph (1)(C) of this subsection shall be approved by the presiding officer if the application meets the following requirements:

(I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;

(II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and

(III) the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(E) Waiver. In the event that an otherwise ETC requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

(i) [(h)] Designation of ETC for unserved areas. If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 U.S.C. §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

(j) [(h)] Relinquishment of ETC designation. A common carrier may seek to relinquish its ETC designation.

(1) Area served by more than one ETC. The commission shall permit a common carrier to relinquish its designation as an ETC in any area served by more than one ETC upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC;

(B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.

(2) Area where the common carrier is the sole ETC. In areas where the common carrier is the only ETC, the commission may permit it to relinquish its ETC designation upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC; and

(B) commission designation of a new ETC for the service area or areas.

(k) [(j)] Rural and non-rural carriers' requirements for annual certification to receive FUSF support. A common carrier serving a rural or non-rural study area shall comply with the following requirements for annual certification for the receipt of FUSF support.

(1) Annual certification. Common carriers must provide the commission with an affidavit annually, on or before September 1st of each year, which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. Upon receipt and acceptance of the affidavits filed on or before September 1st each year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1st each year.

(2) Failure to file. Common carriers failing to file an affidavit by September 1st may still be certified by the commission for annual FUSF. However, the carrier is ineligible for support until the quarter following the federal universal service administrator's receipt of the commission's supplemental submission of the carrier's compliance with the federal requirements.

(3) Supplemental certification. For carriers not subject to the annual certification process, the schedule set forth in 47 C.F.R. §54.313 and 47 C.F.R. §54.314(d) for the filing of supplemental certifications shall apply.

(4) Recommendation for Revocation of FUSF support certification. The commission may recommend the revocation of the FUSF support certification of any carrier that it determines has not complied with the federal requirements pursuant to 47 U.S.C. §254(e) and will review any challenge to a carrier's FUSF support certification and make an appropriate recommendation as a result of any such review.

(l) [(k)] Disaggregation of rural carriers' FUSF support. Common carriers serving rural study areas must comply with the following requirements regarding disaggregation of FUSF support.

(1) Election by May 15, 2002. On or before May 15, 2002, all rural incumbent local exchange carriers (ILECs) may notify the commission of one of the following elections regarding FUSF support. This election will remain in place for four years from the effective date of certification, pursuant to 47 C.F.R. §54.315, unless the commission, on its own motion, or upon the motion of the rural ILEC or an interested party, requires a change to the elected disaggregation plan:

(A) a rural ILEC may choose to certify to the commission that it will not disaggregate at this time;

(B) a rural ILEC may seek disaggregation of its FUSF support by filing a targeted plan with the commission that meets the criteria in paragraph (3) of this subsection, subject to the commission's approval of the plan;

(C) a rural ILEC may self-certify a disaggregation targeted plan that meets the criteria in paragraphs (3) and (4) of this subsection, disaggregate support to the wire center level or up to no more than two cost zones, or mirror a plan for disaggregation that has received prior commission approval; or

(D) if the rural ILEC serves a study area that is served by another carrier designated as an ETC prior to the effective date of 47 C.F.R. §54.315, (June 19, 2001), the ILEC may only self-certify the disaggregation of its FUSF support by adopting a plan for disaggregation that has received prior commission approval.

(2) Abstain from filing. If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier will not be permitted to disaggregate its FUSF support unless it is ordered to do so by the commission pursuant to the terms of paragraph (5) of this subsection.

(3) Requirements for rural ILECs' disaggregation plans. Pursuant to the federal requirements in 47 C.F.R. §54.315(e) a rural ILEC's disaggregation plan, whether submitted pursuant to paragraph (1)(B), (C) or (D) of this subsection, must meet the following requirements:

(A) the sum of the disaggregated annual support must be equal to the study area's total annual FUSF support amount without disaggregation;

(B) the ratio of the per line FUSF support between disaggregation zones for each disaggregated category of FUSF support shall remain fixed over time, except as changes are required pursuant to paragraph (5) of this subsection;

(C) the ratio of per line FUSF support shall be publicly available;

(D) the per line FUSF support amount for each disaggregated zone or wire center shall be recalculated whenever the rural ILEC's total annual FUSF support amount changes and revised total per line FUSF support and updated access line counts shall then be applied using the changed FUSF support amount and updated access line counts applicable at that point;

(E) each support category complies with subparagraphs (A) and (B) of this paragraph;

(F) monthly payments of FUSF support shall be based upon the annual amount of FUSF support divided by 12 months if the rural ILEC's study area does not contain a competitive carrier designated as an ETC; and

(G) a rural ILEC's disaggregation plan methodology and the underlying access line count upon which it is based will apply to any competitive carrier designated as an ETC in the study area.

(4) Additional requirements for self-certification of a disaggregation plan. Pursuant to 47 C.F.R. §54.315(d)(2), a rural ILEC's self-certified disaggregation plan must also include the following items in addition to those items required by paragraph (3) of this subsection:

(A) support for, and a description of, the rationale used, including methods and data relied upon, as well as a discussion of how the plan meets the requirements in paragraph (3) of this subsection and this paragraph;

(B) a reasonable relationship between the cost of providing service for each disaggregation zone within each disaggregation category of support proposed;

(C) a clearly specified per-line level of FUSF support for each category pursuant to 47 C.F.R. §54.315(d)(2)(iii);

(D) if the plan uses a benchmark, a detailed explanation of the benchmark and how it was determined that is generally consistent with how the level of support for each category of costs was derived so that competitive ETCs may compare the disaggregated costs for each cost zone proposed; and

(E) maps identifying the boundaries of the disaggregated zones within the study area.

(5) Disaggregation upon commission order. The commission on its own motion or upon the motion of an interested party may order a rural ILEC to disaggregate FUSF support under the following criteria:

(A) the commission determines that the public interest of the rural study area is best served by disaggregation of the rural ILEC's FUSF support;

(B) the commission establishes the appropriate disaggregated level of FUSF support for the rural ILEC; or

(C) changes in ownership or changes in state or federal regulation warrant the commission's action.

(6) Effective dates of disaggregation plans. The effective date of a rural ILEC's disaggregation plan shall be as specified in 47 C.F.R. §54.315.

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 August 20, 2012.

TRD-201204361

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: September 30, 2012

For further information, please call: (512) 936-7223



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER A. OPEN-ENROLLMENT

CHARTER SCHOOLS

19 TAC §§100.1, 100.101, 100.105

The State Board of Education (SBOE) proposes amendments to §§100.1, 100.101, and 100.105, concerning open-enrollment charter schools. The sections address provisions relating to application and selection procedures and criteria, annual report on open-enrollment charter governance, and application to public senior college or university charters and public junior college charters. The proposed amendments would align SBOE rules pertaining to the charter application process with proposed commissioner of education rules, clarify the signatories on the original contract for charter, codify practices adopted through the annual governance report pertaining to which family members of board members and school officers must be disclosed, and expand the provisions that would apply to public senior college or university charters and public junior college charters.

Section 100.1 addresses the open-enrollment charter application and selection procedures and criteria. The proposed amendment would align with proposed commissioner rules, specify that the chair of a charter holder must sign the written contract, and make technical edits.

Section 100.101 addresses the collection of information for the annual report on open-enrollment charter school governance. The proposed amendment would specify which family members must be reported and require that information regarding compensation be provided for family members. Technical edits would also be made.

Section 100.105 addresses the applicability of open-enrollment charter rules to public senior college or university charters and public junior college charters. The proposed amendment would expand the provisions that would apply to public senior college or

university charters and public junior college charters and make a technical edit.

The proposed amendments would have procedural and reporting requirements. The annual governance reporting form will require additional information, and the method of reporting will be web-based rather than paper submission. The proposed amendments would have locally maintained paperwork requirements. Each charter holder will be required to maintain signed and dated copies of annual governance reporting forms for five years.

Laura Taylor, associate commissioner for accreditation and school improvement, has determined that for the first five-year period the amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Taylor has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be alignment of SBOE rules with proposed commissioner rules, clarification of the signatories on the original contract for charter, and codification of practices adopted through the annual governance report pertaining to which family members of board members and school officers must be disclosed. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

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

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code (TEC), §7.102(c)(9) and §12.101, which authorize the SBOE to grant a charter on the application of an eligible entity for an open-enrollment charter school or approve a charter revision as provided by the TEC, Chapter 12, Subchapter D; TEC, §12.110, which authorizes the SBOE to adopt an application form and a procedure that must be used to apply for a charter for an open-enrollment charter school and criteria to use in selecting a program for which to grant a charter; TEC, §12.119, which authorizes the SBOE to establish the procedure for collecting information for the annual report on open-enrollment charter school governance, including the specification and description of certain powers and duties; TEC, §12.152, which authorizes the SBOE to grant a charter on the application of a public senior college or university or a public junior college for an open-enrollment charter school; and TEC, §12.154, which authorizes the SBOE to grant a charter to a public senior college or university or a public junior college if the entity satisfies specific criteria in the application, as determined by the SBOE.

The amendments implement the TEC, §§7.102(c)(9), 12.101, 12.110, 12.119, 12.152, and 12.154.

§100.1. Application and Selection Procedures and Criteria.

(a) Prior to each selection cycle, the State Board of Education (SBOE) shall adopt an application form for submission by applicants seeking a charter to operate an open-enrollment charter school. The application form shall address the content requirements specified in Texas Education Code (TEC), §12.111, and contain the following:

- (1) the timeline for selection;
- (2) required applicant conferences and training prerequisites;
- (3) scoring criteria and procedures for use by the review panel ~~selected~~ [appointed] under subsection (d) of this section;
- (4) selection criteria, including the minimum score necessary for an application to be eligible for selection; and
- (5) the earliest date an open-enrollment charter school selected in the cycle may open.

(b) The Texas Education Agency (TEA) shall review applications submitted under this section. If an application does not contain all required information and documentation and/or meet the standards in TEC, §12.101, and §100.1015 of this title (relating to Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter), the TEA shall return the application without further processing. [Further, the TEA shall return the application without further processing if it finds substantive deviations from state and federal requirements affecting the operation of open-enrollment charter schools or the applicant's eligibility to be granted a charter.] The TEA shall establish procedures and schedules [to be approved by the SBOE] for returning applications without further processing [under this subsection, including a process for review by the SBOE committee responsible for charter schools]. Failure of the TEA to identify any deficiency [or substantive deviation], or notify an applicant thereof, does not constitute a waiver of the requirement and does not bind the SBOE.

(c) Upon written notice to the TEA, an applicant may withdraw an application.

(d) Applications that meet the standards established under TEC, §12.101, and §100.1015 of this title [Eligible applications] shall be reviewed and scored by an external application [appointed] review panel selected by the commissioner of education from a pool of qualified candidates identified through a request for qualification (RFQ) process. [Two-thirds of the panel members shall be appointed by the SBOE. One-third of the panel members shall be appointed by the commissioner of education.] The panel shall review and score applications in accordance with the procedures and criteria established in the application form. Review panel members shall not discuss applications with or accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of the selection process for open-enrollment charters. Members of the review panel shall disclose to the TEA immediately upon discovery of any past or present relationship with an open-enrollment charter applicant, including any current or prospective employee, agent, officer, or director of the sponsoring entity, an affiliated entity, or other party with an interest in the selection of the application.

(e) Applications that are not scored at or above the minimum score established in the application form are not eligible for SBOE selection during that cycle. The SBOE may at its sole discretion decline to grant an open-enrollment charter to an applicant whose application was scored at or above the minimum score. No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the SBOE[, except as provided in this section].

(f) The SBOE or its designee(s) shall interview applicants whose applications received the minimum score established in the application form. The SBOE may specify individuals required to attend the interview and may require the submission of additional information and documentation prior or subsequent to an interview.

(g) The SBOE may consider criteria that include, but are not limited to, the following when determining whether to grant an open-enrollment charter:

- (1) indications that the charter school will improve student performance;
- (2) innovation evident in the program(s) proposed for the charter school;
- (3) impact statements from any school district whose enrollment is likely to be affected by the proposed charter school, including information relating to any financial difficulty that a loss in enrollment may have on a district;
- (4) evidence of parental and community support for the proposed charter school;
- (5) the qualifications, backgrounds, and histories of individuals and entities who will be involved in the management and educational leadership of the proposed charter school;
- (6) the history of the sponsoring entity of the proposed charter school, as defined in the application form;
- (7) indications that the governance structure proposed for the charter school is conducive to sound fiscal and administrative practices; and
- (8) indications that the proposed charter school would expand the variety of charter schools in operation with respect to the following:
 - (A) representation in urban, suburban, and rural communities;
 - (B) instructional settings;
 - (C) types of eligible entities;
 - (D) types of innovative programs;
 - (E) student populations and programs; and
 - (F) geographic regions.

(h) An applicant for an open-enrollment charter shall not communicate with a member of an external application review panel [appointed by the SBOE] concerning a charter school application beginning on the date the panel member is notified of appointment to serve on a specific review cycle and ending when the SBOE takes final action awarding charters under that application. On finding a material violation of the no-contact period, the SBOE shall reject the application or applications affected.

~~[(i) The SBOE may consider minimum enrollment criteria.]~~

~~[(1) Each application for an open-enrollment charter shall state a minimum student enrollment of no fewer than 50 students. The SBOE may grant a lower minimum student enrollment only on majority recommendation of members voting from the committee with jurisdiction over charters.]~~

~~[(2) The SBOE may grant a lower minimum student enrollment in accordance with paragraph (1) of this subsection upon finding that either the nature of the charter warrants a minimum enrollment lower than 50 students.]~~

(i) [(j)] The SBOE may grant an open-enrollment charter subject to additional conditions [not contained in the application] and shall [may] require fulfillment of such conditions before the charter school is issued a contract [permitted to operate]. Such conditions must be fulfilled by the awardee, as determined by the commissioner, no later than six months after the date of the award by the SBOE, or the authorization for charter is null and void with no additional action required by the SBOE. The commissioner may establish timelines for submission by the awardee of any documentation to be considered by the commissioner in determining whether a condition has been met.

(j) [(k)] An open-enrollment charter shall be in the form and substance of a written contract signed by the chair of the SBOE, the chair of the charter holder, and the chief operating officer of the school, but is not a contract for goods or services within the meaning of Texas Government Code, Chapter 2260. The chief operating officer of the school shall mean the chief executive officer of the open-enrollment [open enrollment] charter holder under TEC, §12.1012.

§100.101. *Annual Report on Open-Enrollment Charter Governance.*

(a) No later than November 1 of each year, each open-enrollment charter holder shall file under §100.1013 of this title (relating to Filing of Documents), the following information on a charter school governance reporting form approved by the State Board of Education:

(1) identifying information for and compensation of each officer and member of the governing body of the open-enrollment charter holder;

(2) identifying information for and compensation of each officer of the charter school;

(3) identifying information for and compensation of each member of the governing body of the charter school, if the charter holder has established a governing body for the charter school; and

(4) identifying information for and compensation of all [about] family members, within the third degree of consanguinity or affinity, of each board member and each school officer [serving together on boards or as administrators].

(b) The identifying information required for an individual under subsection (a) of this section may include facsimile numbers and electronic mail addresses and shall include:

(1) the title of each position held or function performed by the individual;

(2) the specific powers and duties that the governing body of the charter holder or charter school have delegated to the individual, as described by the powers and duties listed in the charter;

(3) the legal name of the individual;

(4) any aliases or names formerly used by the individual, including maiden name;

(5) a mailing address for the individual, if an officer; and the street address of the individual's primary residence, if a governing body member; and

(6) telephone numbers for the individual.

(c) The compensation information required for an individual under subsection (a) of this section shall include all compensation, remuneration, and benefits received by the individual in any capacity from the charter holder or the charter school, or from any contractor or management company doing business with the charter holder or charter school. The compensation reported shall include without limitation:

(1) all salary, bonuses, benefits, or other compensation received pursuant to an employment relationship;

(2) all compensation received for goods or services under contract, agreement, informal arrangement, or otherwise;

(3) all payment of or reimbursement for personal expenses;

(4) all credit extended to the individual by the charter holder or charter school;

(5) the fair market value of all personal use of property paid for by the charter holder or charter school;

(6) the fair market value of all in-kind transfers of property;

(7) all compensation for goods or services provided to the charter holder through transactions unrelated to the charter school; and

(8) all other forms of compensation or remuneration received by the individual from the charter holder or charter school.

(d) No later than November 1 of each year, each open-enrollment charter holder shall file under §100.1013 of this title [(relating to Filing of Documents)]:

(1) a copy of its articles of incorporation and bylaws, or comparable documents if the charter holder does not have articles of incorporation or bylaws; or

(2) if a copy of its articles of incorporation and bylaws or comparable documents is already on file under this subsection, a copy of any amendments or changes thereto.

§100.105. *Application to Public Senior College or University Charters and Public Junior College Charters.*

The following provisions of the rules in this subchapter apply as indicated in this section to a public senior college or university charter school or a public junior college charter school as though the public senior college or university charter school or the public junior college charter school were granted a charter under Texas Education Code [(TEC)], Chapter 12, Subchapter D (Open-Enrollment Charter School).

(1) Section 100.1(a) of this title (relating to Application and Selection Procedures and Criteria) applies, except that the State Board of Education (SBOE) may adopt a separate application form for applicants seeking a charter to operate a public senior college or university charter school or a public junior college charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The SBOE may adopt or amend this separate application form without regard to the selection cycle referenced in that subsection.

(2) Section 100.1(c), (g)(1)-(5) and (8), (i), and (j) of this title [(g)(1)-(4), (g)(8), (j), and (k)] apply.

(3) Except as provided in this section, this subchapter does not apply to a public senior college or university charter school or a public junior college charter school.

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 August 16, 2012.

TRD-201204331

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 30, 2012

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



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

The Texas Board of Professional Engineers (Board) proposes amendments to §137.7, concerning License Expiration and Renewal; §137.31, concerning Seal Specifications; §137.37, concerning Sealing Misconduct; and §137.65, concerning Action in Another Jurisdiction.

The proposed change to §137.7 adds a subsection that would allow the Board to refuse to renew the license of any license holder who had any unpaid administrative penalties owed or failed to meet any other term or condition of a Consent, Agreed, or Final Order of the Board.

The proposed change to §137.31 modifies the requirement for the size of a seal to be no larger than two (2) inches and allows the font style to be either all uppercase or a mixture of upper and lowercase letters.

The proposed change to §137.37 adds a subsection to the rule that specifically addresses the use/misuse of a seal by an unlicensed individual.

The proposed change to §137.65 adds a third subsection that is specific to supporting the recent statute change that added Texas Occupations Code §1001.068 which allows for license holders to practice outside of Texas. This change provides a guidance and justification of disciplinary action if that practice is in violation.

C.W. Clark, P.E., Director of Compliance and Enforcement for the Board, has determined that for the first five-year period the proposed amendments are in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the sections as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Clark also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments is an improvement based on clarification of what the continuing education program is and what is required to meet minimum standards.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to C.W. Clark, P.E., Director of Compliance and Enforcement, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, faxed to his attention at (512) 440-5715 or sent by email to rules@engineers.texas.gov.

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.7

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and

bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; §1001.207, concerning standards of conduct and ethics; and §1001.210, concerning the continuing education program.

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

§137.7. License Expiration and Renewal.

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

(g) A license holder who, at the time of his or her annual renewal, has any unpaid administrative penalty owed to the Board or who has failed to comply with any term or condition of a Consent Order, Agreed Board Order, or a Final Board Order shall not be allowed to renew his or her license to practice engineering until such time as the administrative penalty is paid in full or the term or condition is satisfied unless otherwise authorized by the Consent Order, Agreed Board Order, or a Final Board 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.

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Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: September 30, 2012

For further information, please call: (512) 440-7723



SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §137.31, §137.37

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; §1001.207, concerning standards of conduct and ethics; and §1001.210, concerning the continuing education program.

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

§137.31. Seal Specifications.

(a) (No change.)

(b) Physical and electronic seals shall be of the design illustrated in this section and shall be no larger than two inches. Regardless of seal size the engineer's name and number must be clearly legible.

(c) [(b)] All physical seals obtained and used by license holders shall be capable of leaving a permanent ink image or permanent impression of the seal attached to the engineering work. [The physical and electronic seals shall be of the design illustrated in this paragraph. The physical seals may be one of two different sizes:]

Figure: 22 TAC §137.31(c)

[(1) a pocket seal (the size commercially designated as 1-5/8-inch seal), or]

[(2) a desk seal (commercially designated as a two-inch seal).]

[Figure: 22 TAC §137.31(b)(2)]

[(e) Electronic seals may be of a reduced size provided that the engineer's name and number are clearly legible.]

(d) All seals obtained and used by license holders shall contain any given name, commonly accepted variation of the given name, or initial combination with the surname as currently listed with the board and in the usual written signature. Nicknames shall not be permitted on a seal in lieu of a given name or initial combination. The name can be displayed on the seal using all uppercase letters such as "LESLIE H. DOE" or using the standard combination of upper and lowercase letters, such as "Leslie H. Doe".

(e) - (g) (No change.)

§137.37. Sealing Misconduct.

(a) A license holder is guilty of misconduct and subject to disciplinary action if the license holder:

(1) knowingly signs or seals any engineering document or product if its use or implementation may endanger the health, safety, property or welfare of the public.

(2) signs or affixes a seal on any document or product when the license is inactive or has been revoked, suspended, or has expired.

(3) alters a sealed document without proper notification to the responsible license holder.

(4) allows others access to his or her electronic files containing his or her seal and/or electronic signature, unless access is explicitly authorized for particular engineering work.

(b) A person not licensed by the board may not use, cause to be used, affix or cause to be affixed or in any other manner, regardless of the means, attach or in any way depict an engineering seal or a representation of an engineering seal without the express permission by the licensee responsible for the project or the specific engineering work in question.

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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Lance Kinney, P.E.

Executive Director

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SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.65

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; §1001.207,

concerning standards of conduct and ethics; and §1001.210, concerning the continuing education program.

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

§137.65. Action in Another Jurisdiction.

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

(c) Any complaint, referral or report that a Texas licensed professional engineer performing engineering related to Texas Occupations Code §1001.068 in another state may be subject to disciplinary action by this board, if after investigation it is determined that the engineering work done in that other state was inadequate, deficient, incorrect or violated that state's law or rules regarding the practice of engineering.

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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Lance Kinney, P.E.

Executive Director

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.10

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.10, concerning Supervision of Non-Licensed Persons.

The proposed amendment to §573.10 is intended to correct errors in subsection (h) to clarify the duties and practice limitations of Registered Veterinary Technicians.

The Board also proposes the amendment to §573.10 to create cross-references and remove redundancies with new proposed §573.19, regarding dentistry, which is also proposed in this issue of the *Texas Register*. In the proposed amendment to §573.10, the subsection that previously described the scope of practice for licensed equine dental providers has been removed from §573.10 and relocated to proposed new §573.19, so that all of the Board's rules regarding dentistry are consolidated to appear together in new proposed §573.19.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there will no fiscal implications for either state or local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit is that the Board's rules regarding supervision of non-veterinarians and the rules regarding dentistry will be clarified and made more easily approachable for both licensees and the public. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Board invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942; by facsimile (FAX) to (512) 305-7574; or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medical profession; §801.151(c)(1), which states that the Board shall adopt rules to protect the public; §801.151(c)(3), which states that the Board shall adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian and fulfills the requirements established by a Board-approved organization for registered veterinary technicians.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.10. Supervision of Non-Licensed Persons.

(a) With appropriate supervision and after establishing a veterinarian-client-patient relationship, a veterinarian may delegate veterinary care and treatment duties to non-veterinarian employees, or to the following independent contractors:

(1) licensed equine dental providers, in accordance with §573.19 of this title (relating to Dentistry) [subsection (i) of this section]; or

(2) chiropractors, in accordance with §573.14 of this title (relating to Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation).

(b) A veterinarian shall determine when general, direct, or immediate supervision of a non-veterinarian's actions is appropriate, except where such actions of the non-veterinarian may otherwise be prohibited by law. A veterinarian shall consider both the level of training and experience of the non-veterinarian when determining the level of supervision and duties of non-veterinarians.

(c) A veterinarian is subject to discipline if he or she improperly delegates care and/or treatment duties to a non-veterinarian, or fails to properly supervise the non-veterinarian performing delegated duties.

(d) A non-veterinarian shall not perform the following health care services:

(1) surgery;

(2) invasive dental procedures except as allowed for licensed equine dental providers under §573.19 of this title [not enumerated in subsection (i) of this section];

(3) diagnosis and prognosis of animal diseases and/or conditions; or

(4) prescribing drugs and appliances.

(e) Euthanasia may be performed by a veterinary technician only under the immediate supervision of a veterinarian.

(f) A non-veterinarian may administer a rabies vaccine only under the direct supervision of a veterinarian, and only after the veterinarian has properly established a veterinarian-client-patient relationship.

(g) The use of a veterinarian's signature stamp or electronic signature pad on an official health document by a non-veterinarian shall be authorized only under the direct supervision of the vaccinating veterinarian.

(h) [Delegation to an RVT.] When feasible, a veterinarian should delegate greater responsibility to a registered veterinary technician (RVT) registered by the Texas Veterinary Medical Association [(RVT)] than to an unlicensed person that is not a RVT.

(1) Under the direct or immediate supervision of a veterinarian, an RVT may:

(A) suture to close existing surgical skin incisions and skin lacerations; and

(B) induce anesthesia.

(2) The procedures authorized to be performed by an RVT in paragraph (1) of this subsection may be performed by a non-RVT [veterinarian] only under the immediate supervision of a veterinarian.

[(i) The following treatments may be performed by a licensed equine dental provider under general supervision by a veterinarian, and by a non-licensed employee of a veterinarian under direct supervision by the veterinarian:]

[(1) removing sharp enamel points;]

[(2) removing small dental overgrowths;]

[(3) rostral profiling of the first cheek teeth;]

[(4) reducing incisors;]

[(5) extracting loose, deciduous teeth;]

[(6) removing supragingival calculus;]

[(7) extracting loose, mobile, or diseased teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator; and]

[(8) removing erupted, non-displaced wolf teeth.]

(i) [(j)] Exception for Emergency Care. In an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, a veterinarian may, after determining the nature of the emergency and the condition of the animal, issue treatment directions to a non-veterinarian by means of telephone, electronic mail or messaging, radio, or facsimile communication. The Board may take action against a veterinarian if, in the Board's sole discretion, the veterinarian uses this authorization to circumvent this rule. The veterinarian assumes full responsibility for such treatment. However, nothing in this rule requires a veterinarian to accept an animal treated under this rule as a patient under these circumstances.

(j) [(k)] Exception for Care of Hospitalized Animals. A non-veterinarian may, in the absence of direct supervision, follow the oral or written treatment orders of a veterinarian who is caring for a hospitalized animal, so long as the veterinarian has examined the animal(s) and a valid veterinarian-client-patient [veterinarian/client/patient] relationship exists.

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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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



22 TAC §573.19

The Texas Board of Veterinary Medical Examiners (Board) proposes new §573.19, concerning Dentistry.

The proposed new rule defines dentistry, a term which is used in §801.002(7) of the Veterinary Practice Act, Texas Occupations Code, in the definition of "veterinary medicine" as "veterinary surgery, reproduction and obstetrics, dentistry, ophthalmology, dermatology, cardiology, and any other discipline or specialty of veterinary medicine." Under §801.251 of the Veterinary Practice Act, "a person may not practice, or offer or attempt to practice, veterinary medicine unless the person holds a license to practice veterinary medicine issued under this chapter." Thus, the Veterinary Licensing Act holds that an unlicensed person may not practice dentistry on an animal in Texas. The Veterinary Licensing Act does not, however, define "dentistry," so the Board intends proposed new §573.19 to provide that definition.

The Board proposes the definition of dentistry with the intention to allow unlicensed individuals to brush teeth of animals and superficially clean the teeth of animals with gauze, cotton swabs, or dental floss, while preventing unlicensed individuals from performing any other more invasive treatment on an animal's teeth or gums, including but not limited to using a periodontal scaler on animal teeth to remove plaque or tartar.

The Board also proposes new §573.19 to consolidate the Board's rules regarding dentistry into a single rule for clarity and ease of reference for both licensees and the general public. Proposed new §573.19 therefore includes a subsection describing the scope of practice for equine dental providers that previously appeared in §573.10, regarding the supervision of non-licensed persons. The Board has proposed a parallel amendment to §573.10, which is also published in this issue of the *Texas Register*, to remove the subsection on the scope of practice for equine dental providers and to create cross-references to proposed new §573.19. In the interests of clarity, proposed new §573.19 also references the prohibition that appears in §573.10 forbidding unlicensed persons from performing any invasive dental procedure as defined under §573.80, regarding definitions.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there will be no fiscal implications for either state or local government

as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit is that the Board's rules regarding dentistry will be clarified and made more easily approachable for both licensees and the public. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Board invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942; by facsimile (FAX) to (512) 305-7574; or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The new rule is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(c)(1), which states that the Board shall adopt rules to protect the public; and §801.151(c)(3), which states that the Board shall adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.19. Dentistry.

(a) Dentistry, a subset of the practice of veterinary medicine, is:

(1) The application or use of any instrument or device to any portion of an animal's tooth, gum or any related tissue for the prevention, cure or relief of any wound, fracture, injury or disease of an animal's tooth, gum or related tissue; and

(2) Preventive dental procedures including, but not limited to, the removal of calculus, soft deposits, plaque, stains or the smoothing, filing or polishing of tooth surfaces.

(b) A non-licensed person may not perform any invasive dental procedure, as defined in §573.80 of this title (relating to Definitions), and as limited by subsection (d) of this section.

(c) Nothing in this regulation shall prohibit any person from utilizing cotton swabs, gauze, dental floss, dentifrice, or toothbrushes to clean an animal's teeth.

(d) The following treatments may be performed to an equid by a licensed equine dental provider under general supervision by a veterinarian, and by a non-licensed employee of a veterinarian under direct supervision by the veterinarian:

- (1) removing sharp enamel points;
- (2) removing small dental overgrowths;
- (3) rostral profiling of the first cheek teeth;
- (4) reducing incisors;
- (5) extracting loose, deciduous teeth;

(6) removing supragingival calculus;

(7) extracting loose, mobile, or diseased teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator; and

(8) removing erupted, non-displaced wolf teeth.

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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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §573.43

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.43, concerning Controlled Substances Registration.

The Board has recently encountered situations in which veterinarians were exempt from the requirement to obtain a controlled substance registration under either Texas Department of Public Safety (DPS) or United States Drug Enforcement Agency (DEA) rules and laws, but were concerned that they still had to obtain a controlled substance registration nevertheless in order to comply with §573.43. The Board does not intend its controlled substances registration requirements to be more stringent than that of DEA or DPS. The Board therefore proposes an amendment to §573.43 to clarify that a veterinarian does not need to have a controlled substances registration from either DPS or DEA if that registration is not required by other state or federal law.

The Board also proposes an amendment to §573.43 to correct an error in subsection (b), adding the word "substances" where it was inadvertently not included, so that the phrase now reads "to dispense controlled substances." This is not intended to alter the meaning of the rule.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there will be no fiscal implications for either state or local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit is that the Board's requirements for veterinarians to maintain controlled substances registration with the DEA and DPS will be clarified and will not conflict with other state or federal law. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Board invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942; by facsimile (FAX) to (512) 305-7574; or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medical profession; and §801.151(c)(1), which states that the Board shall adopt rules to protect the public.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.43. *Controlled Substances Registration.*

(a) Subject to subsection (b) of this section, a licensed veterinarian may not prescribe, administer, dispense, deliver, or order delivered, any controlled substance unless the licensed veterinarian is currently registered with the federal Drug Enforcement Administration (DEA) and the Texas Department of Public Safety (DPS) to dispense controlled substances if such registration is required by other state or federal law.

(b) The requirement for DEA registration is waived for a licensed veterinarian who is not registered with the DEA to dispense controlled substances if:

(1) a licensed veterinarian who is registered with the DEA to dispense controlled substances (registrant) supervises or employs the veterinarian who is not registered with the DEA to dispense controlled substances (non-registrant);

(2) the registrant has knowledge that the non-registrant is dispensing and/or administering controlled substances in the usual course of the non-registrant's duties;

(3) the registrant has given written permission for the non-registrant to dispense/administer under the registrant's license; and

(4) the registrant has actual knowledge that the non-registrant is currently registered with the DPS and holds a current DPS controlled substances certificate.

(c) A licensed veterinarian who is not registered with the DEA but is registered with the DPS to dispense controlled substances and holds a current DPS controlled substances certificate may dispense and administer controlled substances, but may not procure, purchase or issue a prescription for a controlled substance.

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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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.71

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.71, concerning Operation of Temporary Limited-Service Veterinary Services.

In recent years, the Board has requested additional information from veterinarians applying to operate a temporary limited-service veterinary service, beyond the categories of information required under §573.71. The Board proposes an amendment to §573.71 to make this additional requested information required by rule, and thereby to make the rule accurately reflect current Board procedure.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there will be no fiscal implications for either state or local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit is to clarify the information required from veterinarians seeking to operate a temporary limited-service veterinary service, information that allows Board to track and monitor such temporary limited-service clinics. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Board invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942; by facsimile (FAX) to (512) 305-7574; or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medical profession; §801.151(c)(1), which states that the Board shall adopt rules to protect the public; and §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may provide temporary limited-service veterinary activities.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.71. *Operation of Temporary Limited-Service Veterinary Services.*

(a) Requirements for operation. Veterinarians operating temporary limited service clinics shall:

- (1) maintain sanitary conditions at the clinic site, including, but not limited to, removal of animal solid waste and sanitizing/disinfecting of urine and solid waste sites;
- (2) provide injections with sterile disposable needles and syringes;

(3) utilize a non-porous table for examining and/or injecting small animals;

(4) maintain biologics and injectable medications between temperature ranges of 35 to 45 degrees Fahrenheit;

(5) perform and complete blood and fecal examinations before dispensing relevant federal legend medications;

(6) maintain rabies vaccination records and treatment records for five years, indexed alphabetically by the client's last name and by vaccination tag numbers, if issued; and

(7) provide clients with a printed form that contains the identity of the administering veterinarian and the address of the places where the records are to be maintained.

(b) Required notification to the Board prior to operation. Before any temporary limited-service clinic may be operated, the veterinarian is required to provide notification to the Board office at least 48 hours before the clinic begins operation. Notice must include the veterinarian's full name, license number, and daytime phone number; the date the clinic will be held, the specific location of where the clinic will be held, and times of operation; and the permanent address where records for the clinic will be kept. Notice may be by telephone call, facsimile, electronic transmission, or mail. Mailed notice will be considered to have met the notification requirement if the written notice is postmarked at least five days prior to the operation of the clinic.

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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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



22 TAC §573.80

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §573.80, concerning Definitions.

The Board proposes the amendment to §573.80 to correct a typographical error in paragraph (10), adding the prefix "non" to "veterinarian" so that the sentence reads: "Immediate Supervision--a veterinarian required to immediately supervise a non-veterinarian must be within audible and visual range of both the animal patient and the person under supervision." This change does not alter the Board's interpretation of the meaning of "Immediate Supervision."

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there will be no fiscal implications for either state or local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit is clarification and correction of the Board's rules on supervision. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule. Ms. Oria has de-

terminated that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Board invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942; by facsimile (FAX) to (512) 305-7574; or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medical profession; §801.151(c)(1), which states that the Board shall adopt rules to protect the public; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian and fulfills the requirements established by a Board-approved organization for registered veterinary technicians.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.80. *Definitions.*

The following words and terms, when used in the Veterinary Licensing Act (Chapter 801, Texas Occupations Code) or the Rules of the Board (Texas Administrative Code, Title 22, Part 24, Chapters 571, 573, 575, and 577 [574 - 577]) shall have the following meanings, unless the context clearly indicates otherwise:

(1) Accepted livestock management practices--those practices involving animals raised or produced primarily for food, fiber, or other products for human consumption, and may include the following:

- (A) branding, tattooing, ear tags or identifying marks of any kind;
- (B) tail docking, except cosmetic tail docking that is performed for appearance purposes only;
- (C) earmarking;
- (D) routine dehorning, except cosmetic dehorning that reshapes or alters the poll area for appearance purposes;
- (E) castration;
- (F) non-surgical assistance with birthing;
- (G) implantation with approved implant products;
- (H) administration of a biologic, except where restricted by law to administration by a veterinarian, and not including deworming by use of stomach tubing;
- (I) artificial insemination;
- (J) shoeing and trimming hooves; and
- (K) application or administration of parasiticides, except where restricted by law.

(2) Designated caretaker--a person to whom the owner of an animal has given specific authority to care for the animal and who has not been designated, by using the pretext of being a designated caretaker, to circumvent the Veterinary Licensing Act (Chapter 801, Texas Occupations Code) by engaging in any aspect of the practice of

veterinary medicine (including alternate therapies). A designated caretaker who treats an animal for a condition that the animal was known or suspected of having prior to the person being named a designated caretaker, is presumed to be attempting to circumvent the Veterinary Licensing Act unless the designated caretaker is following the instruction of a veterinarian and is under the appropriate level of supervision per board rules. In this situation, the designated caretaker may present evidence to rebut the presumption.

(3) Food production animals--any mammals, poultry, fowl, fish or other animals that are raised primarily for human food consumption.

(4) Biologic--any serum, vaccine, antitoxin, or antigen used in the prevention or treatment of disease.

(5) Pregnancy testing--the diagnosis of the physical condition of pregnancy by any method other than the gross visual observation of the animal.

(6) Invasive dentistry or invasive dental procedures--exposing of the dental pulp, or performing extractions.

(7) Consultation--the act of rendering professional advice (diagnosis and prognosis) about a specific veterinary medical case, but does not include treatment or surgery.

(8) General Supervision--a veterinarian required to generally supervise a non-veterinarian must be readily available to communicate with the person under supervision.

(9) Direct Supervision--a veterinarian required to directly supervise a non-veterinarian must be physically present on the same premises as the person under supervision.

(10) Immediate Supervision--a veterinarian required to immediately supervise a non-veterinarian must be within audible and visual range of both the animal patient and the person under supervision.

(11) Official Health Documents--any certificate attesting to the health, vaccination status, physical condition and/or soundness of an animal.

(12) Specialist--a veterinarian that is a Board Certified Diplomate of a specialty organization recognized by the American Veterinary Medical Association.

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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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §577.15, concerning Fee Schedule.

The Board proposes the amendment to §577.15 to reformat the fees to make them easier to read, to adjust veterinarian renewal fees lower to match current legislative appropriations for the 2013 fiscal year, to correct a calculation mistake in the fee for provisional veterinary licenses, to add inactive equine dental provider fees necessitated by rule changes that created inactive status for equine dental provider licensees, and to consolidate all the fixed fees that the Board charges into one schedule.

In the proposed rule, the application processing fees and examination fees, which appeared as separate line items for each initial license in the previous version of the rule, have been consolidated into the respective initial licenses, and no longer appear as separate fees. The Board proposes this change to clarify the cost of becoming initially licensed in Texas as either a veterinarian or an equine dental provider.

With regard to veterinary licenses, the proposed rule decreases veterinary license renewal fees to match the appropriations granted to the agency. The proposed rule increases the fee for provisional veterinary licenses that makes the provisional license \$50 more expensive than a regular veterinary license, to more accurately reflect the costs and staff time involved in processing and administering the two separate examinations that provisional licensees take on their way to becoming full licensees.

With regard to the new inactive fees for equine dental providers, the proposed amendment adds renewal fees and inactive status fees to the fee schedule so that in fiscal year 2013, equine dental providers who became licensed for the first time in fiscal year 2012 will have the option to renew their licenses or put their licenses on inactive status. The Equine Dental Provider Advisory Committee has reviewed these proposed fees and found by consensus that the proposed fees for equine dental provider licenses are reasonable.

The proposed amendment adds several fees to the fee schedule that previously appeared in other rules, such as the fee for duplication of license, and the reactivation fees for both veterinary and equine dental provider licenses. With the addition of these fees, the Board intends for this rule to reflect all of the fixed fees that the Board charges. It does not, however, reflect variable fees that the Board has set, such as the fees for transcripts and records of administrative hearings before the State Office of Administrative Hearings as set forth in §575.10 of this title (relating to Costs of Administrative Hearings).

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, there will be a decrease in revenue to state government as a result of the veterinary renewal fee decreases, which will be offset to some extent by the increase in revenue from the increased provisional veterinary license fee, and the advent of the equine dental provider renewal fees and inactive fees. Ms. Oria does not anticipate any impact on revenue to local government. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the costs of becoming a licensed veterinarian or equine dental provider in Texas, and that the increase in funding through increased fees will allow the Board to continue to license veteri-

narians and equine dental providers effectively and efficiently, and thereby continue to protect the interests of the public and the animals of Texas.

Ms. Oria has determined that there will be a slight decreased economic cost to veterinarians seeking license renewal, both as individuals and as micro businesses, which is offset by a slight increased economic cost for both individuals and small businesses seeking provisional veterinary licensees and renewal fees of either active or inactive equine dental provider licensees. There is a possible difference in the cost of compliance between small and large businesses based purely on the number and type of licensees employed by the business--if a larger business employs more renewing veterinary licensees, it will have to pay proportionately less in licensing fees than it has in prior years, but if the business is owned by a single veterinarian seeking a provisional license, the cost will be relatively more than in prior years. The Board has approximately 7,722 active, non-delinquent doctor of veterinary medicine licensees and approximately 22 active equine dental provider licensees, and it is appropriate to assume that a large majority of these licensees are likely owners of small businesses or micro-businesses.

For veterinarians seeking provisional licensure, the \$200 increase in the one-time provisional license fees should not create a significant economic impact on the small or micro-businesses seeking to hire them or the small or micro-businesses the newly licensed veterinarians start upon licensure, and should be outweighed by the expedited licensure and faster legal employment as a veterinarian that the provisional license offers. For equine dental providers seeking to renew their licenses as either active or inactive, the \$200 active renewal fee and \$100 inactive renewal fee may have a slight negative economic impact on micro-business they own, but the legal employment and advertising opportunities that come with licensure should outweigh this fee. Since the vast majority of the Board's licensees either own or are employed by small or micro-businesses, the Board believes that there are no acceptable alternatives to the proposed fees that could reduce the adverse impact on small or micro-businesses while still allowing the Board sufficient funding to adequately protect the health and safety of animals owned by the public in Texas.

The Board invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942; by facsimile (FAX) to (512) 305-7574; or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(e), which states that the Board may adopt rules necessary to implement a jurisprudence examination for licensed equine dental providers, including examination fees; and §801.154(a), which states that the Board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter.

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

§577.15. Fee Schedule.

The Texas Board of Veterinary Medical Examiners has established the following fixed fees as reasonable and necessary for the administration

of its functions. Other variable fees exist, including but not limited to costs as described §575.10 of this title (relating to Costs of Administrative Hearings), and are not included in this schedule. [The following fees are proposed by the Board:]

Figure: 22 TAC §577.15

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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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 811. CHOICES

The Texas Workforce Commission (Commission) proposes the following new sections to Chapter 811, relating to Choices:

Subchapter C. Choices Services, §811.25

Subchapter D. Choices Activities, §811.41 and §811.52

The Commission proposes amendments to the following sections of Chapter 811, relating to Choices:

Subchapter A. General Provisions, §§811.1, 811.2, 811.4, 811.5

Subchapter B. Choices Services Responsibilities, §§811.11 and 811.13 - 811.15

Subchapter C. Choices Services, §§811.23, 811.29, 811.31, 811.32, and 811.34

Subchapter D. Choices Activities, §§811.42 - 811.44, 811.50, and 811.51

Subchapter E. Support Services and Other Initiatives, §811.61

The Commission proposes the repeal of the following sections of Chapter 811, relating to Choices:

Subchapter C. Choices Services, §§811.25 - 811.28 and 811.33

Subchapter D. Choices Work Activities, §§811.41, 811.45, 811.46, 811.48, and 811.49

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 811 rule change is to:

--streamline Choices services to promote employment at the earliest opportunity;

--focus resources on outcome-based performance measures, such as entered employment, employment retention, and earnings gains, which better reflect the success of the program; and

--incorporate technical changes for clarification and consistency throughout the chapter.

The Deficit Reduction Act of 2005 (Public Law 109-171) reauthorized the Temporary Assistance for Needy Families (TANF) program and instituted several changes. One change dramatically altered the level of documentation and verification of all reportable activities, particularly job search and job readiness. The federal performance measure for TANF has always been process-driven, focusing on an individual's number of participation hours in a countable activity. Under 45 Code of Federal Regulations (CFR) §261.10, a parent or caretaker receiving TANF benefits must engage in work when the state has determined that the individual is ready or after receipt of 24 months of TANF benefits. However, §261.10 also allows states the flexibility to define what it means to engage in work, which can include participation in work activities as outlined in Social Security Act §407.

The Commission is proposing new program parameters and a state service delivery design to give Boards the flexibility to design and deliver services that assist Choices customers in entering employment quickly by concentrating resources on the outcome-focused performance measures of entered employment, employment retention, and earnings gains.

Board performance measures are being redesigned to ensure that the state is on target to meet federal performance measures. Statistical models have shown Texas is on track to meet its federal obligations using these new outcome-focused measures.

For purposes of the work participation rate, Texas defines "engaged in work" to mean that a Choices participant is considered engaged in work by participating in:

--unsubsidized employment;

--subsidized employment;

--OJT; or

--educational services for Choices participants who are teen heads of household and have not completed secondary school or received a GED credential.

All other Choices services remain intact and available for Boards to use in assisting Choices customers with gaining employment. However, these services are not counted toward the work participation rate. For purposes of determining program performance, Boards will have six weeks from the initial date that a Choices eligible begins receiving TANF benefits in which to work with the individual before participation requirements are expected through unsubsidized employment, subsidized employment, OJT, or educational services in the case of Choices eligibles who are teen heads of household and have not completed secondary school or received a GED credential.

However, it should be noted that engagement of Choices customers begins with the Workforce Orientation for Applicants (WOA), which occurs prior to TANF certification. At the WOA, individuals have the opportunity to take advantage of Workforce Solutions Office resources. Boards will not be limited in the provision of other activities, such as job search. For example, if a customer requires job search for more than six weeks in a year, Boards will have the flexibility to provide such services, which will not be counted toward the federal participation requirements.

The intent of the Commission's outcome-driven paradigm shift and strategy is to promote long-term employment and independence from public assistance, and focus on helping Choices participants gain employment, then gain better employment, and, finally, retain employment.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§811.1. Purpose and Goal

Section 811.1(c) adds the TANF Work Verification Plan as an additional source of guidance for the Choices program.

Section 811.1(d) adds the TANF Work Verification Plan as an additional source of guidance for the Choices program.

§811.2. Definitions

New §811.2(4) defines the term "community service" as a program that provides employment and training activities to Choices participants through unsalaried, work-based positions in the public or private nonprofit sectors. Community service programs contain structured, supervised activities that are a direct benefit to the community and are designed to improve the employability of Choices participants who have been unable to find employment.

Section 811.2(5) amends the definition of "conditional applicant" by requiring that an adult or teen head of household who left TANF in a sanctioned status, but who is reapplying for TANF assistance, "must demonstrate cooperation with Choices program requirements for four consecutive weeks."

New §811.2(7) defines the term "Employment Planning Session (EPS)" as a meeting with a TANF recipient to introduce Choices services.

New §811.2(11) defines the term "job readiness" as short-term structured activities or a series of activities lasting less than six months designed to prepare a job seeker for unsubsidized employment and increase the job seeker's employability. Activities may include, but are not limited to: interviewing skills, job retention skills, personal maintenance skills, professional conduct skills, and introductory computer skills.

New §811.2(12) defines the term "job search" as acts of seeking or obtaining employment, or preparing to seek or obtain employment, including life skills training, substance abuse treatment, mental health treatment, or rehabilitation activities. Activities may include: information on and referral to available jobs; occupational exploration, including information on local emerging and demand occupations; job fairs; applying or interviewing for job vacancies; and contacting potential employers.

New §811.2(13) defines the term "job skills" as training or education for job skills required by an employer to provide a Choices participant with the ability to obtain employment or to advance or adapt to the changing demands of the workplace.

New §811.2(20) defines the "The Workforce Information System of Texas (TWIST)" as the Agency's automated data processing and case management system for the Texas workforce system.

New §811.2(21) defines the term "vocational educational training" as organized educational programs directly related to preparing Choices participants for employment in current or emerging occupations.

New §811.2(24) defines the term "work experience" as unpaid training in the public or private sector designed to improve the employability of Choices participants who have been unable to find employment.

Section 811.2(26) amends the definition of "work requirement" by specifying that a Choices participant is deemed to be engaged in work by participating in:

- (A) unsubsidized employment;
- (B) subsidized employment;
- (C) OJT; or
- (D) educational services for Choices participants who have not completed secondary school or received a GED credential as provided in §811.30.

This change is made strictly for the purposes of determining the federal work participation rate and is not for determining if a Choices participant is meeting participation requirements.

Certain paragraphs in this section have been renumbered to reflect additions or deletions.

§811.4. Policies, Memoranda of Understanding, and Procedures

Section 811.4(a)(2) requires Boards to adopt policies regarding limits on the amount of funds per Choices participant and the maximum duration of subsidized employment and OJT placements. This change is made to align with Workforce Investment Act policy, which imposes a limit on the duration and amount of funds provided.

§811.5. Documentation, Verification, and Supervision of Work Activities

Section 811.5(c):

--removes the term "paid" from work activities to align with the changes in Choices work activities;

--removes the requirement that "If participation is projected as described in §811.34(3), current and verified participation must be documented in TWIST at least every six months." The Administration for Children and Families (ACF) issued guidance requiring a recalculation of average weekly projected hours of employment each time new information was received showing a change in a Choices participant's actual hours. The Commission believes that ACF's guidance negates the benefits of projecting hours, thus projection of hours was not implemented; and

--adds a reference to §811.50, a Choices work activity.

Section 811.5(d) is removed. With the Commission's focus on outcome-based performance measures, only data entry of the Choices work activities set forth in §811.5(c) is required.

New §811.5(d) states that for educational services for teen heads of households who have not completed secondary school or received a GED credential, Boards shall ensure that:

- (1) good or satisfactory progress, as determined by the educational institution, is verified and documented in TWIST at least monthly;
- (2) all participation is supervised daily; and

(3) all participation is verified and documented in TWIST at least monthly.

Section 811.5(e) is removed. The limitations relating to unpaid activities no longer apply.

SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

The Commission proposes the following amendments to Subchapter B:

§811.11. Board Responsibilities

Section 811.11(f) replaces the reference to "work" requirement with "Choices program requirements" to indicate that monitoring of Choices participants is ongoing and frequent as determined by the Board.

Section 811.11(f)(2) requires that tracking and reporting of all support services shall be entered into TWIST at least monthly. This clarification is added to emphasize the expectation that the provision of support services to participants be documented in TWIST.

Section 811.11(f)(3) specifies that tracking and reporting actual hours of participation is "in Choices work activities."

Section 811.11(f)(4) replaces the reference to "work" requirements with "Choices program requirements" to indicate that determining and arranging for any intervention needed to assist the Choices participant in complying with Choices program requirements as expected.

Section 811.11(f)(6) is removed. With the focus on four work activities, Workforce Solutions Office staff time is better spent assisting Choices participants in obtaining employment quickly rather than monitoring all other Choices activities. In addition, the requirement is duplicative of monitoring the Choices participants' progression toward achieving the goals and objectives of their family employment plan (FEP).

§811.13. Responsibilities of Choices Participants

Section 811.13(c)(1) updates the references to align with new §811.25(a) - (c).

Section 811.13(c)(2) is removed. With the new specification that work activities include only unsubsidized employment, subsidized employment, OJT, and educational services for Choices participants who have not completed secondary school or received a GED as specified in §811.50, the reference to core and non-core hours no longer applies.

Section 811.13(d)(1) updates the references to align with new §811.25(a).

Section 811.13(d)(2) is removed. With the Commission's emphasis on four employment activities, the references to core and non-core activities no longer apply.

Certain paragraphs in §811.13 have been renumbered to accommodate additions or deletions.

§811.14. Noncooperation

Section 811.14(a)(1) replaces the reference to "work" requirements with the term "Choices program requirements" to clarify that the FEP, as provided in §811.23, includes all Choices activities and is not limited to the four employment activities.

Section 811.14(b) replaces the reference to "work" requirements with the term "Choices program requirements" to clarify that fail-

ure to comply without good cause with all activities provided in the FEP is subject to a penalty or termination of support services.

Section 811.14(e) specifies that a Board shall ensure reasonable attempts to contact a mandatory Choices participant are documented "in TWIST." The change is made to emphasize the expectation that all contacts regarding noncooperation must be documented in TWIST.

Section 811.14(f)(1) replaces the term "work requirement" with the term "Choices program requirements" to clarify that HHSC is notified of a mandatory Choices participant's failure to comply with Choices program requirements.

§811.15. Demonstrated Cooperation

Section 811.15(a) states that conditional applicants are required to demonstrate four consecutive weeks of cooperation to be eligible for TANF cash assistance. The term "reinstatement of" is removed to clarify that if a conditional applicant left TANF in a sanction status, the individual must demonstrate cooperation in order to be reconsidered for eligibility for TANF cash assistance.

Section 811.15(b) clarifies that sanctioned families are required to demonstrate one month of cooperation "to reinstate" TANF cash assistance. This change is made because by definition sanctioned families have not yet been denied TANF cash assistance and must demonstrate cooperation in the second month in order to continue receiving TANF cash assistance.

Section 811.15(c)(1) replaces the reference to "work" requirements with the term "Choices program" requirements to clarify that a sanctioned family's demonstrated cooperation can be in all Choices activities and is not limited to the four employment activities.

Section 811.15(c)(2) replaces the reference to "work" requirements with the term "Choices program" requirements to clarify that conditional applicants' demonstrated cooperation can be in all Choices activities and is not limited to the four employment activities.

SUBCHAPTER C. CHOICES SERVICES

The Commission proposes the following amendments to Subchapter C:

§811.23. Family Employment Plan

Section 811.23(d)(5) replaces the reference to "work" requirements with the term "Choices program" requirements to clarify that all Choices activities are included in the FEP and are not limited to the four employment activities.

Section 811.23(e) clarifies that the FEP must be "regularly" evaluated and modified as appropriate to meet "job seeker and" employer needs in the local labor market. This change emphasizes that the FEP is a living document, not just a compliance document, and it must be regularly evaluated to guide both the job seeker and Workforce Solutions Office staff toward mutually agreed goals.

§811.25. TANF Core and TANF Non-Core Activities

Section 811.25 is repealed. With the emphasis on the four work activities, the references to core and non-core activities no longer apply.

§811.25. TANF Participation Requirements

New §811.25(a) requires Choices participants in a single-parent family to participate for at least a minimum weekly average of 30 hours.

New §811.25(b) requires Choices participants in two-parent families who are not receiving Commission-funded child care to have one or both adults in the family participate for at least a minimum weekly average of 35 hours.

New §811.25(c) requires Choices participants in two-parent families who are receiving Commission-funded child care to have one or both adults in the family participate for at least a minimum weekly average of 55 hours.

§811.26. Special Provisions Regarding Community Service

Section 811.26 is repealed. With the change to counting only the four work activities in the work participation rate as specified in new §811.41(a), the provisions regarding community service no longer apply.

§811.27. Special Provisions Regarding Job Search and Job Readiness

Section 811.27 is repealed. With the change to counting only the four work activities in the work participation rate as specified in new §811.41(a), the limitations on job search and job readiness no longer apply.

§811.28. Special Provisions Regarding Vocational Educational Training and Educational Services

Section 811.28 is repealed. With the change to counting only the four work activities in the work participation rate as specified in new §811.41(a), the limitations regarding vocational educational training and education services no longer apply.

§811.29. Special Provisions Regarding the Fair Labor Standards Act

Section 811.29(a)(1) removes the term "Food Stamp" benefits and replaces it with the current term "SNAP" benefits.

Section 811.29(a)(2) removes the term "Food Stamp" benefits and replaces it with the current term "SNAP" benefits.

Section 811.29(b) removes the reference to "core work activity" and replaces it with a reference to "participation" requirements. The term "core" also is removed. With the change to counting only the four work activities in the work participation rate as specified in new §811.41(a), the limitations on job search and job readiness no longer apply.

Additionally, references to §825.25(b) - (d) are replaced with §811.25(a) - (c).

§811.31. Special Provisions for Choices Participants in Single-Parent Families with Children under Age Six

Section 811.31(b) removes the reference to "core" activities and replaces it with the term "Choices" activities. With the change to counting only the four work activities in the work participation rate as specified in new §811.41(a), the limitations on job search and job readiness no longer apply.

§811.32. Special Provisions Regarding Exempt Choices Participants and Choices Participants with Reduced Work Requirements

Section 811.32(a) specifies that Boards may provide Choices services or support services as set forth in Subchapter C of this chapter to exempt Choices participants who participate to the

extent determined able, as supported by medical documentation, but less than the required participation hours. This change allows support services to be provided to exempt Choices participants if they cannot fully participate.

Section 811.32(b)(2) updates the references to §811.25(b) - (d) to align with new §811.25(a) - (c).

Section 811.32(b)(3) updates the references to §811.25(b) - (d) to align with new §811.25(a) - (c).

§811.33. Other Special Provisions

Section 811.33 is repealed. Conditional applicants and sanctioned families can participate in all Choices activities and receive necessary support services during their demonstrated cooperation period. Therefore, these provisions no longer apply.

§811.34. Participation Provisions

Section 811.34 replaces the reference to "TANF core and non-core" activities with "Choices work" activities. With the change to counting only the four work activities in the work participation rate as specified in new §811.41(a), the limitations on job search and job readiness no longer apply.

Section 811.34(1) removes the term "paid" from work activities to align with the changes in Choices work activities.

New 811.34(2) addresses self-employment and states that Boards shall not count more hours toward the work participation rate for a self-employed Choices participant than the number derived from dividing the participant's net self-employment income (gross self-employment earnings minus business expenses) by the federal minimum wage.

Section 811.34(2) is removed. Under TANF federal regulations, short-term excused absences are not allowable for paid work activities.

Section 811.34(3) is removed. ACF issued guidance requiring a recalculation of average weekly projected hours of employment each time new information was received that showed a Choices participant's actual hours had changed. The Commission believes that ACF's guidance negates the benefits of projecting hours, thus projection of hours was not implemented.

SUBCHAPTER D. CHOICES ACTIVITIES

The Commission proposes the following amendments to Subchapter D:

§811.41. Job Search and Job Readiness Assistance

Section 811.41, Job Search and Job Readiness Assistance, is repealed. Due to the change in activities included in the work participation rate, the following activities are consolidated in new §811.52, relating to Other Choices Activities. To give the Boards the most flexibility, all restrictions and limitations on these activities are removed:

--Job search and job readiness assistance

--Community service

--Work experience

--Vocational educational training

--Job skills training

--Post-employment services, as set forth in §811.51

§811.41. Choices Work Activities

New §811.41(a) specifies that, for purposes of the work participation rate, a Choices participant is considered to be engaged in work by participating in:

- (1) unsubsidized employment, as specified in §811.42;
- (2) subsidized employment, as specified in §811.43;
- (3) OJT, as specified in §811.44; and
- (4) educational services for Choices participants who have not completed secondary school or received a GED, as specified in §811.50.

New §811.41(b) provides that educational services, as specified in new §811.41(a)(4), are limited to teen heads of household, as specified in §811.30.

New §811.41(c) provides the Boards the flexibility to use any other Choices activity set forth in new §811.52 that would reasonably be expected to assist Choices participants in obtaining and retaining employment.

This change incorporates the Commission's goal of promoting employment at the earliest opportunity by focusing on outcome-driven measures rather than a process-driven measure that focuses solely on whether individuals are being kept busy for their required hours of participation.

§811.42. Unsubsidized Employment

Section 811.42(a) is removed. With the emphasis on the four work activities, the references to core activities no longer apply.

New §811.42(b) defines self-employment as an income-producing enterprise that is intended to lead an individual on a clear pathway to self-sufficiency by lessening the family's reliance on public benefits. This subsection is added to give clear direction that self-employment must generate revenue for the family and to eliminate the use of in-kind employment or bartering situations.

Certain subparagraphs in this section have been relettered to reflect additions or deletions.

§811.43. Subsidized Employment

Section 811.43(a) is removed. With the emphasis on the four work activities, the references to core activities no longer apply.

Certain subsections in this section have been relettered to reflect additions or deletions.

§811.44. On-the-Job Training

Section 811.44(a) is removed. With the emphasis on the four work activities, the references to core activities no longer apply.

New 811.44(a) defines OJT as training in the public or private sector for a paid employee while he or she is engaged in productive work that provides knowledge and skills essential to the full and adequate performance of the job. The definition aligns with the federal definition of OJT in 45 CFR §261.2(f).

Section 811.44(c) removes the statement "Unsubsidized employment after satisfactory completion of the training is expected"; it is unnecessary because the Choices participant is already a paid employee.

§811.45. Work Experience

Section 811.45 is repealed. Because of the change in activities included in the work participation rate, all other activities, such as work experience, are consolidated in new §811.52, Other

Choices Activities. To give Boards the most flexibility in providing other Choices activities, all restrictions and limitations on these activities are removed.

§811.46. Community Service

Section 811.46 is repealed. Because of the change in activities included in the work participation rate, all other activities, such as community service, are consolidated in new §811.52, Other Choices Activities. To give Boards the most flexibility in providing other Choices activities, all restrictions and limitations on these activities are removed.

§811.48. Vocational Educational Training

Section 811.48 is repealed. Because of the change in activities included in the work participation rate, all other activities, such as vocational educational training, are consolidated in new §811.52, Other Choices Activities. To give Boards the most flexibility in providing other Choices activities, all restrictions and limitations on these activities are removed.

§811.49. Job Skills Training

Section 811.49 is repealed. Because of the change in activities included in the work participation rate, all other activities, such as job skills training, are consolidated in new §811.52, Other Choices Activities. To give Boards the most flexibility in providing other Choices activities, all restrictions and limitations on these activities are removed.

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential

Section 811.50 removes the reference to non-core activities. With the emphasis on the four work activities, the reference no longer applies.

Section 811.50(b)(1) replaces the reference to §811.2(13) with §811.2(18), the renumbered definition of secondary school.

§811.51. Post-Employment Services

Section 811.51(f)(2) replaces the term "food stamp" with the current term "SNAP."

§811.52. Other Choices Activities

New §811.52 allows Boards to provide any of the following Choices activities, without restriction, if the activities are reasonably expected to assist Choices participants in obtaining and retaining employment:

- (1) Job readiness and job search assistance, as defined in §811.2(11) and (12), respectively;
- (2) Community service, as defined in §811.2(4);
- (3) Work experience, as defined in §811.2(24);
- (4) Vocational educational training, as defined in §811.2(21);
- (5) Job skills training, as defined in §811.2(13); and
- (6) Post-employment services, as set forth in §811.51.

SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

The Commission proposes the following amendments to Subchapter E:

§811.61. Support Services

Section 811.61(b) replaces the term "work" with "Choices program requirements." This change clarifies that Boards have flexibility for the provision of support services and acknowledges that a Choices participant can be meeting all Choices requirements set forth in Subchapter B of this chapter through activities other than the four work activities.

Section 811.61(c)(1) - (3) replaces the term "work" with "Choices program requirements." This change clarifies that Boards have flexibility for the provision of support services and acknowledges that a Choices participant can be meeting all Choices requirements through activities other than the four work activities.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules. There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Rich Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide activities and support services that focus the attention of the workforce system on assisting Choices customers in gaining employment at the earliest opportunity in order to attain self-sufficiency and become independent of public benefits. The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas's 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on January 31, 2012. The Commission also conducted a conference call with Board executive directors and Board staff on February 3, 2012, to discuss the concept paper. During the rulemaking process, the Commission considered all information

gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§811.1, 811.2, 811.4, 811.5

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.1. Purpose and Goal.

(a) The purposes of Temporary Assistance for Needy Families (TANF), as set forth in Title IV, Social Security Act, §401 (42 USCA [U.S.C.A.] §601) are:

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

(b) The goal of Choices services is to end the dependence of needy parents on public assistance by promoting job preparation, work, and marriage. A Local Workforce Development Board (Board) may exercise flexibility in providing services to Choices eligibles to meet this Choices goal. A Board is also provided the flexibility and may engage in strategies that promote the prevention and reduction of out-of-wedlock pregnancies and encourage the formation and maintenance of two-parent families if those strategies support the primary goal of Choices services, which is employment and job retention.

(c) The goal of the Texas Workforce Commission (Commission) is to ensure delivery of the employment and training activities as described in the TANF State Plan and the TANF Work Verification Plan.

(d) Boards shall identify the workforce needs of local employers and design Choices services to ensure that local employer needs are met and that the services are consistent with the goals and purposes of Choices services as referenced in this section, and as authorized by PRWORA, the applicable federal regulations at 45 CFR Parts 260 - 265 [C.F.R. Part 260 - 265], the TANF State Plan, the TANF Work Verification Plan, this chapter, and consistent with a Board's approved integrated workforce training and services plan as referenced in §801.17 of this title.

§811.2. Definitions.

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

(1) Applicant--An adult, or teen head of household, in a family who applies for TANF [Temporary Assistance for Needy Fami-

lies (TANF)] cash assistance, who previously did not leave TANF in a sanctioned status.

(2) Choices eligible--An individual eligible to receive Choices services including an adult or teen head of household who is an applicant, conditional applicant, recipient, nonrecipient parent, former recipient, or sanctioned family as defined in this chapter.

(3) Choices participant--A Choices eligible participating in or outreached for Choices services, including:

(A) Exempt Choices participant--A Choices eligible who is not required under Texas Human Resources Code, Chapter 31 or Texas Health and Human Services Commission (HHSC) rules (1 TAC, Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Programs [Texas Works]) to participate in Choices services, but who may voluntarily participate in Choices services.

(B) Mandatory Choices participant--A Choices eligible who is required under Texas Human Resources Code, Chapter 31 or HHSC rules (1 TAC, Chapter 372[; Texas Works]) to participate in Choices services.

(4) Community service--A program that provides employment and training activities to Choices participants through unsalaried, work-based positions in the public or private nonprofit sectors. Community service programs contain structured, supervised activities that are a direct benefit to the community and are designed to improve the employability of Choices participants who have been unable to find employment.

(5) [(4)] Conditional applicant--An adult or teen head of household who left TANF in a sanctioned status, but who is reapplying for TANF cash assistance and must demonstrate cooperation with Choices program requirements for four consecutive weeks.

(6) [(5)] Earned Income Deduction (EID)--A standard work-related and income deduction, available for four months through HHSC.

(7) Employment Planning Session (EPS)--A meeting with a TANF recipient to introduce Choices services.

(8) [(6)] Extended TANF recipient--A recipient who receives TANF cash assistance past the 60-month federal time limit because of a hardship exemption as defined in Texas Human Resources Code, Chapter 31 and HHSC rules (1 TAC, Chapter 372[; Texas Works]).

(9) [(7)] Former recipient--An adult or teen head of household who no longer receives TANF cash assistance because of employment.

(10) [(8)] HHSC--Texas Health and Human Services Commission.

(11) Job readiness--Short-term structured activities or a series of activities lasting less than six months designed to prepare a job seeker for unsubsidized employment and increase the job seeker's employability. Activities may include, but are not limited to: interviewing skills, job retention skills, personal maintenance skills, professional conduct skills, and introductory computer skills.

(12) Job search--Acts of seeking or obtaining employment, or preparing to seek or obtain employment, including life skills training, substance abuse treatment, mental health treatment, or rehabilitation activities. Activities may include: information on and referral to available jobs; occupational exploration, including information on local emerging and demand occupations; job fairs; applying or interviewing for job vacancies; and contacting potential employers.

(13) Job skills training--Training or education for job skills required by an employer to provide a Choices participant with the ability to obtain employment or to advance or adapt to the changing demands of the workplace.

(14) [(9)] Nonrecipient parent--Adults or minor heads of household not receiving TANF cash assistance, but living with their own children who are receiving TANF cash assistance. Nonrecipient parents include parents who are not eligible for TANF cash assistance:

(A) due to a disqualification by the Texas Health and Human Services Commission. These disqualifications include parents who:

(i) refuse to comply with Medicaid third-party resource requirements;

(ii) do not comply with Social Security number requirements;

(iii) are found guilty of an intentional program violation;

(iv) fail to report the temporary absence of a certified child;

(v) are fugitives fleeing to avoid prosecution of, or confinement for, a felony criminal conviction, or are found by a court to be violating federal or state probation or parole;

(vi) are convicted of a felony drug offense (not deferred adjudication) committed on or after April 1, 2002; or

(vii) refuse to cooperate with the program integrity assessment process;

(B) because they are receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI); or

(C) because they have exhausted their TANF state time limit.

(15) [(10)] PRWORA--The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, as amended.

(16) [(11)] Recipient--An adult or teen head of household who receives TANF cash assistance.

(17) [(12)] Sanctioned family--An adult or teen head of household who must demonstrate cooperation for one month in order to reinstate TANF cash assistance.

(18) [(13)] Secondary school--Educational activities including middle school, high school leading to a high school diploma, or classes leading to the completion of a GED [General Educational Development (GED)] credential.

(19) [(14)] TANF cash assistance--The cash grant provided through HHSC to individuals who meet certain residency, income, and resource criteria as provided under federal and state statutes and regulations, including the PRWORA, the TANF block grant statutes, the TANF State Plan, TANF cash assistance provided under Texas Human Resources Code, Chapters 31 and 34, and other related regulations.

(20) The Workforce Information System of Texas (TWIST)--the Agency's automated data processing and case management system for the Texas workforce system.

(21) Vocational educational training--Organized educational programs directly related to preparing Choices participants for employment in current or emerging occupations.

(22) ~~[(45)]~~ Work-based services--Includes those employment programs defined in Texas Human Resources Code §31.0126.

(23) ~~[(46)]~~ Work eligible individual--Work eligible individuals are adults or minor heads of household receiving TANF cash assistance, and nonrecipient parents--with the following exceptions:

(A) Noncitizens who are ineligible to receive cash assistance because of their immigration status;

(B) Parents caring for a disabled family member who lives in the home (provided the need for such care is supported by medical documentation), on a case-by-case basis; and

(C) Recipients of SSI or SSDI, on a case-by-case basis.

(24) Work experience--Unpaid training in the public or private sector designed to improve the employability of Choices participants who have been unable to find employment.

(25) ~~[(47)]~~ Work ready--A Choices eligible is considered work ready if he or she has the skills that are required by employers in the local workforce development area. A Board must ensure immediate access to the labor market to determine whether the Choices eligible has those necessary skills to obtain employment.

(26) ~~[(48)]~~ Work requirement--For the purposes of 42 USC [U.S.C.] §607 and 45 CFR [C.F.R.] §261.10, a Choices participant [eligible] is deemed to be engaged in work by participating in [cooperating with]:

(A) unsubsidized employment;

(B) subsidized employment;

(C) on-the-job training (OJT); or

(D) educational services for Choices participants who have not completed secondary school or received a GED credential as provided in §811.30.

~~[(A) all requirements set forth in the family employment plan, as described in this chapter; and]~~

~~[(B) all TANF core and non-core activities, as set forth in this chapter.]~~

§811.4. Policies, Memoranda of Understanding, and Procedures.

(a) A Board shall establish policies regarding the following:

(1) A Choices service strategy, as defined in §811.3, that coordinates various service delivery approaches to:

(A) assist applicants and conditional applicants in gaining employment as an alternative to public assistance;

(B) use [utilize] a work first design as referenced in §811.3(b)(2) to provide Choices participants access to the labor market; and

(C) assist former recipients with job retention and career advancement in order to remain independent of TANF cash assistance;

(2) Limits on the amount of funds per Choices participant and the maximum duration [The amount of wages subsidized] for subsidized employment and OJT placements; and

(3) The methods and limitations for provision of work-related expenses.

(b) A Board may establish optional policies that:

(1) require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Account (ITA) systems

as described in Chapter 841 of this title to provide for Choices services for Choices participants and paid for with TANF funds; and

(2) make post-employment services available to:

(A) former recipients who are denied TANF cash assistance because of earnings; and

(B) sanctioned families and conditional applicants who obtain employment during their demonstrated cooperation period.

(c) A Board shall ensure that the following Memoranda of Understanding (MOUs) and collaborative partnerships are developed:

(1) Local-level MOUs with the appropriate agencies to serve Choices eligibles with disabilities to maximize their potential for success in employment;

(2) A local-level MOU in cooperation with HHSC for coordinated case management that is consistent with the MOU between HHSC and the Commission;

(3) A local-level MOU with the Texas Department of State Health Services for providing mental health and substance abuse services to Choices participants; and

(4) A collaborative partnership with housing authorities and sponsors of local housing programs and services to address the unmet housing needs of recipients.

(d) A Board shall ensure that procedures are developed:

(1) to ensure that job development services are available to Choices participants. These services include:

(A) contacting local employers or industry associations to request that job openings be listed with Workforce Solutions Offices [Texas Workforce Centers], and other entities in the One-Stop Service Delivery Network selected by the Board;

(B) identifying the hiring needs of employers;

(C) assisting an employer in creating new positions for Choices participants based on the job developer's and employer's analysis of the employer's business needs; or

(D) finding opportunities with an employer for a specific Choices participant or a group of Choices participants;

(2) to ensure that job placement services are available to Choices participants. Job placement services shall include:

(A) identifying employers' workforce needs;

(B) identifying Choices participants who have sufficient skills and abilities to be successfully linked with employment; and

(C) matching the skills of the Choices participant pool to the hiring needs of local employers;

(3) to notify applicants and conditional applicants--in conjunction with HHSC--on the availability of regularly scheduled Workforce Orientations for Applicants (WOAs) and alternative WOAs;

(4) to notify HHSC of applicants and conditional applicants who contacted a Workforce Solutions Office [Texas Workforce Center] to request alternative WOAs;

(5) to ensure that services are concentrated on Choices eligibles approaching their state or federal time limit, as identified in §811.3(b)(7)(A) and (B). Concentrated services may include targeted outreach, enhanced analysis of circumstances that may limit a Choices eligible's ability to participate, and targeted job development; and

(6) to determine a family's inability to obtain child care.

(e) If a Board elects to establish one or more of the optional policies described in subsection (b) of this section, the Board must ensure that corresponding procedures are developed for those policies.

§811.5. Documentation, Verification, and Supervision of Work Activities.

(a) A Board shall ensure that all required information related to the documentation and verification of participation in Choices work activities, as described in this section, is documented in The Workforce Information System of Texas (TWIST).

(b) A Board shall ensure that all participation in Choices is verified and documented and that self-attestation is not allowed.

(c) For Choices [paid] work activities, as described in §§811.42, 811.43, [and] 811.44, and 811.50, Boards shall ensure that all participation is verified and documented in TWIST at least monthly. [If participation is projected as described in §811.34(3), current and verified participation must be documented in TWIST at least every six months.]

(d) For educational services, as described in §811.50, for teen heads of household who have not completed secondary school or received a GED credential, Boards shall ensure that:

(1) good or satisfactory progress, as determined by the educational institution, is verified and documented in TWIST at least monthly;

(2) all participation is supervised daily; and

(3) all participation is verified and documented in TWIST at least monthly.

~~[(d) For unpaid activities, as described in §§811.41, 811.45, and 811.46, Boards shall ensure that all participation is:]~~

~~[(1) supervised daily; and]~~

~~[(2) verified and documented in TWIST at least monthly.]~~

~~[(e) For unpaid activities, as described in §§811.48, 811.49, and 811.50, Boards shall ensure that:]~~

~~[(1) no more than one hour of unsupervised study or homework time per each hour of class time is counted toward a Choices participant's family participation requirement;]~~

~~[(2) all study and homework time in excess of one hour per hour of class time is directly monitored, supervised, verified, and documented;]~~

~~[(3) study or homework time is only counted toward a Choices participant's family participation requirement if:]~~

~~[(A) the study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution; and]~~

~~[(B) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;]~~

~~[(4) good or satisfactory progress, as determined by the educational institution, is verified and documented in TWIST at least monthly;]~~

~~[(5) all participation is supervised daily; and]~~

~~[(6) all participation is verified and documented in TWIST at least monthly.]~~

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 August 14, 2012.

TRD-201204278

Laurie Biscoe

Deputy Director, Workforce Programs

Texas Workforce Commission

Earliest possible date of adoption: September 30, 2012

For further information, please call: (512) 475-0829



SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

40 TAC §§811.11, 811.13 - 811.15

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.11. Board Responsibilities.

(a) A Board shall ensure that:

(1) the WOA is offered frequently enough to allow applicants and conditional applicants to comply with the HHSC requirement that gives applicants and conditional applicants 10 calendar days from the date of their eligibility interview to attend a WOA;

(2) during a regularly scheduled WOA or alternative WOA, applicants and conditional applicants are informed of:

(A) employment services available through the One-Stop Service Delivery Network to assist applicants and conditional applicants in achieving self-sufficiency without the need for TANF cash assistance;

(B) benefits of becoming employed;

(C) impact of time-limited benefits;

(D) individual and parental responsibilities; and

(E) other services and activities, including education and training, available through the One-Stop Service Delivery Network, including services and referrals for services available to Choices eligibles with disabilities;

(3) alternative WOAs are developed that allow applicants and conditional applicants with extraordinary circumstances to receive the information listed in paragraph (2) of this subsection;

(4) verification that applicants and conditional applicants attend a scheduled or alternative WOA is completed and HHSC is notified in accordance with HHSC rules (1 TAC, Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Programs [Texas Works]); and

(5) applicants and conditional applicants are provided with an appointment to develop a family employment plan (FEP).

(b) A Board shall ensure that:

(1) Choices services are offered to applicants who attend a WOA; and

(2) conditional applicants who attend a WOA are immediately scheduled to begin Choices services.

(c) A Board shall ensure that a Choices participant's eligibility is verified monthly.

(d) A Board shall ensure that all extended TANF recipients are outreached and offered the opportunity to participate in Choices activities.

(e) A Board shall ensure that post-employment services, including job retention and career advancement services, are available to Choices eligibles including mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving EID.

(f) A Board shall ensure that ~~the~~ monitoring of Choices program ~~work~~ requirements is ongoing and frequent, as determined by the ~~a~~ Board, unless otherwise specified in this chapter, and consists of the following:

(1) ensuring receipt of support services;

(2) tracking and reporting all support services and entering them into TWIST at least monthly;

(3) tracking and reporting actual hours of participation in Choices work activities, at least monthly, unless otherwise specified in this chapter;

(4) determining and arranging for any intervention needed to assist the Choices participant in complying with Choices program work requirements; and

(5) ensuring that the Choices participant is progressing toward achieving the goals and objectives in the FEP. ~~family employment plan~~; and

~~[(6) monitoring all other work requirements.]~~

(g) A Board shall ensure that:

(1) no less than four hours of training regarding family violence is provided to staff who:

(A) provide information to Choices eligibles;

(B) request penalties or grant good cause; or

(C) provide employment planning or employment retention services; and

(2) Choices eligibles who are identified as being victims of family violence are referred to an individual or an agency that specializes in issues involving family violence.

(h) A Board shall ensure that documentation is obtained and maintained regarding all contact with Choices participants, including verification of participation hours, and data is entered into TWIST.

(i) A Board shall ensure that a referral program is developed to provide Choices eligibles facing higher than average barriers to employment, as described in this chapter, with referrals to pre-employment and post-employment services offered by community-based and other organizations.

§811.13. Responsibilities of Choices Participants.

(a) A Board shall ensure that Choices participants comply with the provisions contained in this section.

(b) Choices participants shall:

(1) accept a job offer at the earliest possible opportunity;

(2) participate in or receive ancillary services necessary to enable Choices participants to work or participate in employment-related activities, including counseling, treatment, vocational or physical rehabilitation, and medical or health services;

(3) report actual hours of participation in Choices work activities, including hours of employment; and

(4) attend scheduled appointments.

(c) Within two-parent families, Choices participants shall participate in assessment and family employment planning sessions and assigned employment and training activities as follows:

(1) participate in Choices employment and training as specified in §811.25(b) - (c) ~~[\$811.25(e) - (d)]~~;

~~[(2) comply with requirements regarding core and non-core activities, as specified in §§811.25 - 811.34;]~~

(2) ~~[(3)]~~ comply with all requirements specified in the FEP ~~[family employment plan]~~; and

(3) ~~[(4)]~~ sign a form that contains all the information identified in the Commission's Family Work Requirement form, as described in §811.24.

(d) Within single-parent families, Choices participants shall participate in assessment and employment planning sessions and assigned employment and training activities as follows:

(1) participate in Choices employment and training activities as specified in §811.25(a) ~~[\$811.25(b)]~~; and

~~[(2) comply with requirements regarding core and non-core activities, as specified in §§811.25 - 811.34; and]~~

(2) ~~[(3)]~~ comply with all requirements specified in the FEP ~~[family employment plan]~~.

(e) A Board shall ensure that mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID:

(1) report to the Board actual hours of work, as defined in §811.34; and

(2) are provided with information on available post-employment services.

§811.14. Noncooperation.

(a) A Board shall ensure that cooperation by Choices participants is verified each month to ensure that the Choices participants:

(1) comply with Choices program work requirements as set forth in the FEP, as specified in §811.23 ~~[family employment plan]~~; or

(2) have good cause as described in this chapter.

(b) If Choices participants have not cooperated with Choices program work requirements and do not have good cause, a Board shall ensure that:

(1) a penalty is requested for mandatory Choices participants; or

(2) Choices services, including support services, are terminated for exempt Choices participants.

(c) A Board shall ensure that timely and reasonable attempts, as defined by the Agency, are made to contact a mandatory Choices participant prior to requesting a penalty to:

- (1) determine the reason for noncooperation and whether good cause is applicable, as described in §811.16(c);
- (2) inform the mandatory Choices participant of:
 - (A) the violation, if good cause has not been determined;
 - (B) the right to appeal; and
 - (C) the necessary procedures to demonstrate cooperation.

(d) A Board shall ensure that timely and reasonable attempts, as defined by the Agency, are made to contact a sanctioned family and conditional applicants upon discovery of noncooperation during their demonstrated cooperation period to determine if good cause exists.

(e) A Board shall ensure that the reasonable attempts to contact a mandatory Choices participant are documented in TWIST.

(f) A Board shall ensure that:

(1) HHSC is notified of a mandatory Choices participant's failure to comply with Choices program [~~work~~] requirements; and

(2) the notification of noncooperation is submitted as early as possible in the same month in which the noncooperation occurs.

§811.15. Demonstrated Cooperation.

(a) Conditional applicants are required to demonstrate four consecutive weeks of cooperation to be [~~become~~] eligible for [~~reinstatement of~~] TANF cash assistance.

(b) Sanctioned families are required to demonstrate one month of cooperation to reinstate [~~as a condition of eligibility for~~] TANF cash assistance.

(c) A Board shall ensure that HHSC is immediately notified if:

(1) a sanctioned family denied TANF cash assistance because of one month of noncooperation has demonstrated full cooperation with Choices program [~~work~~] requirements for the program month immediately following the program month in which the family noncooperated;

(2) a conditional applicant whose TANF case is closed because of two or more months of noncooperation has demonstrated full cooperation with Choices program [~~work~~] requirements for four consecutive weeks; or

(3) a sanctioned family or conditional applicant has been granted good cause during the demonstrated cooperation period.

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 August 14, 2012.

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Laurie Biscoe

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Texas Workforce Commission

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For further information, please call: (512) 475-0829



SUBCHAPTER C. CHOICES SERVICES

40 TAC §§811.23, 811.25, 811.29, 811.31, 811.32, 811.34

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.23. Family Employment Plan.

(a) Boards must ensure that prior to the development of an FEP [~~a family employment plan~~] Choices participants receive general information about services provided through the One-Stop Service Delivery Network that will assist them in obtaining employment, if the Choices participants did not receive this information during the WOA.

(b) FEPs [~~Family employment plans~~] are required for all Choices participants.

(c) FEPs [~~Family employment plans~~] shall be developed with applicants and former recipients who choose to participate in Choices services.

(d) A Board shall ensure that an FEP [~~a family employment plan~~] is developed during the assessment and:

(1) is based on assessments, as described in §811.22;

(2) contains the goal of self-sufficiency through employment to meet the needs of the local labor market;

(3) contains the steps and services to achieve the goal, including:

(A) connecting the Choices participant immediately to the local labor market;

(B) addressing potential barriers that limit the Choices participant's ability to work or participate in activities;

(C) arranging support services for the Choices participant or the family to address circumstances that limit the Choices participant's ability to work or participate, including services for substance abuse, mental health, family violence, and disability-related issues;

(D) developing specific post-employment service strategies with methods and time frames for reaching the goal of an identified self-sufficiency wage; and

(E) requiring Choices participants to notify the Board's service provider of changes in family circumstances that may preclude participation in Choices services;

(4) is signed by the Choices participant--unless the Choices participant is a mandatory Choices participant coded by HHSC as working at least 30 hours per week, earning at least \$700 per month, and receiving the EID--and a Board's service provider;

(5) assigns required hours and sets forth the participation agreement for compliance with Choices program [~~work~~] requirements. FEPs [~~Family employment plans~~] for two-parent families must include a description of how the required hours of participation will be distributed between one or both adults in the two-parent household; and

(6) provides information about the penalty process, good cause process, right of appeal, and the importance of immediately contacting a case manager should individual or family circumstances arise that prevent participation.

(e) A Board shall regularly ensure that progress toward [~~towards~~] meeting the goals of the FEP [~~family employment plan~~] is evaluated and the FEP [~~family employment plan~~] is modified as

appropriate to meet job seeker and employer needs in the local labor market.

§811.25. TANF Participation Requirements.

(a) Choices participants in a single-parent family are required to participate for at least a minimum weekly average of 30 hours.

(b) Choices participants in two-parent families who are not receiving Commission-funded child care are required to have one or both adults in the family participate for at least a minimum weekly average of 35 hours.

(c) Choices participants in two-parent families who are receiving Commission-funded child care are required to have one or both adults in the family participate for at least a minimum weekly average of 55 hours.

§811.29. Special Provisions Regarding the Fair Labor Standards Act.

(a) A Board shall ensure that employment and training activities are conducted in compliance with FLSA as follows.

(1) The amount of time per week that a Choices participant may be required to participate in activities that are not exempt from minimum wage and overtime under FLSA shall be determined by the TANF cash assistance and SNAP [Food Stamp] benefits amount being divided by the minimum wage, so that the amount paid to the Choices participant is equal to or more than the amount required for payment of wages, including minimum wage and overtime; or

(2) The amount of time per week that a sanctioned family or conditional applicant may be required to participate in activities that are not exempt from minimum wage and overtime under FLSA shall be determined by the SNAP [Food Stamp] benefits amount being divided by the minimum wage, so that the amount paid to the sanctioned family is equal to or more than the amount required for payment of wages, including minimum wage and overtime; and

(3) If a Board provides activities that meet all of the following categories, the activity is considered training under FLSA and minimum wage and overtime are not required:

(A) The training is similar to that given in a vocational school;

(B) The training is for the benefit of the trainees;

(C) The trainees do not displace regular employees;

(D) The employers derive no immediate advantage from trainees' activities;

(E) The trainees are not entitled to a job after training is completed; and

(F) The employers and trainees understand that trainees are not paid.

(b) The number of hours that a Choices participant is required to participate in community service or another unpaid work activity shall be determined in compliance with FLSA as described in subsection (a) of this section. If a Choices participant's hours of community service or other unpaid work activity are not sufficient to meet the participation ~~[core work activity]~~ requirement as set forth in §811.25(a) - (c) [§811.25(b) - (d)], the Choices participant shall be enrolled in additional non-FLSA-covered ~~[core]~~ activities.

§811.31. Special Provisions for Choices Participants in Single-Parent Families with Children under Age Six.

(a) A Board shall ensure that Choices participants in single-parent families with children under age six are notified of the penalty exception to Choices participation as described in §811.16(d).

(b) A Choices participant in a single-parent family with children under age six shall count as engaged in work if he or she participates in Choices [core] activities for at least an average of 20 hours per week.

§811.32. Special Provisions Regarding Exempt Choices Participants and Choices Participants with Reduced Work Requirements.

(a) A Board may [shall not] provide Choices services or support services as set forth in this subchapter [§§811.25 - 811.33] to exempt Choices participants who participate to the extent determined able, as supported by medical documentation, but less than the required participation hours. [fail to meet work requirements.]

(b) A Board shall ensure that a penalty is not requested for:

(1) exempt Choices participants;

(2) Choices participants with disabilities who participate to the extent determined able, as supported by medical documentation, but less than the required participation hours, as specified in §811.25(a) - (c) [§811.25(b) - (d)] and §811.31(b); or

(3) Choices participants who are caring for a disabled family member, as supported by medical documentation, when the Choices participant participates to the extent determined able, but less than the required participation hours, as specified in §811.25(a) - (c) [§811.25(b) - (d)] and §811.31(b).

§811.34. Participation Provisions.

A Board shall count only actual hours of participation in Choices work [TANF core and non-core] activities as allowable work participation hours with the following exceptions, unless otherwise specified in this chapter:

(1) For ~~[paid]~~ work activities set forth in §§811.42 - 811.44, Boards may count paid holidays or other paid leave as actual participation hours.

(2) For self-employment, Boards shall not count more hours toward the work participation rate for a self-employed Choices participant than the number derived from dividing the participant's net self-employment income (gross self-employment earnings minus business expenses) by the federal minimum wage.

~~[(2) For unpaid work activities set forth in §§811.41 and §§811.45 - 811.50, Boards may count short-term excused absences as actual participation if they meet the following conditions:]~~

~~[(A) A short-term excused absence:]~~

~~[(i) is because of a holiday; or]~~

~~[(ii) totals a maximum of 80 additional hours within a 12-month period and does not exceed 16 hours of excused absences per month.]~~

~~[(B) The Choices participant must have been scheduled to participate in an unpaid work activity during the time period in which the holiday or excused absence falls. Boards shall ensure credited participation hours do not exceed the number of hours the Choices participant was scheduled to participate.]~~

~~[(3) A Board may project participation hours in unsubsidized employment (except self-employment), subsidized employment, and on-the-job training, up to six months at a time, using an average of four weeks of current, verified, and documented actual hours. For self-employment, a Board:]~~

~~[(A) may project participation hours in self-employment, up to six months at a time, using an average of three months of current, verified, and documented actual hours.]~~

{(B) may not count more hours toward the work participation rate for self-employed Choices participants than the number derived by dividing the Choices participant's net self-employment income (gross self-employment wages minus business expenses) by the federal minimum wage.}

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 Workforce Commission

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For further information, please call: (512) 475-0829



40 TAC §§811.25 - 811.28, 811.33

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

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeals affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.25. *TANF Core and TANF Non-Core Activities.*

§811.26. *Special Provisions Regarding Community Service.*

§811.27. *Special Provisions Regarding Job Search and Job Readiness.*

§811.28. *Special Provisions Regarding Vocational Educational Training and Educational Services.*

§811.33. *Other Special Provisions.*

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. CHOICES WORK ACTIVITIES

40 TAC §§811.41, 811.45, 811.46, 811.48, 811.49

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

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeals affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.41. *Job Search and Job Readiness Assistance.*

§811.45. *Work Experience.*

§811.46. *Community Service.*

§811.48. *Vocational Educational Training.*

§811.49. *Job Skills Training.*

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. CHOICES ACTIVITIES

40 TAC §§811.41 - 811.44, 811.50 - 811.52

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.41. *Choices Work Activities.*

(a) For purposes of the work participation rate, a Choices participant is considered to be engaged in work by participating in:

(1) unsubsidized employment, as specified in §811.42;

(2) subsidized employment, as specified in §811.43;

(3) OJT, as specified in §811.44; or

(4) educational services for Choices participants who have not completed secondary school or received a GED, as specified in §811.30.

(b) Educational services, as specified in subsection (a)(4) of this section, are limited to teen heads of household, as specified in §811.30.

(c) Boards may use any other Choices activity set forth in §811.52 that would reasonably be expected to assist Choices participants in obtaining and retaining employment.

§811.42. *Unsubsidized Employment.*

~~{(a) Unsubsidized employment is a core activity as defined in §811.25(a)(1).}~~

(a) ~~{(b)}~~ Unsubsidized employment includes the following:

(1) full-time or part-time employment, in which wages are paid in full by the employer;

(2) unsubsidized internship with wages paid by the internship employer; and

(3) self-employment.

(b) Self-employment is defined as an income-producing enterprise that will lead an individual on a clear pathway to self-sufficiency by lessening the family's reliance on public benefits.

§811.43. Subsidized Employment.

~~[(a) Subsidized employment is a core activity as defined in §811.25(a)(1).]~~

~~(a) [(b)]~~ Subsidized employment is full-time or part-time employment that is subsidized in full or in part and complies with this section. Subsidized employment may occur in either the private sector or public sector. A Board shall not be the employer of record for Choices participants enrolled in a subsidized employment activity. Subsidized employment includes but is not limited to the following:

(1) subsidized internship with a portion of the Choices participant's wages subsidized;

(2) subsidized employment with a staffing agency acting as the employer of record; and

(3) subsidized employment with the actual employer acting as the employer of record.

~~(b) [(e)]~~ Wages.

(1) Wages shall be at least federal or state minimum wage, whichever is higher.

(2) Employers must provide the same wages and benefits to subsidized employees as for unsubsidized employees with similar skills, experience, and position.

~~(c) [(d)]~~ Boards shall ensure subsidized employment placements prepare and move Choices participants into unsubsidized employment.

~~(d) [(e)]~~ Boards shall ensure subsidized employment placements are allotted to employers who expect to retain Choices participants as regular unsubsidized employees once the subsidized placement has ended, unless successful completion of the placement is expected to result in unsubsidized employment with a different employer.

§811.44. On-the-Job Training.

(a) OJT is training in the public or private sector for a paid employee while he or she is engaged in productive work that provides knowledge and skills essential to the full and adequate performance of the job.

~~[(a) On-the-job training is a core activity as defined in §811.25(a)(1).]~~

(b) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer a Choices participant for subsidized, time-limited training activities, to assist the Choices participant with obtaining knowledge and skills that are essential to the workplace while in a job setting. OJT [On-the-job training] is training by an employer that is provided to a Choices participant on or off the work site while engaged in productive work in a job that:

(1) provides knowledge or skills essential to the full and adequate performance of the job;

(2) provides reimbursement to the employer of a percent of the wage rate of the Choices participant for the extraordinary costs of providing the training and additional supervision related to the training;

(3) is limited in duration as appropriate to the occupation for which the Choices participant is being trained, taking into account the content of the training, the prior work experience of the Choices participant, and the service strategy of the Choices participant, as appropriate; and

(4) includes training specified by the employer.

~~(c) [Unsubsidized employment after satisfactory completion of the training is expected.]~~ A Board shall not contract with employers who have previously exhibited a pattern of failing to provide Choices participants in OJT ~~[on-the-job training]~~ with continued long-term employment, which provides wages, benefits, and working conditions that are equal to those that are provided to regular employees who have worked a similar length of time and are doing a similar type of work.

(d) Boards shall ensure OJT [on-the-job training] placements are allotted to employers who expect to retain Choices participants as regular unsubsidized employees once the on-the-job training placement has ended, unless successful completion of the placement is expected to result in unsubsidized employment with a different employer.

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential.

~~(a) Educational services[; which are non-core activities as defined in §811.25(a)(2).]~~ are only available for Choices participants who have not completed secondary school or who have not received a GED credential.

(b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices participants who are age 20 and older for the following educational or other training services:

(1) secondary school, as defined in §811.2(18) [§811.2(13)], when required as a prerequisite for employment;

(2) Adult Basic Education (ABE), language instruction, or literacy instruction; or

(3) other educational activities which are directly related to employment.

(c) A Board shall ensure educational services related to employment directly provide education, knowledge, and skills for specific occupations, work settings, jobs, or job offers.

§811.51. Post-Employment Services.

(a) A Board shall ensure that post-employment services, which include job retention, career advancement, and reemployment services, are offered to Choices participants who are employed, and to applicants, conditional applicants, and former recipients who have obtained employment but require additional assistance in retaining employment and achieving self-sufficiency.

(b) A Board shall ensure that post-employment services are monitored, and ensure that hours of employment are required and reported by Choices participants for at least the length of time the Choices participants receive TANF cash assistance.

(c) A Board shall ensure that ongoing contact is established with Choices eligibles receiving post-employment services at least monthly.

(d) A Board may include mentoring techniques as part of a post-employment strategy.

(e) The post-employment services may include the following:

(1) assistance and support for the transition into employment through direct services or referrals to resources available in the workforce area;

(2) child care, if needed, as specified in rules at Chapter 809 of this title;

(3) work-related expenses, including those identified in §811.64;

(4) transportation, if needed;

(5) job search, job placement, and job development services to help a former recipient who loses a job to obtain employment;

(6) referrals to available education or training resources to increase an employed Choices eligible's skills or to help the individual qualify for advancement and long-term employment goals;

(7) additional career planning and counseling; or

(8) referral to support services available in the community.

(f) The maximum length of time a former recipient, conditional applicant, and sanctioned family may receive services under this section is dependent upon:

(1) family circumstances;

(2) the risk of returning to public assistance. A person is considered at risk of returning to TANF cash assistance if he or she is a SNAP [food stamp] recipient, or receives Commission-funded child care;

(3) the ongoing need for these services; and

(4) the availability of funds for these services.

(g) Post-employment service providers may include employers, community colleges, technical colleges, career schools and colleges, faith-based and community-based organizations.

§811.52. Other Choices Activities.

Boards may provide any of the following activities, without restriction, if the activities are reasonably expected to assist Choices participants in obtaining and retaining employment:

(1) Job readiness and job search assistance, as defined in §811.2(11) and (12), respectively;

(2) Community service, as defined in §811.2(4);

(3) Work experience, as defined in §811.2(24);

(4) Vocational educational training, as defined in §811.2(21);

(5) Job skills training, as defined in §811.2(13); and

(6) Post-employment services, as set forth in §811.51.

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 August 14, 2012.

TRD-201204287

Laurie Biscoe

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Texas Workforce Commission

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SUBCHAPTER E. SUPPORT SERVICES AND
OTHER INITIATIVES

40 TAC §811.61

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.61. Support Services.

(a) A Board shall ensure that support services as specified in this subchapter are provided, if needed, to Choices participants to address barriers to employment or participation in Choices services, subject to availability of resources and funding. A Board shall ensure that support services provided to Choices participants are coordinated with the employer, when appropriate.

(b) A Board shall ensure that support services, including Commission-funded child care, are provided only to Choices participants who are meeting Choices program [work] requirements set forth in §811.16, Subchapter B of this chapter [§§811.16, 811.23, and 811.25 - 811.34], and as set forth in §809.45 of this title. In applying this provision, a Board shall ensure support services are provided to Choices participants if it is determined support services are needed to comply with Choices program [work] requirements set forth in §811.16, Subchapter B of this chapter [§§811.16, 811.23, and 811.25 - 811.34], and as set forth in §809.45 of this title.

(c) A Board shall ensure that:

(1) support services are terminated immediately upon a determination of failure to meet Choices program [work] requirements by Choices participants unless otherwise determined by the Board's service provider as referenced in subsection (b) of this section;

(2) the Board's child care contractor is notified immediately of the failure to meet Choices program [work] requirements; and

(3) upon notification, the Board's child care contractor immediately notifies the child care provider that services are terminating due to failure to meet Choices program [work] requirements.

(d) A Board shall ensure that support services, classified as cash assistance, for:

(1) applicants and former recipients do not extend beyond four months for those who are unemployed and not receiving TANF cash assistance; and

(2) unemployed conditional applicants and sanctioned families do not extend beyond their demonstrated cooperation period.

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 August 14, 2012.

TRD-201204290

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Texas Workforce Commission
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For further information, please call: (512) 475-0829



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 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER B. EARLY VOTING

1 TAC §81.41

Proposed new §81.41, published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 561), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on August 16, 2012.
TRD-201204326



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER X. CITRUS GREENING QUARANTINE

4 TAC §§19.615 - 19.622

The Texas Department of Agriculture withdraws the emergency new §§19.615 - 19.622 which appeared in the March 30, 2012, issue of the *Texas Register* (37 TexReg 2128).

Filed with the Office of the Secretary of State on August 14, 2012.

TRD-201204295

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: August 14, 2012

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



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER F. FORMULA FUNDING

AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §13.107

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §13.107 which appeared in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5961).

Filed with the Office of the Secretary of State on August 17, 2012.

TRD-201204333

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 17, 2012

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



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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER T. NOXIOUS AND INVASIVE PLANTS

4 TAC §19.300

The Texas Department of Agriculture (the department) adopts the amendment to §19.300, concerning the list of noxious and invasive plants, without changes to the proposed text as published in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5060).

The amendment to §19.300(a) is necessary to add a species to the list of noxious and invasive plant species that have serious potential to cause economic or ecological harm to the state. The department has consulted with representatives from the agricultural industry, the horticulture industry, the Texas Cooperative Extension, the Texas Department of Transportation, the Texas State Soil and Water Conservation Board, and the Texas Parks and Wildlife Department for the addition of the *Lygodium japonicum* (Japanese Climbing Fern). The department has considered scientific data and the economic impact submitted by the Texas Invasive Plant and Pest Council, affiliated with the National Association of Exotic Pest Plant Councils. By law, the noxious and invasive plants listed may not be sold, distributed or imported in Texas. The amendment adds the *Lygodium japonicum* (Japanese Climbing Fern) to the list of noxious and invasive plants.

No comments were received on the proposal.

The amendment to §19.300 is adopted under the Texas Agriculture Code, §71.151, which authorizes the department to publish by rule a list of noxious and invasive plant species that have serious potential to cause economic or ecological harm to the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2012.

TRD-201204334

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: September 6, 2012

Proposal publication date: July 6, 2012

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



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER B. INTERPRETATIONS AND ADVISORY LETTERS

7 TAC §1.201

The Finance Commission of Texas (commission) adopts amendments to §1.201, concerning Interpretations and Advisory Letters. The commission adopts the amendments to §1.201 without changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4752). The rule will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Chapter 1 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Part 1, Chapter 1 was published in the May 11, 2012, issue of the *Texas Register* (37 TexReg 3609). The agency did not receive any comments on the notice of intention to review.

Overall, the adopted changes provide clarification, improved grammar, plain language and better readability, and technical corrections. Revisions concerning the processing of interpretation requests and related fees have been updated to conform the rule with current agency practice. The individual purposes of the amendments to each subsection are provided in the following paragraphs.

In subsection (a) concerning definitions, the verb "shall" has been changed to "will" in the introductory paragraph, since the latter language is reflective of a more modern and plain language approach in regulations. The definition for "agency or OCC" has been added to properly identify the Office of Consumer Credit Commissioner and allow the use of the agency's acronym when appropriate. Revisions have been made to clarify and

streamline references to the Consumer Credit Commissioner. Additionally, §1.201(a) contains other technical corrections, including the renumbering of existing definitions.

Subsection (b) outlines the information that must be submitted in a request for interpretation. Hence, this adoption replaces the current language of "Procedures for Finance Commission of Texas interpretations" with the following more accurate phrase: "Required information for interpretation request." In paragraph (4), the fee charged for an interpretation has been increased from \$300 to \$500. Prior to this adoption, the fee had been unchanged for almost 10 years. Thus, the increase is appropriate and necessary to compensate the agency for the expenses involved in researching and answering present day requests. In addition, paragraph (4) includes revisions clarifying that the agency will determine refunds and fee waivers.

Former paragraph (6) concerning "Processing time" has been renamed "Processing of request" and reorganized into subsection (c). Section 1.201(c) has been subdivided into paragraphs (1) and (2) to reflect situations where the agency declines to issue an interpretation and where an interpretation may be presented to the commission for approval.

Former subsection (c) has been relettered as subsection (d) and relates to OCCC advisory letters. The introductory phrase as adopted includes use of the agency's acronym and a parallel change of "shall" to "must." The quoted notation that must be included in every advisory letter has been reformatted with initial capitalization as opposed to all letters being capitalized. Additionally, subsections (c) and (d) contain other clarifying and technical corrections.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

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-201204341

Leslie L. Pettijohn
Commissioner

Finance Commission of Texas

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



CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS APPLYING FOR LICENSURE WITH THE OFFICE OF CONSUMER CREDIT COMMISSIONER UNDER THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT

SUBCHAPTER A. APPLICATION PROCEDURES FOR OFFICE OF CONSUMER CREDIT COMMISSIONER APPLICANTS

7 TAC §2.104

The Finance Commission of Texas (commission) adopts amendments to §2.104, concerning Application and Renewal Fees, for residential mortgage loan originators applying for licensure with the Office of Consumer Credit Commissioner (OCCC) under the Secure and Fair Enforcement for Mortgage Licensing Act. The commission adopts the amendments to §2.104 without changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4754). The rule will not be re-published.

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §2.104 is to clarify annual renewal fees and establish reinstatement fees for OCCC applicants under Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators (RMLOs), the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

Section 2.104 sets out the required application and renewal fees for OCCC applicants and licensees. These fees must be submitted to the Nationwide Mortgage Licensing System and Registry (NMLSR) and are nonrefundable. Subsection (a) includes a technical correction. In subsection (c), the adopted amendments clarify that the annual renewal fee is "not to exceed" \$300 and that such fees are due by December 31 of each year.

New subsection (d) outlines a reinstatement period and fee for RMLOs applying for a license with the OCCC. The agency conducted a review of the reinstatement procedures utilized by other states, as well as an analysis of the costs to the OCCC to perform reinstatement for Texas RMLOs. Subsection (d) sets a \$50 fee for reinstatement and a yearly reinstatement period from January 1 through the last day of February. The agency believes that these reinstatement requirements provide the appropriate balance of reasonable fees and timeframe for licensees and the OCCC, allowing reinstatement of recently expired RMLOs.

These amendments are adopted under Texas Finance Code, §180.004, which authorizes the commission to implement rules necessary to comply with Chapter 180 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289). Additionally, the amendments are also adopted under Texas Finance Code, §180.061, which authorizes the commission to adopt rules establishing requirements as necessary for payment of fees to apply for or renew licenses through the NMLSR, and under Texas Finance Code, §14.107, which authorizes the commission by rule to set the fees for licensing and examination under Chapter 342, 347, 348, or 351 at amounts or rates necessary to recover the costs of administering those and other chapters.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009, and Texas Finance Code, Chapters 342, 347, 348, and 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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Leslie J. Pettijohn

Commissioner

Finance Commission of Texas

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



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 82. ADMINISTRATION

7 TAC §82.1, §82.2

The Finance Commission of Texas (commission) adopts amendments to §82.1, concerning Custody of Criminal History Record Information, and §82.2, concerning Public Information Requests; Charges. The commission adopts the amendments to §82.1 with changes and §82.2 without changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4755).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to §82.1 and §82.2 is to implement changes resulting from the commission's review of Chapter 82 under Texas Government Code, §2001.039. The notice of intention to review Chapter 82 was published in the May 11, 2012, issue of the *Texas Register* (37 TexReg 3609). The agency did not receive any comments on the notice of intention to review.

The individual purposes of the amendments to each rule are provided in the following paragraphs. The purpose of the amendments to §82.1 is to update which agency employees and other authorized persons have access to criminal history record information and to make technical corrections.

In both subsections of §82.1, the verb "shall" has been changed to "will," since the latter term is reflective of a more modern and plain language approach in regulations. Revisions have also been made throughout the section utilizing the agency's acronym ("OCCC") to provide more streamlined phrasing.

In §82.1(b), the list of agency employees and other authorized persons having access to criminal history record information has been updated to reflect current agency practice. The following parties are added to subsection (b): the director of consumer protection, the public information officer, and any designated and approved employee who requires access in order to fulfill the employee's duties.

Since the proposal, the descriptors "permanent or temporary" preceding "employee" in §82.1(b)(8) have been removed for this adoption, with the addition of the following phrase at the end of the paragraph: "and as designated and approved by a party provided in paragraph (1) or (5) of this subsection." The revised language provides proper supervisory approval to allow additional employees access to criminal history record information.

The purpose of the amendments to §82.2 is to conform the rule to the agency's current public information process, remove obsolete language, and add clarification. Throughout §82.2, the verb

"shall" has been changed to "will," providing parallel changes consistent with those made in §82.1.

In subsection (a) of §82.2 concerning definitions, the acronym "OCCC" has been added to the definition as an alternative for "agency" to allow the use of the agency's acronym when appropriate. New paragraph (3) contains the definition for "public information request" as a request pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act). This definition also provides that the term "open records request" may be used synonymously with "public information request." Concerning the definition of "readily available information," the latter phrase concerning redaction time has been deleted and replaced with language clarifying that information located in separate buildings or remote storage as per Texas Government Code, §552.261 is not considered to be readily available.

Subsection (b) of §82.2 includes the more descriptive tagline of "Receipt of public information request." Language referencing other state and federal agencies has been removed, as those requests are usually handled as intergovernmental transfers of information. In the sentence concerning fee waivers and reductions, a reference has been added to Texas Government Code, §552.267, which authorizes these fee changes for requests made in the public interest. Additionally, the last phrase concerning no fee for requests of 50 pages or less has been revised and relocated to subsection (c).

Subsection (c) of §82.2 concerning copy and service charges has experienced several revisions and been reorganized to better reflect current agency practice and provide clarity for requestors of public information. The first two paragraphs have been recategorized into the most determinative factors affecting charges: (1) requests of 50 pages or fewer, and (2) requests of more than 50 pages. Requests under paragraph (1) have no fee, and those under paragraph (2) have charges of \$0.10 per page and \$15 per hour for administrative time. Obsolete charges for overhead and computer time not used by the agency have been deleted.

Section 82.2(c)(3) has been revised to specifically relate to requests for not readily available information. The adopted changes include a citation to the provisions concerning remote storage in Texas Government Code, §552.261, language concerning the types of personnel time that may be charged for at \$15 per hour (e.g., driving to and from the storage location, retrieving and restoring information), and a citation to the Office of the Attorney General's (OAG) rule related to this issue. Further, all of the charges under this paragraph are optional, as this adoption replaces the verb "shall" with "may" in this instance.

Descriptive taglines have been added to paragraphs (4) - (6) to provide clarification. A new sentence has been added to §82.2(c)(4) concerning certification, stating that certified copies will bear the commissioner's signature and agency seal. Paragraph (5) contains a more precise citation to the OAG's public information cost rules chapter. Paragraph (6) concerning cost estimates has been subdivided into two subparagraphs: (A) for requests over \$40, and (B) for requests over \$100.

In subsection (d) regarding delivery charges, former paragraph (3) relating to delivery via fax has been deleted as those charges are now obsolete and not used by the agency. Adopted §82.2(d)(3) contains new language concerning delivery via email and states that requests of more than 50 pages sent via email will not include copying charges, except for pages requiring redaction of confidential information.

Adopted §82.2(e) includes new paragraphs (2) and (3), which provide clarification relating to requests for inspection of 50 or more pages and inspections costing over \$100.

The remaining changes to both §82.1 and §82.2 are technical and nonsubstantive in nature. Additionally, the third and final rule in Chapter 82, §82.3, concerning Request for Criminal History Evaluation Letter, does not contain any changes resulting from rule review.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §14.157 authorizes the commission to adopt rules governing the custody and use of criminal history record information obtained under Texas Finance Code, Chapter 14, Subchapter D. Texas Government Code, §552.230 authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§82.1. Custody of Criminal History Record Information.

(a) The use of "criminal history record information," as defined by Texas Government Code, §411.082, obtained or maintained by the Office of Consumer Credit Commissioner (OCCC) pursuant to Texas Finance Code, Chapter 14, Subchapter D, will be limited to assisting the commissioner in determining the character and fitness of an applicant for a license issued by the OCCC or in determining the character and fitness of a current license holder of the OCCC. All criminal history record information received by the OCCC is confidential information and is for the exclusive use of the OCCC. Except on court order or as otherwise provided by Texas Finance Code, §14.155, such information may not be disclosed to any person or agency.

(b) Access to criminal history record information maintained by the OCCC will be limited to the following persons:

- (1) the Consumer Credit Commissioner;
- (2) any assistant commissioner;
- (3) any attorney employed by the OCCC or an assistant attorney general representing the interest of the OCCC;
- (4) employees of the licensing section;
- (5) the director of consumer protection;
- (6) the public information officer;
- (7) any person appointed to act on behalf of or in the stead of any of the above; and
- (8) any employee of the OCCC that requires access to criminal history record information in order to fulfill the employee's duties and as designated and approved by a party provided in paragraph (1) or (5) of this subsection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2012.
TRD-201204343

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 6, 2012
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For further information, please call: (512) 936-7621



CHAPTER 83. REGULATED LENDERS AND
CREDIT ACCESS BUSINESSES
SUBCHAPTER A. RULES FOR REGULATED
LENDERS
DIVISION 10. DUTIES AND AUTHORITY OF
AUTHORIZED LENDERS

7 TAC §83.838

The Finance Commission of Texas (commission) adopts new §83.838 in Subchapter A, Division 10 of Chapter 83, concerning multiple-advance loans. The commission adopts new §83.838 without changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4758). The rule will not be republished.

The commission received no written comments on the proposal.

The purpose of the new rule is to clarify which loans are subject to Texas Finance Code, §342.455. That section is titled "Agreement for More than One Loan or Cash Advance," and it provides interest limitations and disclosure requirements for agreements in which a lender makes multiple advances to a borrower. Subsection (b) of §342.455 states that the interest rate for a multiple-advance loan is limited to the Subchapter E rates, provided in Texas Finance Code, §342.201. Subsections (c) - (g) contain disclosure requirements, including the date of the agreement; any insurance charges; and the name, address, and signature of the borrower and lender.

Although §342.455 does not specifically identify which loans are exempt, the agency believes that the section should be interpreted as applying only when a subsequent advance increases a loan's principal balance after the original date of the loan. This interpretation is consistent with the statute's use of the phrase "from time to time," which suggests that the parties contemplate that the advances will be made at separate times.

New §83.838 defines a "multiple-advance loan" as a loan agreement subject to Texas Finance Code, Chapter 342, under which more than one loan or advance may be made to a borrower from time to time. Subsection (b) provides that multiple-advance loans are subject to the requirements provided in Texas Finance Code, §342.455. Subsection (c) provides that a loan is not subject to §342.455 if all advances occur on the same date, or if all advances after the initial advance occur because of the borrower's default (e.g., collateral protection insurance fees, repossession fees, court costs).

This new section is adopted under Texas Finance Code, §342.007, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Finance Code, Chapter 342.

The statutory provisions affected by the adopted new section are contained in Texas Finance Code, Chapter 342.

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-201204344

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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



SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3002

The Finance Commission of Texas (commission) adopts amendments to §83.3002, concerning Filing of New Application, for credit access businesses. The commission adopts the amendments to §83.3002 without changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4759). The rule will not be republished.

The commission received no written comments on the proposal.

The purpose of the amendments to §83.3002 is to provide a procedure for current licensees to add one or more locations (branches) after approval of their most recent new or transfer license application. The amendments outline two timeframes: (1) applications received after 90 days from last new or transfer license approval, and (2) applications received within 90 days from last new or transfer license approval. The latter category affords a streamlined procedure where fewer documents are required.

The adopted amendments add new paragraph (3) to §83.3002 regarding subsequent applications for branch offices. Subparagraph (A) states that if a currently licensed credit access business files an application for a new office after 90 days from its last new or transfer license approval, the applicant must follow the standard new application process contained in the existing rule. However, if required information on file with the agency is current and valid, that information does not need to be resubmitted.

Section 83.3002(3)(B) details the simplified process for applicants wishing to add locations within 90 days from their last new or transfer license approval. To utilize this provision, any action, fact, or other information cannot require a materially different answer than that given in the last new or transfer license application. Applicants under subparagraph (B) must provide the following four items: (1) a branch consent form signed by an authorized individual verifying that there have been no changes from the last application; (2) the location information and responsible person for each new branch; (3) the new application fees, with the exception of the investigation fee; and (4) if requested, a new financial statement. Additionally, the commissioner may require any other information necessary to process the branch application.

New subparagraph (C) clarifies that a subsequent branch application filed under new §83.3002(3)(B) does not qualify as the "last new or transfer license approval."

The amendments are adopted under Texas Finance Code, §393.622, which authorizes the Finance Commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G.

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

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-201204345

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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



TITLE 16. ECONOMIC REGULATION PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 83. COSMETOLOGISTS

16 TAC §83.25

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 83, §83.25, regarding the Cosmetology program, as published in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4145) without changes and will not be republished. The adoption takes effect September 4, 2012.

The amendments are necessary to provide §83.25(e) continuing education hour options for all instructor licenses renewing on or after September 1, 2012. Section 83.25, effective on February 17, 2012, and published in the February 10, 2012, issue of the *Texas Register* (37 TexReg 681) reduced the required continuing education hours from six to four and changed the type of hours from two hours each in sanitation, any topic other than sanitation, and methods of teaching, to one hour in sanitation and three hours in methods of teaching.

Because the majority of continuing education classes are currently provided in two-hour increments, instructors must take two methods of teaching courses in order to acquire three continuing education hours. Currently instructors must take five hours of continuing education to meet the topic requirements, and many have already completed the six-hour requirement, yet they still find themselves short one hour of continuing education in methods of teaching. The adopted amendments will give instructors options for acquiring the continuing education hours that do not necessitate taking more hours than required. Option 2 will expire on September 14, 2014, because the Department anticipates that continuing education courses will be changed to meet the reduction in continuing education hours and those courses will be offered in one-hour and three-hour increments. A sum-

mary of the proposed amendments were included in the proposal published in the June 8, 2012, issue of the *Texas Register* (37 TexReg 4145).

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed amendments were published in the June 8, 2012, issue of the *Texas Register*. The 60-day public comment period closed on August 10, 2012. The Department received one public comment from a continuing education certified instructor. The commenter expressed support for the proposed amendment and stated that the rule change will benefit instructors.

The amendments are adopted under Texas Occupations Code, Chapter 51, and Texas Government Code, Chapter 57, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter or a law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, and Texas Government Code, Chapter 57. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 15, 2012.

TRD-201204325
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: September 4, 2012
Proposal publication date: June 8, 2012
For further information, please call: (512) 475-4879



PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES SUBCHAPTER A. LICENSING PROVISIONS DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.3

The Texas Racing Commission (Commission) adopts an amendment to 16 TAC §311.3, Information for Background Investigation, concerning requirements and procedures for checking criminal history records. The rule amendment is adopted without changes to the proposed text as published in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5071) and will not be republished.

The adopted change deletes the specific dollar amounts set in the rule for the background check and fingerprinting fees and provides the Commission the flexibility to charge licensees the actual cost, even if those costs subsequently change.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Revised Civil Statutes Annotated Article 179e, §3.02, which authorizes the

Commission to make rules relating exclusively to horse and greyhound racing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2012.

TRD-201204329
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: September 5, 2012
Proposal publication date: July 6, 2012
For further information, please call: (512) 833-6699



TITLE 22. EXAMINING BOARDS PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

The Texas Board of Professional Engineers (Board) adopts amendments to §131.53, concerning Minutes, and §131.81, concerning Definitions, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4329) and will not be republished.

The adopted change to §131.53 clarifies the current rule regarding recordings of Board meetings to be consistent with the approved Agency Records Retention Schedule.

The adopted change to §131.81 updates the name of the ABET Technology Accreditation Commission (TAC) to the Engineering Technology Accreditation Commission (ETAC).

The Board received no comments on the proposed rule changes.

SUBCHAPTER C. MEETINGS

22 TAC §131.53

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201204363
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 9, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 440-7723



SUBCHAPTER F. ADMINISTRATION

22 TAC §131.81

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201204364

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

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Proposal publication date: June 15, 2012

For further information, please call: (512) 440-7723



CHAPTER 133. LICENSING

The Texas Board of Professional Engineers (Board) adopts amendments to §133.21, regarding Application for Standard License, with minor modifications to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4331). The changes are based on comments received and the text of the rule will be republished. The Board also adopts amendments to §133.23, regarding Applications from Former Standard License Holders; §133.27, regarding Application for Temporary License for Engineers Currently Licensed Outside the United States; §133.31, regarding Educational Requirement for Applicants; §133.33, regarding Proof of Educational Qualifications--Non-Accredited/Non-Approved Programs; §133.61, regarding Engineering Examinations Required for a License to Practice as a Professional Engineer; and §133.65, regarding Examination on the Fundamentals of Engineering, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4331) and will not be republished.

The adopted change to §133.21 removes the requirement for the Test of Spoken English (TSE), which no longer exists; adds the Texas Driver's License as a valid form of name change documentation; and adds the Internet-based TOEFL score as an option. These corrections were identified during the agency quadrennial rule review. The other proposed change was intended to level the scoring for the various TOEFL tests. The existing rule score for the paper-based exam of 550 was reduced to 523 to be consistent with a 70% expectation. The Board received one comment regarding the proposed change stating that the change would be a reduction of the current requirements for applicants to be proficient in English. The Board accepts these comments. It was not the intended purpose to reduce requirements. The organization that administers the TOEFL does not set a minimum passing score, but leaves it to the discretion of the requiring entity. The current TOEFL score requirement has been in place since 1990 when it was introduced. The rule wording is modified to keep the current required score for the paper-based exam

and set the passing score for the new Internet-based exam at an equivalent level.

The adopted change to §133.23 corrects a citation to another rule number within this rule. No comments were received on this change.

The adopted change to §133.27 corrects a citation to another rule number within this rule and removes the requirement for the TSE, which no longer exists. No comments were received on this change.

The adopted changes to §§133.31, 133.33, and 133.65 implement a name change for the ABET accreditation commission that evaluated engineering technology programs. The name will change from the Technology Accreditation Commission to the Engineering Technology Accreditation Commission. The abbreviation will change from TAC/ABET to ETAC/ABET. No comments were received on this change.

The adopted change to §133.61 corrects the rule related to special accommodations for exams. These requests are handled through the current contract with NCEES, and they have their own forms and requirements.

SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §§133.21, 133.23, 133.27

The amendments are adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

§133.21. Application for Standard License.

(a) To be eligible for licensure as a professional engineer, one must submit a completed application.

(b) All persons must have passed the examination on the fundamentals of engineering or be eligible for a waiver from the examination on the fundamentals of engineering before submitting an application.

(c) Applicants must speak and write the English language. Proficiency in English may be evidenced by possession of an accredited degree taught exclusively in English, or passage of the Test of English as a Foreign Language (TOEFL) with a written score of at least 550, a computer based score of at least 200 or an internet based score of at least 95 or other evidence such as significant academic or work experience in English acceptable to the executive director.

(d) Applicants for a license shall submit:

(1) an application in a format prescribed by the board and shall:

(A) list his or her full, legal and complete name without abbreviations, nicknames, or other variations of the full legal name. If applicable, the applicant shall submit proof of a legal name change including but not limited to a marriage certificate, passport, current Driver's License issued by the State of Texas, court documents, or nationalization documents to substantiate other documentation submitted in the application; and

(B) list social security number, as required under the Texas Family Code, §231.302;

- (2) current application fee as established by the board;
- (3) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);
- (4) supplementary experience record as required under §133.41 of this chapter (relating to Supplementary Experience Records);
- (5) reference statements as required under §133.51 of this chapter (relating to Reference Providers);
- (6) verification of passage of examination(s) from other jurisdictions as required under §133.61(g) of this chapter (relating to Engineering Examinations);
- (7) verification of a current license, if applicable;
- (8) a completed Texas Engineering Professional Conduct and Ethics Examination as required under §133.63 of this chapter (relating to Professional Conduct and Ethics Examination);
- (9) scores of TOEFL, if applicable;
- (10) information regarding any criminal history including any judgments, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a format prescribed by the board together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges; and
- (11) if applicable, written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, the TOEFL, or a commercial evaluation of non-accredited degrees and a statement supporting the request(s).

(e) At the time the application is filed, an applicant may request in writing that any transcripts, reference statements, evaluations, experience records or other similar documentation previously submitted to the board be included in a current application; however, such documentation may not meet the requirements of the board at the time of the subsequent application and new or updated information may be required.

(f) The NCEES record may be accepted as verification of an original transcript, licenses held, examinations taken, experience record and reference documentation to meet the conditions of subsection (d)(3) - (7) of this section.

(g) Once an application is accepted for review, the fee shall not be returned, and the application and all submissions shall become a permanent part of the board records.

(h) An applicant who is a citizen of another country shall show sufficient documentation to the board to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

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-201204365

Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
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For further information, please call: (512) 440-7723



SUBCHAPTER D. EDUCATION

22 TAC §133.31, §133.33

The amendments are adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2012.

TRD-201204366
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
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For further information, please call: (512) 440-7723



SUBCHAPTER G. EXAMINATIONS

22 TAC §133.61, §133.65

The amendments are adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.17

The Texas Board of Professional Engineers (Board) adopts amendments to §137.17, regarding Continuing Education Program, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4333) and will not be republished.

The adopted changes to §137.17 clarify the Continuing Education Program certification process, whether renewing online or using paper, and remove a phrase that implied that engineering work done for free while in inactive status was permissible.

The Board received only one comment on the proposal of §137.17 and it was ". . . appropriate and necessary clarifications to the intent." The Board accepted that response and voted to adopt the rule as proposed.

The amendments are adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



CHAPTER 139. ENFORCEMENT SUBCHAPTER B. COMPLAINT PROCESS AND PROCEDURES

22 TAC §139.13

The Texas Board of Professional Engineers (Board) adopts amendments to §139.13, regarding Filing a Complaint, without changes to the proposed text as published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4334) and will not be republished.

The adopted changes to §139.13 were all administrative and incorporated updates to the Board's contact information, such as URL and email and physical addresses.

The Board received no comments on the proposed amendments of §139.13.

The amendments are adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the perfor-

mance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2012.

TRD-201204369

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: September 9, 2012

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For further information, please call: (512) 440-7723



SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers (Board) adopts amendments to §139.35, regarding Sanctions and Penalties, without changes to the proposed text as published in the July 6, 2012, issue of the *Texas Register* (37 TexReg 5074) and will not be republished.

The adopted change to §139.35 adds to Figure: 22 TAC §139.35(b) one table entry regarding professional engineers who violate the 20-day requirement to provide a copy of design plans which require a review by a Registered Accessibility Specialist to the Texas Department of Licensing and Regulation. The rule citation "§137.63(b)(1)" is added to the two entries related to windstorm certification. There are also several formatting errors that are corrected in the tables. These changes were identified during the agency quadrennial rule review.

The Board received no comments on the proposal of §139.35.

The amendments are adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2012.

TRD-201204370

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

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Proposal publication date: July 6, 2012

For further information, please call: (512) 440-7723



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.7

The Texas State Board of Pharmacy adopts amendments to §281.7, concerning Grounds for Discipline for a Pharmacist License. The amendments are adopted without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4519).

The amendments clarify the definition of "unprofessional conduct," correct grammar, and add "allowing an individual whose license to practice pharmacy, either as a pharmacist or a pharmacist-intern, or a pharmacy technician/trainee whose registration has been disciplined by the board, resulting in the license or registration being revoked, canceled, retired, surrendered, denied or suspended, to have access to prescription drugs in a pharmacy" as a grounds for discipline for a pharmacist license.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas 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.

Filed with the Office of the Secretary of State on August 20, 2012.

TRD-201204387

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: September 9, 2012

Proposal publication date: June 22, 2012

For further information, please call: (512) 308-8028



SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

22 TAC §281.22, §281.30

The Texas State Board of Pharmacy adopts amendments to §281.22, concerning Informal Disposition of a Contested Case, and §281.30, concerning Pleadings and Notice in a Contested Case. The amendments are adopted without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4520).

The amendment to §281.22 updates a reference to §281.30 in subsection (e). The amendments to §281.30 implement new procedures for the proper handling of default hearings and re-name the section to Pleadings and Notice in a Contested Case.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas 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.

Filed with the Office of the Secretary of State on August 20, 2012.

TRD-201204388

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 308-8028



SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.64

The Texas State Board of Pharmacy adopts amendments to §281.64, concerning Sanctions for Criminal Offenses. The amendments are adopted without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4521).

The amendments to §281.64 clarify the sanctions for offenses involving illegal dispensing.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas 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.

Filed with the Office of the Secretary of State on August 20, 2012.

TRD-201204389

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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Proposal publication date: June 22, 2012

For further information, please call: (512) 308-8028



CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF
PHARMACIES

22 TAC §291.6

The Texas State Board of Pharmacy adopts amendments to §291.6, concerning Pharmacy License Fees. The amendments are adopted without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4522).

The amendments to §291.6 raise pharmacy license fees to generate additional revenue needed to make revenue projections.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas 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.

Filed with the Office of the Secretary of State on August 20, 2012.

TRD-201204390

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Effective date: October 1, 2012

Proposal publication date: June 22, 2012

For further information, please call: (512) 305-8028



SUBCHAPTER E. CLINIC PHARMACY
(CLASS D)

22 TAC §291.93

The Texas State Board of Pharmacy adopts amendments to §291.93, concerning Operational Standards. The amendments are adopted without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4522).

The amendments clarify the requirements for mailing medication from Class D (Clinic) pharmacies and increase the number of temporary locations that a Class D pharmacy may operate simultaneously from three to six.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas 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.

Filed with the Office of the Secretary of State on August 20, 2012.

TRD-201204391

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



SUBCHAPTER G. SERVICES PROVIDED BY
PHARMACIES

22 TAC §291.131, §291.133

The Texas State Board of Pharmacy adopts amendments to §291.131, concerning Pharmacies Compounding Non-Sterile Preparations, and §291.133, concerning Pharmacies Compounding Sterile Preparations. The amendments are adopted with changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4523).

The amendments clarify the requirements for the recall of compounded preparations.

The International Academy of Compounding Pharmacists and Richie's Pharmacy provided comments regarding the proposed rules. IACP and Richie's commented that the amendment prohibiting pharmacists from compounding preparations using ingredients from a state list should not be adopted. The Board agrees with this comment. IACP and Richie's Pharmacy commented that the amendment regarding the recall of a compounded product should be modified to reflect the recall be initiated only as a result of potency, sterility, or composition of the drug itself. The Board does not agree with this comment because it may take up to several weeks before potency or sterility of the product is determined. The Board believes that the product must be recalled as soon as a potential problem occurs and not delayed while waiting for tests of the product. Richie's Pharmacy and IACP suggested that the phrase "if the pharmacy identifies a potential or confirmed harm to a patient" be changed. The Board disagrees with this comment. IACP commented that the amendment allowing the Board to require the pharmacy to initiate a recall is not needed. The Board disagrees with the comment and believes that the Board should have the authority to order a recall. The Board did clarify in the amendment that this provision applies when the pharmacy does not initiate a recall on its own.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.131. *Pharmacies Compounding Non-Sterile Preparations.*

(a) Purpose. Pharmacies compounding non-sterile preparations, prepackaging pharmaceutical products and distributing those products shall comply with all requirements for their specific license classification and this section. The purpose of this section is to provide standards for the:

(1) compounding of non-sterile preparations pursuant to a prescription or medication order for a patient from a practitioner in Class A (Community), Class C (Institutional), and Class E (Non-resident) pharmacies;

(2) compounding, dispensing, and delivery of a reasonable quantity of a compounded non-sterile preparation in a Class A (Community), Class C (Institutional), and Class E (Non-resident) pharmacies to a practitioner's office for office use by the practitioner;

(3) compounding and distribution of compounded non-sterile preparations by a Class A (Community) pharmacy for a Class C (Institutional) pharmacy; and

(4) compounding of non-sterile preparations by a Class C (Institutional) pharmacy and the distribution of the compounded preparations to other Class C (Institutional) pharmacies under common ownership.

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Beyond-use date--The date or time after which the compounded non-sterile preparation shall not be stored or transported or begin to be administered to a patient. The beyond-use date is determined from the date or time when the preparation was compounded.

(2) Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(3) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order, based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Occupations Code.

(4) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(5) Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(6) SOPs--Standard operating procedures.

(7) USP/NF--The current edition of the United States Pharmacopoeia/National Formulary.

(c) Personnel.

(1) Pharmacist-in-charge. In addition to the responsibilities for the specific class of pharmacy, the pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning non-sterile compounding:

(A) determining that all personnel involved in non-sterile compounding possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised;

(B) determining that all personnel involved in non-sterile compounding obtain continuing education appropriate for the type of compounding done by the personnel;

(C) assuring that the equipment used in compounding is properly maintained;

(D) maintaining an appropriate environment in areas where non-sterile compounding occurs; and

(E) assuring that effective quality control procedures are developed and followed.

(2) Pharmacists. Special requirements for non-sterile compounding.

(A) All pharmacists engaged in compounding shall:

(i) possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised; and

(ii) obtain continuing education appropriate for the type of compounding done by the pharmacist.

(B) A pharmacist shall inspect and approve all components, drug product containers, closures, labeling, and any other materials involved in the compounding process.

(C) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to ensure that errors have not occurred in the compounding process.

(D) A pharmacist is responsible for the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(3) Pharmacy technicians and pharmacy technician trainees. All pharmacy technicians and pharmacy technician trainees engaged in non-sterile compounding shall:

(A) possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken;

(B) obtain continuing education appropriate for the type of compounding done by the pharmacy technician or pharmacy technician trainee; and

(C) perform compounding duties under the direct supervision of and responsible to a pharmacist.

(4) Training.

(A) All training activities shall be documented and covered by appropriate SOPs as outlined in subsection (d)(8)(A) of this section.

(B) All personnel involved in non-sterile compounding shall be well trained and must participate in continuing relevant training programs.

(d) Operational Standards.

(1) General requirements.

(A) Non-sterile drug preparations may be compounded in licensed pharmacies:

(i) upon presentation of a practitioner's prescription drug or medication order based on a valid pharmacist/patient/prescriber relationship;

(ii) in anticipation of future prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(iii) in reasonable quantities for office use by a practitioner and for use by a veterinarian.

(B) Non-sterile compounding in anticipation of future prescription drug or medication orders must be based upon a history of receiving valid prescriptions issued within an established pharmacist/patient/prescriber relationship, provided that in the pharmacist's professional judgment the quantity prepared is stable for the anticipated shelf time.

(i) The pharmacist's professional judgment shall be based on the criteria used to determine a beyond-use date outlined in paragraph (5)(C) of this subsection.

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time must be maintained and be available for inspection.

(iii) Any preparation compounded in anticipation of future prescription drug or medication orders shall be labeled. Such label shall contain:

(I) name and strength of the compounded preparation or list of the active ingredients and strengths;

(II) facility's lot number;

(III) beyond-use date as determined by the pharmacist using appropriate documented criteria as outlined in paragraph (5)(C) of this subsection; and

(IV) quantity or amount in the container.

(C) Commercially available products may be compounded for dispensing to individual patients provided the following conditions are met:

(i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet patient's needs;

(ii) the pharmacy maintains documentation that the product is not reasonably available due to a drug shortage or unavailability from the manufacturer; and

(iii) the prescribing practitioner has requested that the drug be compounded as described in subparagraph (D) of this paragraph.

(D) A pharmacy may not compound preparations that are essentially copies of commercially available products (e.g., the preparation is dispensed in a strength that is only slightly different from a commercially available product) unless the prescribing practitioner specifically orders the strength or dosage form and specifies why the patient needs the particular strength or dosage form of the preparation. The prescribing practitioner shall provide documentation of a patient specific medical need and the preparation produces a clinically significant therapeutic response (e.g. the physician requests an alternate product due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available. The unavailability of such drug product must be documented prior to compounding. The methodology for documenting unavailability includes maintaining a copy of the wholesaler's notification showing back-ordered, discontinued, or out-of-stock items. This documentation must be available in hard-copy or electronic format for inspection by the board.

(E) A pharmacy may enter into an agreement to compound and dispense prescription/medication orders for another pharmacy provided the pharmacy complies with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(F) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide non-sterile prescription compounding services, which may include specific drug products and classes of drugs.

(G) A pharmacy may not compound veterinary preparations for use in food producing animals except in accordance with federal guidelines.

(H) A pharmacist may add flavoring to a prescription at the request of a patient, the patient's agent, or the prescriber. The pharmacist shall label the flavored prescription with a beyond-use-date that shall be no longer than fourteen days if stored in a refrigerator unless otherwise documented. Documentation of beyond-use-dates longer than fourteen days shall be maintained by the pharmacy electronically or manually and made available to agents of the board on request. A pharmacist may not add flavoring to an over-the-counter product at the request of a patient or patient's agent unless the pharmacist obtains a prescription for the over-the-counter product from the patient's practitioner.

(2) Library. In addition to the library requirements of the pharmacy's specific license classification, a pharmacy shall maintain a current copy, in hard-copy or electronic format, of Chapter 795 of the USP/NF concerning Pharmacy Compounding Non-Sterile Preparations.

(3) Environment.

(A) Pharmacies regularly engaging in compounding shall have a designated and adequate area for the safe and orderly compounding of non-sterile preparations, including the placement of equipment and materials. Pharmacies involved in occasional compounding shall prepare an area prior to each compounding activity which is adequate for safe and orderly compounding.

(B) Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of a drug compounding operation.

(C) A sink with hot and cold running water, exclusive of rest room facilities, shall be accessible to the compounding areas and be maintained in a sanitary condition. Supplies necessary for adequate washing shall be accessible in the immediate area of the sink and include:

- (i) soap or detergent; and
- (ii) air-driers or single-use towels.

(D) If drug products which require special precautions to prevent contamination, such as penicillin, are involved in a compounding operation, appropriate measures, including dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its use for the preparation of other drug products, must be used in order to prevent cross-contamination.

(4) Equipment and Supplies. The pharmacy shall:

(A) have a Class A prescription balance, or analytical balance and weights which shall be properly maintained and subject to periodic inspection by the Texas State Board of Pharmacy; and

(B) have equipment and utensils necessary for the proper compounding of prescription drug or medication orders. Such equipment and utensils used in the compounding process shall be:

- (i) of appropriate design and capacity, and be operated within designed operational limits;
- (ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug product beyond the desired result;
- (iii) cleaned and sanitized immediately prior and after to each use; and
- (iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance.

(5) Labeling. In addition to the labeling requirements of the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following.

(A) The generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded preparation.

(B) A statement that the preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement).

(C) A beyond-use date after which the compounded preparation should not be used. The beyond-use date shall be determined as outlined in Chapter 795 of the USP/NF concerning Pharmacy Compounding Non-Sterile Preparations including the following:

- (i) The pharmacist shall consider:
 - (I) physical and chemical properties of active ingredients;
 - (II) use of preservatives and/or stabilizing agents;
 - (III) dosage form;
 - (IV) storage containers and conditions; and
 - (V) scientific, laboratory, or reference data from a peer reviewed source and retained in the pharmacy. The reference data should follow the same preparation instructions for combining raw materials and packaged in a container with similar properties.

(ii) In the absence of stability information applicable for a specific drug or preparation, the following maximum beyond-use dates are to be used when the compounded preparation is packaged in tight, light-resistant containers and stored at controlled room temperatures.

(i) soap or detergent; and

(ii) air-driers or single-use towels.

(I) Nonaqueous liquids and solid formulations (Where the manufactured drug product is the source of active ingredient): 25% of the time remaining until the product's expiration date or 6 months, whichever is earlier.

(II) Water-containing formulations (Prepared from ingredients in solid form): Not later than 14 days when refrigerated between 2 - 8 degrees Celsius (36 - 46 degrees Fahrenheit).

(III) All other formulations: Intended duration of therapy or 30 days, whichever is earlier.

(iii) Beyond-use date limits may be exceeded when supported by valid scientific stability information for the specific compounded preparation.

(6) Written drug information. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing. A statement which indicates that the preparation was compounded by the pharmacy must be included in this written information. If there is no written information available, the patient should be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate the prescriber, concerning the drug.

(7) Drugs, components, and materials used in non-sterile compounding.

(A) Drugs used in non-sterile compounding shall be a USP/NF grade substances manufactured in an FDA-registered facility.

(B) If USP/NF grade substances are not available, or when food, cosmetics, or other substances are, or must be used, the substance shall be of a chemical grade in one of the following categories:

- (i) Chemically Pure (CP);
- (ii) Analytical Reagent (AR); or
- (iii) American Chemical Society (ACS); or
- (iv) Food Chemical Codex; or

(C) If a drug, component or material is not purchased from a FDA-registered facility, the pharmacist shall establish purity and stability by obtaining a Certificate of Analysis from the supplier and the pharmacist shall compare the monograph of drugs in a similar class to the Certificate of Analysis.

(D) A manufactured drug product may be a source of active ingredient. Only manufactured drugs from containers labeled with a batch control number and a future expiration date are acceptable as a potential source of active ingredients. When compounding with manufactured drug products, the pharmacist must consider all ingredients present in the drug product relative to the intended use of the compounded preparation.

(E) All components shall be stored in properly labeled containers in a clean, dry area, under proper temperatures.

(F) Drug product containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug product beyond the desired result.

(G) Components, drug product containers, and closures shall be rotated so that the oldest stock is used first.

(H) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug product.

(I) A pharmacy may not compound a preparation that contains ingredients appearing on a federal Food and Drug Administration list of drug products withdrawn or removed from the market for safety reasons.

(8) Compounding process.

(A) All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed for:

- (i) the facility;
- (ii) equipment;
- (iii) personnel;
- (iv) preparation evaluation;
- (v) quality assurance;
- (vi) preparation recall;
- (vii) packaging; and
- (viii) storage of compounded preparations.

(B) Any compounded preparation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Any person with an apparent illness or open lesion that may adversely affect the safety or quality of a drug product being compounded shall be excluded from direct contact with components, drug product containers, closures, any materials involved in the compounding process, and drug products until the condition is corrected.

(D) Personnel engaged in the compounding of drug preparations shall wear clean clothing appropriate to the operation being performed. Protective apparel, such as coats/jackets, aprons, hair nets, gowns, hand or arm coverings, or masks shall be worn as necessary to protect personnel from chemical exposure and drug preparations from contamination.

(E) At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(9) Quality Assurance.

(A) Initial formula validation. Prior to routine compounding of a non-sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a product that contains the stated amount of active ingredient(s).

(B) Finished preparation checks. The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded non-sterile preparations shall be inspected for accuracy of correct identities and amounts of ingredients, packaging, labeling, and expected physical appearance before the non-sterile preparations are dispensed.

(10) Quality Control.

(A) The pharmacy shall follow established quality control procedures to monitor the quality of compounded drug preparations for uniformity and consistency such as capsule weight variations, adequacy of mixing, clarity, or pH of solutions. When developing these procedures, pharmacy personnel shall consider the provisions of Chapter 795, concerning Pharmacy Compounding Non-Sterile Preparations, Chapter 1075, concerning Good Compounding Practices, and Chapter

1160, concerning Pharmaceutical Calculations in Prescription Compounding contained in the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) Compounding procedures that are routinely performed, including batch compounding, shall be completed and verified according to written procedures. The act of verification of a compounding procedure involves checking to ensure that calculations, weighing and measuring, order of mixing, and compounding techniques were appropriate and accurately performed.

(C) Unless otherwise indicated or appropriate, compounded preparations are to be prepared to ensure that each preparation shall contain not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated and labeled quantity of active ingredient per unit weight or volume and not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated weight or volume per unit of the preparation.

(e) Records.

(1) Maintenance of records. Every record required by this section shall be:

(A) kept by the pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Compounding records.

(A) Compounding pursuant to patient specific prescription drug or medication orders. Compounding records for all compounded preparations shall be maintained by the pharmacy electronically or manually as part of the prescription drug or medication order, formula record, formula book, or compounding log and shall include:

- (i) the date of preparation;
- (ii) a complete formula, including methodology and necessary equipment which includes the brand name(s) of the raw materials, or if no brand name, the generic name(s) and name(s) of the manufacturer(s) of the raw materials and the quantities of each;
- (iii) signature or initials of the pharmacist or pharmacy technician or pharmacy technician trainee performing the compounding;
- (iv) signature or initials of the pharmacist responsible for supervising pharmacy technicians or pharmacy technician trainees and conducting in-process and final checks of compounded preparations if pharmacy technicians or pharmacy technician trainees perform the compounding function;
- (v) the quantity in units of finished preparations or amount of raw materials;
- (vi) the container used and the number of units prepared;
- (vii) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:

(I) the criteria used to determine the beyond-use date; and

(II) documentation of performance of quality control procedures. Documentation of the performance of quality control procedures is not required if the compounding process is done pursuant to a patient specific order and involves the mixing of two or more commercially available oral liquids or commercially available preparations when the final product is intended for external use.

(B) Compounding records when batch compounding or compounding in anticipation of future prescription drug or medication orders.

(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for preparations prepared in batch. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:

- (I) the formula;
- (II) the components;
- (III) the compounding directions;
- (IV) a sample label;
- (V) evaluation and testing requirements;
- (VI) specific equipment used during preparation;

and

(VII) storage requirements.

(ii) Preparation work sheet. The preparation work sheet for each batch of preparations shall document the following:

(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(II) lot number or each component;

(III) component manufacturer/distributor or suitable identifying number;

(IV) container specifications;

(V) unique lot or control number assigned to batch;

(VI) beyond use date of batch-prepared preparations;

(VII) date of preparation;

(VIII) name, initials, or electronic signature of the person(s) involved in the preparation;

(IX) name, initials, or electronic signature of the responsible pharmacist;

(X) finished preparation evaluation and testing specifications, if applicable; and

(XI) comparison of actual yield to anticipated or theoretical yield, when appropriate.

(f) Office Use Compounding and Distribution of Compounded Preparations to Class C Pharmacies or Veterinarians in Accordance With §563.054 of the Act.

(1) General.

(A) A pharmacy may dispense and deliver a reasonable quantity of a compounded preparation to a practitioner for office use by the practitioner in accordance with this subsection.

(B) A Class A (Community) pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute non-sterile compounded preparations to a Class C (Institutional) pharmacy.

(C) A Class C (Institutional) pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute non-sterile compounded preparations that the Class C pharmacy has compounded for other Class C pharmacies under common ownership.

(D) To dispense and deliver a compounded preparation under this subsection, a pharmacy must:

(i) verify the source of the raw materials to be used in a compounded drug;

(ii) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(iii) enter into a written agreement with a practitioner for the practitioner's office use of a compounded preparation;

(iv) comply with all applicable competency and accrediting standards as determined by the board; and

(v) comply with the provisions of this subsection.

(2) Written Agreement. A pharmacy that provides non-sterile compounded preparations to practitioners for office use or to another pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:

(A) address acceptable standards of practice for a compounding pharmacy and a practitioner and receiving pharmacy that enter into the agreement including a statement that the compounded preparations may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity except as authorized by §563.054 of the Act;

(B) require the practitioner or receiving pharmacy to include on a patient's chart, medication order, or medication administration record the lot number and beyond-use date of a compounded preparation administered to a patient; and

(C) describe the scope of services to be performed by the pharmacy and practitioner or receiving pharmacy, including a statement of the process for:

(i) a patient to report an adverse reaction or submit a complaint; and

(ii) the pharmacy to recall batches of compounded preparations.

(3) Recordkeeping.

(A) Maintenance of Records.

(i) Records of orders and distribution of non-sterile compounded preparations to a practitioner for office use or to a Class C (Institutional) pharmacy for administration to a patient shall:

(I) be kept by the pharmacy and be available, for at least two years from the date of the record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies;

(II) maintained separately from the records of products dispensed pursuant to a prescription or medication order; and

(III) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy or its representative. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ii) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Orders. The pharmacy shall maintain a record of all non-sterile compounded preparations ordered by a practitioner for office use or by a Class C pharmacy for administration to a patient. The record shall include the following information:

(i) date of the order;

(ii) name, address, and phone number of the practitioner who ordered the preparation and if applicable, the name, address and phone number of the Class C pharmacy ordering the preparation; and

(iii) name, strength, and quantity of the preparation ordered.

(C) Distributions. The pharmacy shall maintain a record of all non-sterile compounded preparations distributed pursuant to an order to a practitioner for office use or by a Class C pharmacy for administration to a patient. The record shall include the following information:

(i) date the preparation was compounded;

(ii) date the preparation was distributed;

(iii) name, strength and quantity in each container of the preparation;

(iv) pharmacy's lot number;

(v) quantity of containers shipped; and

(vi) name, address, and phone number of the practitioner or Class C pharmacy to whom the preparation is distributed.

(D) Audit Trail.

(i) The pharmacy shall store the order and distribution records of preparations for all non-sterile compounded preparations ordered by and or distributed to a practitioner for office use or by a Class C pharmacy for administration to a patient in such a manner as to be able to provide a audit trail for all orders and distributions of any of the following during a specified time period.

(I) any strength and dosage form of a preparation (by either brand or generic name or both);

(II) any ingredient;

(III) any lot number;

(IV) any practitioner;

(V) any facility; and

(VI) any pharmacy, if applicable.

(ii) The audit trail shall contain the following information:

(I) date of order and date of the distribution;

(II) practitioner's name, address, and name of the Class C pharmacy, if applicable;

(III) name, strength and quantity of the preparation in each container of the preparation;

(IV) name and quantity of each active ingredient;

(V) quantity of containers distributed; and

(VI) pharmacy's lot number;

(4) Labeling. The pharmacy shall affix a label to the preparation containing the following information:

(A) name, address, and phone number of the compounding pharmacy;

(B) the statement: "For Institutional or Office Use Only--Not for Resale"; or if the preparation is distributed to a veterinarian the statement: "Compounded Preparation";

(C) name and strength of the preparation or list of the active ingredients and strengths;

(D) pharmacy's lot number;

(E) beyond-use date as determined by the pharmacist using appropriate documented criteria;

(F) quantity or amount in the container;

(G) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(H) device-specific instructions, where appropriate.

(g) Recall Procedures.

(1) The pharmacy shall have written procedures for the recall of any compounded non-sterile preparations provided to a patient, to a practitioner for office use, or a pharmacy for administration. Written procedures shall include, but not be limited to the requirements as specified in paragraph (3) of this subsection.

(2) The pharmacy shall immediately initiate a recall of any non-sterile preparation compounded by the pharmacy upon identification of a potential or confirmed harm to a patient.

(3) In the event of a recall, the pharmacist-in-charge shall ensure that:

(A) each practitioner, facility, and/or pharmacy to which the preparation was distributed is notified, in writing, of the recall;

(B) each patient to whom the preparation was dispensed is notified, in writing, of the recall;

(C) if the preparation is prepared as a batch, the board is notified of the recall, in writing;

(D) if the preparation is distributed for office use, the Texas Department of State Health Services, Drugs and Medical Devices Group, is notified of the recall, in writing;

(E) the preparation is quarantined; and

(F) the pharmacy keeps a written record of the recall including all actions taken to notify all parties and steps taken to ensure corrective measures.

(4) If a pharmacy fails to initiate a recall, the board may require a pharmacy to initiate a recall if there is potential for or confirmed harm to a patient.

§291.133. *Pharmacies Compounding Sterile Preparations.*

(a) Purpose. Pharmacies compounding sterile preparations, prepackaging pharmaceutical products, and distributing those products shall comply with all requirements for their specific license classification and this section. The purpose of this section is to provide standards for the:

(1) compounding of sterile preparations pursuant to a prescription or medication order for a patient from a practitioner in Class A (Community), Class C (Institutional), and Class E (Non-resident) pharmacies;

(2) compounding, dispensing, and delivery of a reasonable quantity of a compounded sterile preparation in a Class A (Community), Class C (Institutional), and Class E (Non-resident) pharmacies to a practitioner's office for office use by the practitioner;

(3) compounding and distribution of compounded sterile preparations by a Class A (Community) pharmacy for a Class C (Institutional) pharmacy; and

(4) compounding of sterile preparations by a Class C (Institutional) pharmacy and the distribution of the compounded preparations to other Class C (Institutional) pharmacies under common ownership.

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Airborne particulate cleanliness class--The level of cleanliness specified by the maximum allowable number of particles per cubic meter of air as specified in the International Organization of Standardization (ISO) Classification Air Cleanliness (ISO 14644-1). For example:

(A) ISO Class 5 (formerly Class 100) is an atmospheric environment that contains less than 3,520 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100 particles 0.5 microns in diameter per cubic foot of air);

(B) ISO Class 7 (formerly Class 10,000) is an atmospheric environment that contains less than 352,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 10,000 particles 0.5 microns in diameter per cubic foot of air); and

(C) ISO Class 8 (formerly Class 100,000) is an atmospheric environment that contains less than 3,520,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100,000 particles 0.5 microns in diameter per cubic foot of air).

(3) Ancillary supplies--Supplies necessary for the preparation and administration of compounded sterile preparations.

(4) Anteroom--An ISO Class 8 or better area where personnel may perform hand hygiene and garbing procedures, staging of components, order entry, labeling, and other high-particulate generating activities. It is also a transition area that:

(A) provides assurance that pressure relationships are constantly maintained so that air flows from clean to dirty areas; and

(B) reduces the need for the heating, ventilating and air conditioning (HVAC) control system to respond to large disturbances.

(5) Aseptic Processing--The technique involving procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during preparation.

(6) Automated compounding device--An automated device that compounds, measures, and/or packages a specified quantity of individual components in a predetermined sequence for a designated sterile preparation.

(7) Batch--A specific quantity of a drug or other material that is intended to have uniform character and quality, within specified limits, and is produced during a single preparation cycle.

(8) Batch preparation compounding--Compounding of multiple sterile preparation units, in a single discrete process, by the same individual(s), carried out during one limited time period. Batch preparation/compounding does not include the preparation of multiple sterile preparation units pursuant to patient specific medication orders.

(9) Beyond-use date--The date or time after which the compounded sterile preparation shall not be stored or transported or begin to be administered to a patient. The beyond-use date is determined from the date or time the preparation is compounded.

(10) Biological Safety Cabinet, Class II--A ventilated cabinet for personnel, product, and environmental protection having an open front with inward airflow for personnel protection, downward HEPA filtered laminar airflow for product protection, and HEPA filtered exhausted air for environmental protection.

(11) Buffer Area, Buffer or Core Room, Buffer or Clean Room Areas, Buffer Room Area, Buffer or Clean Area, or Buffer Zone--An ISO Class 7 area where the primary engineering control area is physically located. Activities that occur in this area include the preparation and staging of components and supplies used when compounding sterile preparations.

(12) Clean room or controlled area--A room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.

(13) Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(14) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Occupations Code.

(15) Compounding Aseptic Isolator--A form of barrier isolator specifically designed for compounding pharmaceutical ingredients or preparations. It is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the sur-

rounding environment shall not occur unless it has first passed through a microbial retentive filter (HEPA minimum).

(16) Compounding Aseptic Containment Isolator--A compounding aseptic isolator designed to provide worker protection from exposure to undesirable levels of airborne drug throughout the compounding and material transfer processes and to provide an aseptic environment for compounding sterile preparations. Air exchange with the surrounding environment should not occur unless the air is first passed through a microbial retentive filter (HEPA minimum) system capable of containing airborne concentrations of the physical size and state of the drug being compounded. Where volatile hazardous drugs are prepared, the exhaust air from the isolator should be appropriately removed by properly designed building ventilation.

(17) Critical Area--A critical area is an ISO Class 5 environment.

(18) Critical Sites--Sterile ingredients of compounded sterile preparations and locations on devices and components used to prepare, package, and transfer compounded sterile preparations that provide opportunity for exposure to contamination.

(19) Cytotoxic--A pharmaceutical that has the capability of killing living cells.

(20) Device--An instrument, apparatus, implement, machine, contrivance, implant, in-vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(21) Direct Compounding Area--A critical area within the ISO Class 5 primary engineering control where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

(22) Disinfectant--A disinfectant is an agent that frees from infection, usually a chemical agent but sometimes a physical one, and that destroys disease-causing pathogens or other harmful microorganisms but may not kill bacterial spores. It refers to substances applied to inanimate objects.

(23) First Air--The air exiting the HEPA filter in a unidirectional air stream that is essentially particle free.

(24) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(25) HVAC--Heating, ventilation, and air conditioning.

(26) Immediate use--A sterile preparation that is not prepared according to USP 797 standards (i.e. outside the pharmacy and most likely not by pharmacy personnel) which shall be stored for no longer than one hour after completion of the preparation.

(27) IPA--Isopropyl alcohol (2-propanol).

(28) Media-Fill Test--A media-fill test is used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile preparation without microbial contamination. During this test, a microbiological growth medium such as Soybean--Casein Digest Medium is substituted for the actual drug product to simulate admixture compounding. The issues to consider in the development of a media-fill test are the following: media-fill procedures, media selection, fill volume, incubation, time and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

(29) Multiple-Dose Container--A multiple-unit container for articles or preparations intended for potential administration only and usually contains antimicrobial preservatives. The beyond-use

date for an opened or entered (e.g., needle-punctured) multiple-dose container with antimicrobial preservatives is 28 days, unless otherwise specified by the manufacturer.

(30) Negative Pressure Room--A room that is at a lower pressure compared to adjacent spaces and, therefore, the net flow of air is into the room.

(31) Office use--The administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy in accordance with Chapter 562 of the Act, or for administration or provision by a veterinarian in accordance with §563.054 of the Act.

(32) Pharmacy Bulk Package--A container of a sterile preparation for potential use that contains many single doses. The contents are intended for use in a pharmacy admixture program and are restricted to the preparation of admixtures for infusion or, through a sterile transfer device, for the filling of empty sterile syringes. The closure shall be penetrated only one time after constitution with a suitable sterile transfer device or dispensing set, which allows measured dispensing of the contents. The pharmacy bulk package is to be used only in a suitable work area such as a laminar flow hood (or an equivalent clean air compounding area).

(33) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original container into unit dose packaging or a multiple dose container for distribution within a facility licensed as a Class C pharmacy or to other pharmacies under common ownership for distribution within those facilities. The term as defined does not prohibit the prepackaging of drug products for use within other pharmacy classes.

(34) Preparation or Compounded Sterile Preparation--A sterile admixture compounded in a licensed pharmacy or other health-care-related facility pursuant to the order of a licensed prescriber.

(35) Primary Engineering Control--A device or room that provides an ISO Class 5 environment for the exposure of critical sites when compounding sterile preparations. Such devices include, but may not be limited to, laminar airflow workbenches, biological safety cabinets, and compounding aseptic isolators and compounding aseptic containment isolators.

(36) Product--A product is a commercially manufactured sterile drug or nutrient that has been evaluated for safety and efficacy by the U.S. Food and Drug Administration (FDA). Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

(37) Positive Control--A quality assurance sample prepared to test positive for microbial growth.

(38) Positive Pressure Room--A room that is at a higher pressure compared to adjacent spaces and, therefore, the net airflow is out of the room.

(39) Quality assurance--The set of activities used to ensure that the process used in the preparation of sterile drug preparations lead to preparations that meet predetermined standards of quality.

(40) Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final compounded sterile preparations prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(41) Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(42) Segregated Compounding Area--A designated space, either a demarcated area or room, that is restricted to preparing low-risk level compounded sterile preparations with 12-hour or less beyond-use date. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of compounded sterile preparations and shall be void of activities and materials that are extraneous to sterile compounding.

(43) Single-dose container--A container intended for a single use, other than single-dose vials and single-dose large volume potential solutions. Examples of single-dose containers include pre-filled syringes, cartridges, and fusion-sealed containers without preservatives.

(44) Single-dose vial--A vial intended for a single use. Exceptions to this definition would be single dose vials routinely used to compound total potential nutrition (TPN) preparations (e.g., sodium chloride, sodium acetate, sodium phosphate, potassium chloride, potassium acetate, potassium phosphate, calcium gluconate, magnesium sulfate, multivitamin for injection, multi-trace elements, ascorbic acid, folic acid, heparin, phytonadione, l-carnitine, cysteine, selenium, injectable zinc).

(45) Single-dose large volume parenteral solution--Large volume parenteral solutions (i.e., containers of solution of at least 1000 mL) routinely used for compounding sterile TPN preparations or for batch compounding (e.g., sterile water for injection (SWFI); 5%, 10%, and 70% dextrose in SWFI; 0.9% sodium chloride; 0.45% sodium chloride; 5% dextrose/0.9% sodium chloride; 5% dextrose/0.45% sodium chloride).

(46) SOPs--Standard operating procedures.

(47) Terminal Sterilization--The application of a lethal process, e.g., steam under pressure or autoclaving, to sealed final preparation containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10⁻⁶, i.e., or a probability of less than one in one million of a non-sterile unit.

(48) Unidirectional Flow--An airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

(49) USP/NF--The current edition of the United States Pharmacopoeia/National Formulary.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. The pharmacy shall have a pharmacist-in-charge in compliance with the specific license classification of the pharmacy.

(B) Responsibilities. In addition to the responsibilities for the specific class of pharmacy, the pharmacist-in-charge shall have

the responsibility for, at a minimum, the following concerning the compounding of sterile preparations:

(i) developing a system to ensure that all pharmacy personnel responsible for compounding and/or supervising the compounding of sterile preparations within the pharmacy receive appropriate education and training and competency evaluation;

(ii) determining that all personnel involved in compounding sterile preparations obtain continuing education appropriate for the type of compounding done by the personnel;

(iii) supervising a system to ensure appropriate procurement of drugs and devices and storage of all pharmaceutical materials including pharmaceuticals, components used in the compounding of sterile preparations, and drug delivery devices;

(iv) ensuring that the equipment used in compounding is properly maintained;

(v) developing a system for the disposal and distribution of drugs from the pharmacy;

(vi) developing a system for bulk compounding or batch preparation of drugs;

(vii) developing a system for the compounding, sterility assurance, quality assurance, and quality control of sterile preparations; and

(viii) if applicable, ensuring that the pharmacy has a system to dispose of hazardous waste in a manner so as not to endanger the public health.

(2) Pharmacists. Special requirements for compounding sterile preparations.

(A) All pharmacists engaged in compounding sterile preparations shall:

(i) possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised; and

(ii) obtain continuing education appropriate for the type of compounding done by the pharmacist.

(B) A pharmacist shall inspect and approve all components, drug preparation containers, closures, labeling, and any other materials involved in the compounding process.

(C) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to ensure that errors have not occurred in the compounding process.

(D) A pharmacist is responsible for the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(E) A pharmacist shall be accessible at all times to respond to patients' and other health professionals' questions and needs. Such access may be through a telephone or pager which is answered 24 hours a day.

(3) Pharmacy technicians and pharmacy technician trainees. Pharmacy technicians and pharmacy technician trainees may compound sterile preparations provided the pharmacy technicians and/or pharmacy technician trainees:

(A) have completed the education and training specified in paragraph (4) of this subsection; and

(B) are supervised by a pharmacist who has completed the training specified in paragraph (4) of this subsection, conducts

in-process and final checks, and affixes his or her initials to the appropriate quality control records.

(4) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile preparations.

(A) General.

(i) All pharmacy personnel preparing sterile preparations shall receive didactic and experiential training and competency evaluation through demonstration, testing (written and practical) as outlined by the pharmacist-in-charge and described in the policy and procedure or training manual. Such training shall include instruction and experience in the following areas:

- (I) aseptic technique;
- (II) critical area contamination factors;
- (III) environmental monitoring;
- (IV) structure and engineering controls related to facilities;
- (V) equipment and supplies;
- (VI) sterile preparation calculations and terminology;
- (VII) sterile preparation compounding documentation;
- (VIII) quality assurance procedures;
- (IX) aseptic preparation procedures including proper gowning and gloving technique;
- (X) handling of cytotoxic and hazardous drugs, if applicable; and
- (XI) general conduct in the controlled area.

(ii) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile preparations shall be observed and evaluated as satisfactory through written and practical tests, and media-fill challenge testing, and such evaluation documented.

(iii) Although media-fill tests may be incorporated into the experiential portion of a training program, media-fill tests must be conducted at each pharmacy where an individual compounds sterile preparations. No preparation intended for patient use shall be compounded by an individual until the on-site media-fill tests test indicates that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile preparations and supervise pharmacy technicians compounding sterile preparations without media-fill tests provided the pharmacist:

(I) has completed a recognized course in an accredited college of pharmacy or a course sponsored by an ACPE accredited provider which provides 20 hours of instruction and experience in the areas listed in this subparagraph; and

(II) completes the on-site media-fill tests within seven days of commencing work at the pharmacy.

(iv) Media-fill tests procedures for assessing the preparation of specific types of sterile preparations shall be representative of all types of manipulations, products, risk levels, and batch sizes that personnel preparing that type of sterile preparation are likely to encounter.

(v) The pharmacist-in-charge shall ensure continuing competency of pharmacy personnel through in-service education, training, and media-fill tests to supplement initial training. Personnel competency shall be evaluated:

(I) during orientation and training prior to the regular performance of those tasks;

(II) whenever the quality assurance program yields an unacceptable result;

(III) whenever unacceptable techniques are observed; and

(IV) at least on an annual basis for low- and medium-risk level compounding, and every six months for high-risk level compounding.

(B) Pharmacists.

(i) All pharmacists who compound sterile preparations for administration to patients or supervise pharmacy technicians and pharmacy technician trainees compounding sterile preparations shall:

(I) complete through a single course, a minimum of 20 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may be obtained through:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a recognized course in an accredited college of pharmacy or a course sponsored by an ACPE accredited provider which provides 20 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph.

(II) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(ii) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(C) Pharmacy technicians and pharmacy technician trainees. In addition to specific qualifications for registration, all pharmacy technicians and pharmacy technician trainees who compound sterile preparations for administration to patients shall:

(i) have initial training obtained either through completion of:

(I) a single course, a minimum of 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may be obtained through:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may not be transferred

to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a course sponsored by an ACPE accredited provider which provides 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph; or

(II) a training program which is accredited by the American Society of Health-System Pharmacists. Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile preparations in a licensed pharmacy provided:

(-a-) the compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(-b-) the individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in subparagraph (B) of this paragraph; and

(-c-) the supervising pharmacist conducts in-process and final checks.

(ii) acquire the required experiential portion of the training programs specified in this subparagraph under the supervision of an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(D) Documentation of Training. The pharmacy shall maintain a record on each person who compounds sterile preparations. The record shall contain, at a minimum, a written record of initial and in-service training, education, and the results of written and practical testing and media-fill testing of pharmacy personnel. The record shall be maintained and contain the following information:

(i) name of the person receiving the training or completing the testing or media-fill tests;

(ii) date(s) of the training, testing, or media-fill challenge testing;

(iii) general description of the topics covered in the training or testing or of the process validated;

(iv) name of the person supervising the training, testing, or media-fill challenge testing; and

(v) signature or initials of the person receiving the training or completing the testing or media-fill challenge testing and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or media-fill challenge testing of personnel.

(d) Operational Standards.

(1) General Requirements.

(A) Sterile preparations may be compounded in licensed pharmacies:

(i) upon presentation of a practitioner's prescription drug or medication order based on a valid pharmacist/patient/prescriber relationship;

(ii) in anticipation of future prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(iii) in reasonable quantities for office use by a practitioner and for use by a veterinarian.

(B) Sterile compounding in anticipation of future prescription drug or medication orders must be based upon a history of receiving valid prescriptions issued within an established pharmacist/pa-

tient/prescriber relationship, provided that in the pharmacist's professional judgment the quantity prepared is stable for the anticipated shelf time.

(i) The pharmacist's professional judgment shall be based on the criteria used to determine a beyond-use date outlined in paragraph (5)(G) of this subsection.

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time must be maintained and be available for inspection.

(iii) Any preparation compounded in anticipation of future prescription drug or medication orders shall be labeled. Such label shall contain:

(I) name and strength of the compounded preparation or list of the active ingredients and strengths;

(II) facility's lot number;

(III) beyond-use date as determined by the pharmacist using appropriate documented criteria as outlined in paragraph (5)(G) of this subsection;

(IV) quantity or amount in the container;

(V) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(VI) device-specific instructions, where appropriate.

(C) Commercially available products may be compounded for dispensing to individual patients provided the following conditions are met:

(i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet patient's needs;

(ii) the pharmacy maintains documentation that the product is not reasonably available due to a drug shortage or unavailability from the manufacturer; and

(iii) the prescribing practitioner has requested that the drug be compounded as described in subparagraph (D) of this paragraph.

(D) A pharmacy may not compound preparations that are essentially copies of commercially available products (e.g., the preparation is dispensed in a strength that is only slightly different from a commercially available product) unless the prescribing practitioner specifically orders the strength or dosage form and specifies why the patient needs the particular strength or dosage form of the preparation. The prescribing practitioner shall provide documentation of a patient specific medical need and the preparation produces a clinically significant therapeutic response (e.g. the physician requests an alternate product due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available. The unavailability of such drug product must be documented prior to compounding. The methodology for documenting unavailability includes maintaining a copy of the wholesaler's notification showing back-ordered, discontinued, or out-of-stock items. This documentation must be available in hard-copy or electronic format for inspection by the board.

(E) A pharmacy may enter into an agreement to compound and dispense prescription/medication orders for another phar-

macy provided the pharmacy complies with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(F) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide sterile prescription compounding services, which may include specific drug preparations and classes of drugs.

(G) A pharmacy may not compound veterinary preparations for use in food producing animals except in accordance with federal guidelines.

(2) Microbial Contamination Risk Levels. Risk Levels for sterile compounded preparations shall be as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF and as listed below.

(A) Low-risk level compounded sterile preparations.

(i) Low-Risk conditions. Low-risk level compounded sterile preparations are those compounded under all of the following conditions.

(I) The compounded sterile preparations are compounded with aseptic manipulations entirely within ISO Class 5 or better air quality using only sterile ingredients, products, components, and devices.

(II) The compounding involves only transfer, measuring, and mixing manipulations with closed or sealed packaging systems that are performed promptly and attentively.

(III) Manipulations are limited to aseptically opening ampuls, penetrating sterile stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices and packages of other sterile products.

(IV) For a low-risk preparation, in the absence of direct sterility testing results or appropriate information sources that justify different limits, the storage periods may not exceed the following periods: before administration, 48 hours at controlled room temperature, for not more than 14 days if stored at a cold temperature, and for 45 days if stored in a frozen state at minus 20 degrees Celsius or colder). For delayed activation device systems, the storage period begins when the device is activated.

(ii) Examples of Low-Risk Compounding. Examples of low-risk compounding include the following.

(I) Single volume transfers of sterile dosage forms from ampuls, bottles, bags, and vials using sterile syringes with sterile needles, other administration devices, and other sterile containers. The solution content of ampules shall be passed through a sterile filter to remove any glass particles.

(II) Manually measuring and mixing no more than three manufactured products to compound drug admixtures.

(B) Low-Risk Level compounded sterile preparations with 12-hour or less beyond-use date. Low-risk level compounded sterile preparations are those compounded pursuant to a physician's order for a specific patient under all of the following conditions.

(i) The compounded sterile preparations are compounded in compounding aseptic isolator or compounding aseptic containment isolator that does not meet the requirements described in paragraph (5)(A)(ii)(II) of this subsection relating to Low and Medium Risk Preparations or the compounded sterile preparations are compounded in laminar airflow workbench or a biological safety cabinet that cannot be located within an ISO Class 7 buffer area.

(ii) The primary engineering control device is located in a segregated compounding area restricted to sterile compounding activities that minimizes the risk of contamination of the compounded sterile preparation.

(iii) The segregated compounding area shall not be in a location that has unsealed windows or doors that connect to the outdoors, or that is adjacent to construction sites, warehouses, or food preparation.

(iv) For a low-risk preparation compounded as described in clauses (i) - (iii) of this subparagraph, administration of such compounded sterile preparations must commence within 12 hours of preparation or as recommended in the manufacturers' package insert, whichever is less.

(C) Medium-risk level compounded sterile preparations.

(i) Medium-Risk Conditions. Medium-risk level compounded sterile preparations, are those compounded aseptically under low-risk conditions and one or more of the following conditions exists.

(I) Multiple individual or small doses of sterile products are combined or pooled to prepare a compounded sterile preparation that will be administered either to multiple patients or to one patient on multiple occasions.

(II) The compounding process includes complex aseptic manipulations other than the single-volume transfer.

(III) The compounding process requires unusually long duration, such as that required to complete the dissolution or homogenous mixing (e.g., reconstitution of intravenous immunoglobulin or other intravenous protein products).

(IV) The compounded sterile preparations do not contain broad spectrum bacteriostatic substances and they are administered over several days (e.g., an externally worn infusion device).

(V) For a medium-risk preparation, in the absence of direct sterility testing results or appropriate information sources that justify different limits the beyond use dates may not exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 30 hours at controlled room temperature, for not more than 9 days at a cold temperature, and for 45 days in solid frozen state at minus 20 degrees Celsius or colder.

(ii) Examples of medium-risk compounding. Examples of medium-risk compounding include the following.

(I) Compounding of total parenteral nutrition fluids using a manual or automated device during which there are multiple injections, detachments, and attachments of nutrient source products to the device or machine to deliver all nutritional components to a final sterile container.

(II) Filling of reservoirs of injection and infusion devices with multiple sterile drug products and evacuations of air from those reservoirs before the filled device is dispensed.

(III) Filling of reservoirs of injection and infusion devices with volumes of sterile drug solutions that will be administered over several days at ambient temperatures between 25 and 40 degrees Celsius (77 and 104 degrees Fahrenheit).

(IV) Transfer of volumes from multiple ampuls or vials into a single, final sterile container or product.

(D) High-risk level compounded sterile preparations.

(i) High-risk Conditions. High-risk level compounded sterile preparations are those compounded under any of the following conditions.

(I) Non-sterile ingredients, including manufactured products are incorporated or a non-sterile device is employed before terminal sterilization.

(II) Sterile ingredients, components, devices, and mixtures are exposed to air quality inferior to ISO Class 5. This includes storage in environments inferior to ISO Class 5 of opened or partially used packages of manufactured sterile products that lack antimicrobial preservatives.

(III) Non-sterile preparations are exposed no more than 6 hours before being sterilized.

(IV) It is assumed, and not verified by examination of labeling and documentation from suppliers or by direct determination, that the chemical purity and content strength of ingredients meet their original or compendial specifications in unopened or in opened packages of bulk ingredients.

(V) For a high-risk preparation, in the absence of direct sterility testing results or appropriate information sources that justify different limits, the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 24 hours at controlled room temperature, for not more than 3 days at a cold temperature, and for 45 days in solid frozen state at minus 20 degrees or colder.

(VI) All non-sterile measuring, mixing, and purifying equipment is rinsed thoroughly with sterile, pyrogen-free water, and then thoroughly drained or dried immediately before use for high-risk compounding while assuring cleanliness. All high-risk compounded sterile aqueous solutions subjected to terminal sterilization are passed through a filter with a nominal porosity not larger than 1.2 micron preceding or during filling into their final containers to remove particulate matter. Sterilization of high-risk level compounded sterile preparations by filtration shall be performed entirely within an ISO Class 5 or superior air quality environment.

(ii) Examples of high-risk compounding. Examples of high-risk compounding include the following.

(I) Dissolving non-sterile bulk drug powders to make solutions, which will be terminally sterilized.

(II) Exposing the sterile ingredients and components used to prepare and package compounded sterile preparations to room air quality worse than ISO Class 5.

(III) Measuring and mixing sterile ingredients in non-sterile devices before sterilization is performed.

(IV) Assuming, without appropriate evidence or direct determination, that packages of bulk ingredients contain at least 95% by weight of their active chemical moiety and have not been contaminated or adulterated between uses.

(3) Immediate Use Compounded Sterile Preparations. For the purpose of emergency or immediate patient care, such situations may include cardiopulmonary resuscitation, emergency room treatment, preparation of diagnostic agents, or critical therapy where the preparation of the compounded sterile preparation under low-risk level conditions would subject the patient to additional risk due to delays in therapy. Compounded sterile preparations are exempted from the requirements described in this paragraph for low-risk, medium-risk,

and high-risk level compounded sterile preparations when all of the following criteria are met.

(A) Only simple aseptic measuring and transfer manipulations are performed with not more than three sterile non-hazardous commercial drug and diagnostic radiopharmaceutical drug products, including an infusion or diluent solution.

(B) Unless required for the preparation, the preparation procedure occurs continuously without delays or interruptions and does not exceed 1 hour.

(C) Administration begins not later than one hour following the completion of preparing the compounded sterile preparation.

(D) When the compounded sterile preparations is not administered by the person who prepared it, or its administration is not witnessed by the person who prepared it, the compounded sterile preparation shall bear a label listing patient identification information such as name and identification number(s), the names and amounts of all ingredients, the name or initials of the person who prepared the compounded sterile preparation, and the exact 1-hour beyond-use time and date.

(E) If administration has not begun within one hour following the completion of preparing the compounded sterile preparation, the compounded sterile preparation is promptly and safely discarded. Immediate use compounded sterile preparations shall not be stored for later use.

(F) Cytotoxic drugs shall not be prepared as immediate use compounded sterile preparations.

(4) Library. In addition to the library requirements of the pharmacy's specific license classification, a pharmacy shall maintain current or updated copies in hard-copy or electronic format of each of the following:

(A) a reference text on injectable drug preparations, such as Handbook on Injectable Drug Products;

(B) a specialty reference text appropriate for the scope of pharmacy services provided by the pharmacy, e.g., if the pharmacy prepares hazardous drugs, a reference text on the preparation of hazardous drugs; and

(C) the United States Pharmacopeia/National Formulary or the USP Pharmacist's Pharmacopeia containing USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations.

(5) Environment. Compounding facilities shall be physically designed and environmentally controlled to minimize airborne contamination of critical sites.

(A) Low and Medium Risk Preparations.

(i) A pharmacy that prepares low- and medium-risk preparations shall have a clean room/controlled area for the compounding of sterile preparations that is constructed to minimize the opportunities for particulate and microbial contamination. The clean room/controlled area shall:

(I) be clean, well lit, and of sufficient size to support sterile compounding activities;

(II) be used only for the compounding of sterile preparations;

(III) be designed such that hand sanitizing and gowning occurs outside the buffer area but allows hands-free access by compounding personnel to the buffer room/area;

(IV) have non-porous and washable floors or floor covering to enable regular disinfection;

(V) be ventilated in a manner to avoid disruption from the HVAC system and room cross-drafts;

(VI) have walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices (e.g., coved), nonshedding and resistant to damage by disinfectant agents;

(VII) have junctures of ceilings to walls coved or caulked to avoid cracks and crevices;

(VIII) have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning;

(IX) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials. Objects that shed particles shall not be brought into the controlled area;

(X) contain an anteroom/ante-zone that provides at least an ISO class 8 air quality and may contain a sink that enables hands-free use with a closed system of soap dispensing to minimize the risk of extrinsic contamination; and

(XI) contain a buffer zone or buffer room designed to maintain at least ISO Class 7 conditions. The following is applicable for the buffer area.

(-a-) There shall be some demarcation designation that delineates the anteroom or area from the buffer area. The demarcation shall be such that it does not create conditions that could adversely affect the cleanliness of the area.

(-b-) The buffer area shall be segregated from surrounding, unclassified spaces to reduce the risk of contaminants being blown, dragged, or otherwise introduced into the filtered unidirectional airflow environment, and this segregation should be continuously monitored.

(-c-) A buffer zone that is not physically separated from the anteroom shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel.

(-d-) The buffer area shall not contain sources of water (i.e., sinks) or floor drains.

(ii) The pharmacy shall prepare sterile pharmaceuticals in a primary engineering control device, such as a laminar air flow hood, biological safety cabinet, compounding aseptic isolator, compounding aseptic containment isolator which is capable of maintaining at least ISO Class 5 conditions during normal activity.

(I) The primary engineering control shall:

(-a-) be located in the buffer area or room and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system.

(-b-) be certified by an independent contractor according to the International Organization of Standardization (ISO) Classification of Particulate Matter in Room Air (ISO 14644-1) for operational efficiency at least every six months and when it is relocated, in accordance with the manufacturer's specifications; and

(-c-) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented.

(II) The compounding aseptic isolator or compounding aseptic containment isolator must be placed in an ISO Class 7 buffer area unless the isolator meets all of the following conditions.

(-a-) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(-b-) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.

(-c-) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(B) High-risk Preparations. In addition to the requirements in subparagraph (A) of this paragraph, when high-risk preparations are compounded, the primary engineering control shall be located in a buffer room that provides a physical separation, through the use of walls, doors and pass-throughs and has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(C) Automated compounding device. If automated compounding devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a routine basis, based on the manufacturer's recommendations.

(D) Cytotoxic drugs. If the preparation is cytotoxic, the following is also applicable.

(i) General.

(I) All personnel involved in the compounding of cytotoxic products shall wear appropriate protective apparel, such as gowns, face masks, eye protection, hair covers, shoe covers or dedicated shoes, and appropriate gloving.

(II) Appropriate safety and containment techniques for compounding cytotoxic drugs shall be used in conjunction with aseptic techniques required for preparing sterile preparations.

(III) Disposal of cytotoxic waste shall comply with all applicable local, state, and federal requirements.

(IV) Prepared doses of cytotoxic drugs must be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with cytotoxic agents.

(ii) Primary engineering control device. Cytotoxic drugs shall be prepared in a Class II or III vertical flow biological safety cabinet or compounding aseptic containment isolator located in an ISO Class 7 area that is physically separated from other preparation areas. The area for preparation of sterile chemotherapeutic preparations shall:

(I) have not less than 0.01 inches water column negative pressure to the adjacent positive pressure ISO Class 7 or better anteroom; and

(II) have a pressure indicator that can be readily monitored for correct room pressurization.

(iii) Facilities that prepare a low volume of cytotoxic drugs. Pharmacies that prepare a low volume of cytotoxic drugs, are not required to comply with the provisions of clause (ii) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., closed-system vial transfer device within a BSC or CACI that is located in a non-negative pressure room).

(E) Cleaning and disinfecting the sterile compounding areas. The following cleaning and disinfecting practices and frequen-

cies apply to direct and contiguous compounding areas, which include ISO Class 5 compounding areas for exposure of critical sites as well as buffer rooms, anterooms, and ante-areas.

(i) The pharmacist-in-charge is responsible for developing written procedures for cleaning and disinfecting the direct and contiguous compounding areas and assuring the procedures are followed.

(ii) These procedures shall be conducted prior to and after each work shift (at a minimum of every 12 hours while the pharmacy is open) and when there are spills or environmental quality breaches.

(iii) Before compounding is performed, all items are removed from the direct and contiguous compounding areas and all surfaces are cleaned of loose material and residue from spills, followed by an application of a residue-free disinfecting agent (e.g., IPA), that is left on for a time sufficient to exert its antimicrobial effect.

(iv) Work surfaces near the direct and contiguous compounding areas in the buffer or clean area are cleaned of loose material and residue from spills, followed by an application of a residue-free disinfecting agent that is left on for a time sufficient to exert its antimicrobial effect.

(v) Floors in the buffer or clean area are cleaned by mopping at least once daily when no aseptic operations are in progress preceding from the buffer or clean room area to the anteroom area.

(vi) In the anteroom area, walls, ceilings, and shelving shall be cleaned monthly.

(vii) Supplies and equipment removed from shipping cartons must be wiped with a disinfecting agent, such as IPA. However, if supplies are received in sealed pouches, the pouches may be removed as the supplies are introduced into the buffer or clean area without the need to disinfect the individual supply items. No shipping or other external cartons may be taken into the buffer or clean area.

(viii) Storage shelving, emptied of all supplies, walls, and ceilings are cleaned and disinfected at planned intervals, monthly, if not more frequently.

(F) Security requirements. The pharmacy may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile preparations, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile pharmaceuticals shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(G) Storage requirements and beyond-use dating.

(i) Storage requirements. All drugs shall be stored at the proper temperature and conditions, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(ii) Beyond-use dating.

(I) Beyond-use dates for compounded sterile preparations shall be assigned based on professional experience, which shall include careful interpretation of appropriate information sources for the same or similar formulations.

(II) Beyond-use dates for compounded sterile preparations that are prepared strictly in accordance with manufacturers' product labeling must be those specified in that labeling, or from appropriate literature sources or direct testing.

(III) Beyond-use dates for compounded sterile preparations that lack justification from either appropriate literature sources or by direct testing evidence must be assigned as described in Chapter 797, Pharmaceutical Compounding--Sterile Preparations of the USP/NF.

(6) Equipment and supplies. Pharmacies compounding sterile preparations shall have the following equipment and supplies:

(A) a calibrated system or device (i.e., thermometer) to monitor the temperature to ensure that proper storage requirements are met, if sterile pharmaceuticals are stored in the refrigerator;

(B) a calibrated system or device to monitor the temperature where bulk chemicals are stored;

(C) if applicable, a Class A prescription balance, or analytical balance and weights. Such balance shall be properly maintained and subject to periodic inspection by the Texas State Board of Pharmacy;

(D) equipment and utensils necessary for the proper compounding of sterile preparations. Such equipment and utensils used in the compounding process shall be:

(i) of appropriate design, appropriate capacity, and be operated within designed operational limits;

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug preparation beyond the desired result;

(iii) cleaned and sanitized immediately prior to and after each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance;

(E) appropriate disposal containers for used needles, syringes, etc., and if applicable, hazardous waste from the preparation of hazardous drugs and/or biohazardous waste;

(F) appropriate packaging or delivery containers to maintain proper storage conditions for sterile preparations;

(G) infusion devices, if applicable; and

(H) all necessary supplies, including:

(i) disposable needles, syringes, and other supplies for aseptic mixing;

(ii) disinfectant cleaning solutions;

(iii) hand washing agents with bactericidal action;

(iv) disposable, lint free towels or wipes;

(v) appropriate filters and filtration equipment;

(vi) cytotoxic spill kits, if applicable; and

(vii) masks, caps, coveralls or gowns with tight cuffs, shoe covers, and gloves, as applicable.

(7) Labeling.

(A) Prescription drug or medication orders. In addition to the labeling requirements for the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following.

(i) The generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded sterile preparation.

(ii) For outpatient prescription orders only, a statement that the compounded sterile preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement).

(iii) A beyond-use date. The beyond-use date shall be determined as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF, and paragraph (4) of this subsection.

(B) Batch. If the sterile pharmaceutical is compounded in a batch, the following shall also be included on the batch label.

(i) unique lot number assigned to the batch;

(ii) quantity;

(iii) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(iv) device-specific instructions, where appropriate.

(C) Pharmacy bulk package. The label of a pharmacy bulk package shall:

(i) state prominently "Pharmacy Bulk Package--Not for Direct Infusion;"

(ii) contain or refer to information on proper techniques to help ensure safe use of the preparation; and

(iii) bear a statement limiting the time frame in which the container may be used once it has been entered, provided it is held under the labeled storage conditions.

(8) Written drug information for prescription drug orders only. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing a prescription drug order. A statement which indicates that the preparation was compounded by the pharmacy must be included in this written information. If there is no written information available, the patient shall be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate, the prescriber, concerning the drug.

(9) Pharmaceutical Care Services. In addition to the pharmaceutical care requirements for the pharmacy's specific license classification, the following requirements for sterile preparations compounded pursuant to prescription drug orders must be met.

(A) Primary provider. There shall be a designated physician primarily responsible for the patient's medical care. There shall be a clear understanding between the physician, the patient, and the pharmacy of the responsibilities of each in the areas of the delivery of care, and the monitoring of the patient. This shall be documented in the patient medication record (PMR).

(B) Patient training. The pharmacist-in-charge shall develop policies to ensure that the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use, including instruction when applicable, regarding:

(i) appropriate disposition of hazardous solutions and ancillary supplies;

(ii) proper disposition of controlled substances in the home;

(iii) self-administration of drugs, where appropriate;

(iv) emergency procedures, including how to contact an appropriate individual in the event of problems or emergencies related to drug therapy; and

(v) if the patient or patient's caregiver prepares sterile preparations in the home, the following additional information shall be provided:

(I) safeguards against microbial contamination, including aseptic techniques for compounding intravenous admixtures and aseptic techniques for injecting additives to premixed intravenous solutions;

(II) appropriate storage methods, including storage durations for sterile pharmaceuticals and expirations of self-mixed solutions;

(III) handling and disposition of premixed and self-mixed intravenous admixtures; and

(IV) proper disposition of intravenous admixture compounding supplies such as syringes, vials, ampules, and intravenous solution containers.

(C) Pharmacist-patient relationship. It is imperative that a pharmacist-patient relationship be established and maintained throughout the patient's course of therapy. This shall be documented in the patient's medication record (PMR).

(D) Patient monitoring. The pharmacist-in-charge shall develop policies to ensure that:

(i) the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider; and

(ii) the first dose of any new drug therapy is administered in the presence of an individual qualified to monitor for and respond to adverse drug reactions.

(10) Drugs, components, and materials used in sterile compounding.

(A) Drugs used in sterile compounding shall be a USP/NF grade substances manufactured in an FDA-registered facility.

(B) If USP/NF grade substances are not available shall be of a chemical grade in one of the following categories:

(i) Chemically Pure (CP);

(ii) Analytical Reagent (AR);

(iii) American Chemical Society (ACS); or

(iv) Food Chemical Codex.

(C) If a drug, component or material is not purchased from a FDA-registered facility, the pharmacist shall establish purity and stability by obtaining a Certificate of Analysis from the supplier and the pharmacist shall compare the monograph of drugs in a similar class to the Certificate of Analysis.

(D) All components shall:

(i) be manufactured in an FDA-registered facility; or

(ii) in the professional judgment of the pharmacist, be of high quality and obtained from acceptable and reliable alternative sources; and

(iii) stored in properly labeled containers in a clean, dry area, under proper temperatures.

(E) Drug product containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity,

strength, quality, or purity of the compounded drug preparation beyond the desired result.

(F) Components, drug preparation containers, and closures shall be rotated so that the oldest stock is used first.

(G) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug preparation.

(H) A pharmacy may not compound a preparation that contains ingredients appearing on a federal Food and Drug Administration list of drug products withdrawn or removed from the market for safety reasons.

(11) Compounding process.

(A) Standard operating procedures (SOPs). All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed for:

- (i) the facility;
- (ii) equipment;
- (iii) personnel;
- (iv) preparation evaluation;
- (v) quality assurance;
- (vi) preparation recall;
- (vii) packaging; and
- (viii) storage of compounded sterile preparations.

(B) USP/NF. Any compounded formulation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Personnel Cleansing and Garbing.

(i) Any person with an apparent illness or open lesion that may adversely affect the safety or quality of a drug preparation being compounded shall be excluded from direct contact with components, drug preparation containers, closures, any materials involved in the compounding process, and drug products until the condition is corrected.

(ii) Before entering the clean area, compounding personnel must remove the following:

- (I) personal outer garments (e.g., bandanas, coats, hats, jackets, scarves, sweaters, vests);
- (II) all cosmetics, because they shed flakes and particles; and
- (III) all hand, wrist, and other body jewelry.

(iii) The wearing of artificial nails or extenders is prohibited while working in the sterile compounding environment.

(iv) Personnel must don personal protective equipment and perform hand hygiene in an order that proceeds from the dirtiest to the cleanest activities as follows:

(I) Activities considered the dirtiest include donning of dedicated shoes or shoe covers, head and facial hair covers (e.g., beard covers in addition to face masks), and face mask/eye shield. Eye shields are optional unless working with irritants like germicidal disinfecting agents.

(II) After donning dedicated shoes or shoe covers, head and facial hair covers, and face masks, personnel shall perform a hand hygiene procedure by removing debris from underneath fingernails using a nail cleaner under running warm water followed by vigorous hand washing. Personnel shall begin washing arms at the hands and continue washing to elbows for at least 30 seconds with either a plain (non-antimicrobial) soap, or antimicrobial soap, and water while in the anteroom/ante-area.

(III) After completion of hand washing, personnel shall don clean non-shedding gowns with sleeves that fit snugly around the wrists.

(IV) Gloves that form a continuous barrier with the gown shall be the last item donned before compounding begins.

(V) Gloves, either those which are sterile or have been disinfected by applying 70% IPA or appropriate disinfectant to all contact surface areas and allowed to dry, that form a continuous barrier with the gown shall be the last item donned before compounding begins. Routine application of 70% IPA shall occur throughout the compounding day and whenever nonsterile surfaces are touched.

(VI) When compounding personnel must temporarily exit the ISO Class 7 environment during a work shift, the exterior gown, if not visibly soiled, may be removed and retained in the ISO Class 8 anteroom/ante-area, to be re-donned during that same work shift only. However, shoe covers, hair and facial hair covers, face mask/eye shield, and gloves must be replaced with new ones before re-entering the ISO Class 7 clean environment along with performing proper hand hygiene.

(D) At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(12) Quality Assurance.

(A) Initial Formula Validation. Prior to routine compounding of a sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a product that is sterile and that contains the stated amount of active ingredient(s).

(i) Low risk preparations.

(I) Quality assurance practices include, but are not limited to the following:

(-a-) Routine disinfection and air quality testing of the direct compounding environment to minimize microbial surface contamination and maintain ISO Class 5 air quality.

(-b-) Visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments and goggles.

(-c-) Review of all orders and packages of ingredients to ensure that the correct identity and amounts of ingredients were compounded.

(-d-) Visual inspection of compounded sterile preparations to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually by each person authorized to compound in a low-risk level under conditions that closely simulate the most challenging or stressful conditions encountered during compounding of low-risk level sterile produce. Once begun, this test is completed without interruption within an ISO Class 5 air quality environment. Three sets of four 5-milliliter aliquots

of sterile Soybean--Casein Digest Medium are transferred with the same sterile 10-milliliter syringe and vented needle combination into separate sealed, empty, sterile 30-milliliter clear vials (i.e., four 5-milliliter aliquots into each of three 30-milliliter vials). Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(ii) Medium risk preparations.

(I) Quality assurance procedures for medium-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations, as well as a more challenging media-fill test passed annually, or more frequently.

(II) Example of a Media-Fill Test Procedure.

This, or an equivalent test, is performed at least annually under conditions that closely simulate the most challenging or stressful conditions encountered during compounding. This test is completed without interruption within an ISO Class 5 air quality environment. Six 100-milliliter aliquots of sterile Soybean--Casein Digest Medium are aseptically transferred by gravity through separate tubing sets into separate evacuated sterile containers. The six containers are then arranged as three pairs, and a sterile 10-milliliter syringe and 18-gauge needle combination is used to exchange two 5-milliliter aliquots of medium from one container to the other container in the pair. For example, after a 5-milliliter aliquot from the first container is added to the second container in the pair, the second container is agitated for 10 seconds, then a 5-milliliter aliquot is removed and returned to the first container in the pair. The first container is then agitated for 10 seconds, and the next 5-milliliter aliquot is transferred from it back to the second container in the pair. Following the two 5-milliliter aliquot exchanges in each pair of containers, a 5-milliliter aliquot of medium from each container is aseptically injected into a sealed, empty, sterile 10-milliliter clear vial, using a sterile 10-milliliter syringe and vented needle. Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(iii) High risk preparations.

(I) Procedures for high-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations. In addition, a media-fill test that represents high-risk level compounding is performed twice a year by each person authorized to compound high-risk level compounded sterile preparations.

(II) Example of a Media-Fill Test Procedure Compounded Sterile Preparations Sterilized by Filtration. This test, or an equivalent test, is performed under conditions that closely simulate the most challenging or stressful conditions encountered when compounding high-risk level compounded sterile preparations. Note: Sterility tests for autoclaved compounded sterile preparations are not required unless they are prepared in batches of more than 25 units. This test is completed without interruption in the following sequence:

(-a-) Dissolve 3 grams of nonsterile commercially available Soybean--Casein Digest Medium in 100 milliliters of non-bacteriostatic water to make a 3% nonsterile solution.

(-b-) Draw 25 milliliters of the medium into each of three 30-milliliter sterile syringes. Transfer 5 milliliters from each syringe into separate sterile 10-milliliter vials. These vials are the

positive controls to generate exponential microbial growth, which is indicated by visible turbidity upon incubation.

(-c-) Under aseptic conditions and using aseptic techniques, affix a sterile 0.2-micron porosity filter unit and a 20-gauge needle to each syringe. Inject the next 10 milliliters from each syringe into three separate 10-milliliter sterile vials. Repeat the process for three more vials. Label all vials, affix sterile adhesive seals to the closure of the nine vials, and incubate them at 20 to 35 degrees Celsius. Inspect for microbial growth over 14 days as described in Chapter 797 Pharmaceutical Compounding--Sterile Preparations, of the USP/NF.

(B) Finished preparation release checks and tests.

(i) High-risk level compounded sterile preparations.

All high-risk level compounded sterile preparations that are prepared in groups of more than 25 identical individual single-dose packages (such as ampuls, bags, syringes, and vials), or in multiple dose vials for administration to multiple patients, or are exposed longer than 12 hours at 2 - 8 degrees Celsius (36 - 46 degrees Fahrenheit) and longer than six hours at warmer than 8 degrees Celsius (46 degrees Fahrenheit) before they are sterilized shall be tested to ensure they are sterile and do not contain excessive bacterial endotoxins as specified in Chapter 71, Sterility Tests of the USP/NF.

(ii) All compounded sterile preparations that are intended to be solutions must be visually examined for the presence of particulate matter and not administered or dispensed when such matter is observed.

(iii) The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded sterile preparations at all contamination risk levels shall be inspected for accuracy of correct identities and amounts of ingredients, aseptic mixing and sterilization, packaging, labeling, and expected physical appearance before they are administered or dispensed.

(13) Quality control.

(A) Quality control procedures. The pharmacy shall follow established quality control procedures to monitor the compounding environment and quality of compounded drug preparations for conformity with the quality indicators established for the preparation. When developing these procedures, pharmacy personnel shall consider the provisions of Chapter 797, Pharmaceutical Compounding--Sterile Preparations, Chapter 1075, Good Compounding Practices, and Chapter 1160, Pharmaceutical Calculations in Prescription Compounding of the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) Verification of compounding accuracy and sterility.

(i) The accuracy of identities, concentrations, amounts, and purities of ingredients in compounded sterile preparations shall be confirmed by reviewing labels on packages, observing and documenting correct measurements with approved and correctly standardized devices, and reviewing information in labeling and certificates of analysis provided by suppliers.

(ii) If the correct identify, purity, strength, and sterility of ingredients and components of compounded sterile preparations cannot be confirmed such ingredients and components shall be discarded immediately.

(iii) If individual ingredients, such as bulk drug substances, are not labeled with expiration dates, when the drug substances are stable indefinitely in their commercial packages under labeled storage conditions, such ingredients may gain or lose moisture during stor-

age and use and shall require testing to determine the correct amount to weigh for accurate content of active chemical moieties in compounded sterile preparations.

(e) Records.

(1) Maintenance of records. Every record required under this section must be:

(A) kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Compounding records.

(A) Compounding pursuant to patient specific prescription drug orders. Compounding records for all compounded pharmaceuticals shall be maintained by the pharmacy electronically or manually as part of the prescription drug or medication order, formula record, formula book, or compounding log and shall include:

(i) the date of preparation;

(ii) a complete formula, including methodology and necessary equipment which includes the brand name(s) of the raw materials, or if no brand name, the generic name(s) or official name and name(s) of the manufacturer(s) or distributor of the raw materials and the quantities of each;

(iii) signature or initials of the pharmacist or pharmacy technician or pharmacy technician trainee performing the compounding;

(iv) signature or initials of the pharmacist responsible for supervising pharmacy technicians or pharmacy technician trainees and conducting in-process and finals checks of compounded pharmaceuticals if pharmacy technicians or pharmacy technician trainees perform the compounding function;

(v) the quantity in units of finished products or amount of raw materials;

(vi) the container used and the number of units prepared; and

(vii) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:

(I) the criteria used to determine the beyond-use date; and

(II) documentation of performance of quality control procedures.

(B) Compounding records when batch compounding or compounding in anticipation of future prescription drug or medication orders.

(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for preparations prepared in batch. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared

and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:

(I) the formula;

(II) the components;

(III) the compounding directions;

(IV) a sample label;

(V) evaluation and testing requirements;

(VI) specific equipment used during preparation;

and

(VII) storage requirements.

(ii) Preparation work sheet. The preparation work sheet for each batch of preparations shall document the following:

(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(II) lot number for each component;

(III) component manufacturer/distributor or suitable identifying number;

(IV) container specifications (e.g., syringe, pump cassette);

(V) unique lot or control number assigned to batch;

(VI) expiration date of batch-prepared preparations;

(VII) date of preparation;

(VIII) name, initials, or electronic signature of the person(s) involved in the preparation;

(IX) name, initials, or electronic signature of the responsible pharmacist;

(X) finished preparation evaluation and testing specifications, if applicable; and

(XI) comparison of actual yield to anticipated or theoretical yield, when appropriate.

(f) Office Use Compounding and Distribution of Compounded Preparations to Class C Pharmacies or Veterinarians in Accordance with §563.054 of the Act.

(1) General.

(A) A pharmacy may dispense and deliver a reasonable quantity of a compounded preparation to a practitioner for office use by the practitioner in accordance with this subsection.

(B) A Class A (Community) pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations to a Class C (Institutional) pharmacy.

(C) A Class C (Institutional) pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations that the Class C pharmacy has compounded for other Class C pharmacies under common ownership.

(D) To dispense and deliver a compounded preparation under this subsection, a pharmacy must:

(i) verify the source of the raw materials to be used in a compounded drug;

(ii) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(iii) enter into a written agreement with a practitioner for the practitioner's office use of a compounded preparation;

(iv) comply with all applicable competency and accrediting standards as determined by the board; and

(v) comply with the provisions of this subsection.

(2) **Written Agreement.** A pharmacy that provides sterile compounded preparations to practitioners for office use or to another pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:

(A) address acceptable standards of practice for a compounding pharmacy and a practitioner and receiving pharmacy that enter into the agreement including a statement that the compounded drugs may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity except as authorized by §563.054 of the Act;

(B) require the practitioner or receiving pharmacy to include on a patient's chart, medication order or medication administration record the lot number and beyond-use date of a compounded preparation administered to a patient;

(C) describe the scope of services to be performed by the pharmacy and practitioner or receiving pharmacy, including a statement of the process for:

(i) a patient to report an adverse reaction or submit a complaint; and

(ii) the pharmacy to recall batches of compounded preparations.

(3) **Recordkeeping.**

(A) **Maintenance of Records.**

(i) Records of orders and distribution of sterile compounded preparations to a practitioner for office use or to a Class C pharmacy for administration to a patient shall:

(I) be kept by the pharmacy and be available, for at least two years from the date of the record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies;

(II) maintained separately from the records of products dispensed pursuant to a prescription or medication order; and

(III) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy or its representative. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ii) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(B) **Orders.** The pharmacy shall maintain a record of all sterile compounded preparations ordered by a practitioner for office use or by a Class C pharmacy for administration to a patient. The record shall include the following information:

(i) date of the order;

(ii) name, address, and phone number of the practitioner who ordered the preparation and if applicable, the name, address and phone number of the Class C Pharmacy ordering the preparation; and

(iii) name, strength, and quantity of the preparation ordered.

(C) **Distributions.** The pharmacy shall maintain a record of all sterile compounded preparations distributed pursuant to an order to a practitioner for office use or by a Class C pharmacy for administration to a patient. The record shall include the following information:

(i) date the preparation was compounded;

(ii) date the preparation was distributed;

(iii) name, strength and quantity in each container of the preparation;

(iv) pharmacy's lot number;

(v) quantity of containers shipped; and

(vi) name, address, and phone number of the practitioner or Class C Pharmacy to whom the preparation is distributed.

(D) **Audit Trail.**

(i) The pharmacy shall store the order and distribution records of preparations for all sterile compounded preparations ordered by and or distributed to a practitioner for office use or by a Class C pharmacy for administration to a patient in such a manner as to be able to provide a audit trail for all orders and distributions of any of the following during a specified time period.

(I) any strength and dosage form of a preparation (by either brand or generic name or both);

(II) any ingredient;

(III) any lot number;

(IV) any practitioner;

(V) any facility; and

(VI) any pharmacy, if applicable.

(ii) The audit trail shall contain the following information:

(I) date of order and date of the distribution;

(II) practitioner's name, address, and name of the Class C pharmacy, if applicable;

(III) name, strength and quantity of the preparation in each container of the preparation;

(IV) name and quantity of each active ingredient;

(V) quantity of containers distributed; and

(VI) pharmacy's lot number;

(4) **Labeling.** The pharmacy shall affix a label to the preparation containing the following information:

(A) name, address, and phone number of the compounding pharmacy;

(B) the statement: "For Institutional or Office Use Only--Not for Resale"; or if the preparation is distributed to a veterinarian the statement: "Compounded Preparation";

(C) name and strength of the preparation or list of the active ingredients and strengths;

(D) pharmacy's lot number;

(E) beyond-use date as determined by the pharmacist using appropriate documented criteria;

(F) quantity or amount in the container;

(G) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(H) device-specific instructions, where appropriate.

(g) Recall Procedures.

(1) The pharmacy shall have written procedures for the recall of any compounded sterile preparation provided to a patient, to a practitioner for office use, or a pharmacy for administration. Written procedures shall include, but not be limited to the requirements as specified in paragraph (3) of this subsection.

(2) The pharmacy shall immediately initiate a recall of any sterile preparation compounded by the pharmacy upon identification of a potential or confirmed harm to a patient.

(3) In the event of a recall, the pharmacist-in-charge shall ensure that:

(A) each practitioner, facility, and/or pharmacy to which the preparation was distributed is notified, in writing, of the recall;

(B) each patient to whom the preparation was dispensed is notified, in writing, of the recall;

(C) if the preparation is prepared as a batch, the board is notified of the recall, in writing;

(D) if the preparation is distributed for office use, the Texas Department of State Health Services, Drugs and Medical Devices Group, is notified of the recall, in writing;

(E) the preparation is quarantined; and

(F) the pharmacy keeps a written record of the recall including all actions taken to notify all parties and steps taken to ensure corrective measures.

(4) If a pharmacy fails to initiate a recall, the board may require a pharmacy to initiate a recall if there is potential for or confirmed harm to a patient.

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 August 20, 2012.
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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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Proposal publication date: June 22, 2012

For further information, please call: (512) 305-8028



CHAPTER 295. PHARMACISTS

The Texas State Board of Pharmacy adopts amendments to §295.5, concerning Pharmacist License or Renewal Fees, and §295.8, concerning Continuing Education Requirements. The amendments are adopted without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4525).

The amendments to §295.5 will raise pharmacist license fees to generate additional revenue needed to make revenue projections. The amendments to §295.8 will allow pharmacists to receive continuing education credit for programs approved by other state boards of pharmacy.

No comments were received.

22 TAC §295.5

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas 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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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



22 TAC §295.8

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas 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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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8028



CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.4

The Texas State Board of Pharmacy adopts amendments to §297.4, concerning Fees. The amendments are adopted with changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4526). The Board voted to adopt the rule with changes, as noted below, due to the TexasOnline submission fees changing.

The amendments to §297.4 will raise pharmacy technician and pharmacy technician trainee fees to generate additional revenue needed to make revenue projections. The Board voted to change the proposed initial and renewal fees by a \$1 decrease to reflect the correct amount due for the TexasOnline subscription fee.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§297.4. *Fees.*

(a) Pharmacy technician trainee. The fee for registration shall be \$47 and is composed of the following fees:

(1) \$40 for processing the application and issuance of the pharmacy technician trainee registration as authorized by the Act, §568.005;

(2) \$2 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(3) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(b) Pharmacy technician.

(1) Biennial Registration. The board shall require biennial renewal of all pharmacy technician registrations provided under Chapter 568 of the Act.

(2) Initial Registration Fee. The fee for initial registration shall be \$75 for a two year registration and is composed of the following fees:

(A) \$67 for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) \$3 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(3) Renewal Fee. The fee for biennial renewal of a pharmacy technician registration shall be \$71 and is composed of the following:

(A) \$67 for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) \$2 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(c) Duplicate or Amended Certificates. The fee for issuance of a duplicate or amended pharmacy technician trainee registration certificate or pharmacy technician registration renewal certificate shall be \$20.

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 August 20, 2012.

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Gay Dodson, R.Ph.

Executive Director/Secretary

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5,
Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The staff of the Texas Department of Insurance (TDI) filed Petition No. W-0812-06-I on August 16, 2012. The petition requests that the commissioner amend Rule IV A. and Appendix B. of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance to better conform the manual's instructions to the statutory requirements for workers' compensation classification codes. Staff requests that the proposed amendments be effective 15 days after notice of adoption of the changes is published in the *Texas Register*.

Article 5.96 and §2053.051(a)(1) and §2053.053 of the Texas Insurance Code authorize TDI to file this petition and the commissioner to take the requested action. Article 5.96 authorizes TDI to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation insurance. Section 2053.051(a)(1) requires TDI to determine hazards by class, and §2053.053 states that insurance companies writing workers' compensation policies may not use hazard classifications other than the classifications established by TDI. No statute requires TDI to make these classification code assignments.

The proposed amendments to Rule IV A. would clarify that a carrier may select classification codes to use when issuing a quote or when issuing a new or renewal workers' compensation policy; and a carrier may change, add, and delete classification codes on a workers' compensation policy. When selecting, changing, or adding classification codes for a workers' compensation policy, a carrier may only use classification codes contained in the manual.

The proposed amendments to Appendix B. 1. would delete the provision that requires current policies to show the classifications approved for the expiring policy with payrolls updated to reflect current conditions, as the other proposed amendments make this provision unnecessary.

The proposed amendments to Appendix B. 2. would clarify that a carrier may change, add, and delete classification codes on a workers' compensation policy, as long as the carrier uses classification codes contained in the manual.

The proposed amendments to Appendix B. 3. would delete the provision that classification codes assigned by an insurance company to a

policy covering an employer who previously was a non-subscriber to the workers' compensation law may be subject to change by TDI, and clarify that a carrier may select classification codes to use when issuing a quote or when issuing a new or renewal workers' compensation policy, as long as the carrier uses classification codes contained in the manual.

The proposed amendments would delete Appendix B. 4. because TDI will no longer determine classification codes, and the proposed amendments would renumber Appendix B. 5. to accommodate the other amendments.

The amendments are necessary to better conform the manual's instructions to the statutory requirements for workers' compensation classification codes. These changes will make the process of changing classification codes more efficient for insurance companies, because they will be able to act without having to wait for TDI approval, and more efficient for TDI, because TDI will not have to use its resources to approve classification codes.

You may review copies of the staff petition and the proposed exhibits in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition and proposed exhibits, please contact Sylvia Gutierrez at ChiefClerk@tdi.state.tx.us, (512) 463-6327 (Reference No. W-0812-06-1).

The commissioner may approve these amendments without a hearing. If you wish to comment on the petition or request a hearing, please submit two copies of your comments within 15 days after the publication of this notice. Send one copy to the Office of the Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to Nancy Moore, Director, Workers' Compensation Classification and Premium Calculation Office, Texas Department of Insurance, P.O. Box 149104, Mail Code 105-2A, Austin, Texas 78714-9104.

TDI publishes this notification pursuant to Article 5.96 of the Texas Insurance Code, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-201204358

Sara Waitt

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: August 17, 2012



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §155.21, Naming of a Texas Department of Criminal Justice Owned Facility. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Sharon Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342 or sharon.howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposed rule review.

§155.21, Naming of a Texas Department of Criminal Justice Owned Facility.

TRD-201204403

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Filed: August 20, 2012



Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission (Commission) files this notice of intent to review Chapter 311, concerning Other Licenses. This review is conducted pursuant to the Texas Government Code, §2001.039, which requires state agencies to review and consider for re-adoption their administrative rules every four years.

The review shall assess whether the reasons for initially adopting the rules within the chapter continue to exist and whether any changes to the rules should be made.

All comments or questions in response to this notice of rule review may be submitted in writing to Carolyn Weiss, Assistant to the Executive Director of the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907. The Commission will accept public comments regarding the chapter and the rules within it for 30 days following publication of this notice in the *Texas Register*.

Any proposed changes to the rules within Chapter 311 as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-201204330

Mark Fenner

General Counsel

Texas Racing Commission

Filed: August 16, 2012



Adopted Rule Reviews

Employees Retirement System of Texas

Title 34, Part 4

Pursuant to the notice of the proposed rule review published in the January 21, 2011, issue of the *Texas Register* (36 TexReg 282), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 87, Deferred Compensation, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 87 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 87 continues to exist and, therefore, the Board readopts Chapter 87. This completes ERS' review of 34 TAC Chapter 87, Deferred Compensation.

TRD-201204457

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: August 22, 2012



Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 291, Subchapter D (§§291.71 - 291.76), concerning Pharmacies (Institutional Pharmacy (Class C)), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4651).

No comments were received.

The agency finds the reason for adopting the rules continues to exist.

TRD-201204396

Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: August 20, 2012



The Texas State Board of Pharmacy adopts the review of Chapter 303 (§§303.1 - 303.3), concerning Destruction of Drugs, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4651).

No comments were received.

The agency finds the reason for adopting the rules continues to exist.

TRD-201204397
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: August 20, 2012



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §55.119(b)

RELEASE OF CHILD SUPPORT LIEN

To:
(Name/Address of recorder or asset holder)

And Obligor:
(Name/Address/DOB/SSN)

Obligee:
(Name)

As provided by Texas Family Code §157.322, the child support lien described below is released.

The lien affected by this release arose from a child support order entered on _____ by _____ in cause number _____.

Date of filing or delivery of lien: _____

I am the obligee of the above referenced order
 an attorney or entity representing the above named obligee.

I affirm under penalty of perjury that the information contained in this release is true and accurate.

Date _____
(Signature)
(Print name, e-mail address, phone and fax number)

I certify that _____ appeared before me and is known to me as the individual whose signature appears above.

Date _____
Notary Public

Notary State: _____

County: _____

Figure: 1 TAC §55.119(c)

PARTIAL RELEASE OF CHILD SUPPORT LIEN

To:

(Name/Address of recorder or asset holder)

And Obligor:

(Name/Address/DOB/SSN)

Obligee:

(Name)

As provided by Texas Family Code §157.321, the property described below is released:
(Property description)

This partial release of lien applies only to the property described above and does not operate to prevent action to collect from other property owned by the obligor.

The lien affected by this partial release arose from a child support order entered on _____ by _____ in cause number _____.

Date of filing or delivery of lien: _____

I am the obligee of the above referenced order
 an attorney or entity representing the above named obligee.

I affirm under penalty of perjury that the information contained in this release is true and accurate.

Date

(Signature)
(Print name, e-mail address, phone and fax number)

I certify that _____ appeared before me and is known to me as the individual whose signature appears above.

Date

Notary Public

Notary State: _____

County: _____

Figure: 7 TAC §12.12(b)(1)(B)

Table 1--Conversion Factor Matrix for Calculating Potential Future Credit Exposure.¹

Original maturity²	Interest Rate	Foreign exchange rate and gold	Equity	Other³ (includes commodities and precious metals except gold)
1 year or less	0.015	0.015	0.20	0.06
Over 1 to 3 years	0.03	0.03	0.20	0.18
Over 3 to 5 years	0.06	0.06	0.20	0.30
Over 5 to 10 years	0.12	0.12	0.20	0.60
Over ten years	0.30	0.30	0.20	1.00

¹ For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

² For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

³ Transactions not explicitly covered by any other column in Table 1 are to be treated as "Other."

Figure: 7 TAC §12.12(b)(1)(C)

Table 2--Remaining Maturity Factor for Calculating Credit Exposure

	Interest Rate	Foreign exchange rate and gold	Equity	Other³ (includes commodities and precious metals except gold)
Multiplicative Factor	1.5%	1.5%	6.0%	6.0%

³ Transactions not explicitly covered by any other column in Table 2 are to be treated as "Other."

Figure: 7 TAC §12.12(c)(1)(B)(iv)(II)

Table 3--Collateral Haircuts

SOVEREIGN ENTITIES		
	Residual maturity	Haircut without currency mismatch ⁴
OECD Country Risk Classification ⁵ 0-1.....	<= 1 year.....0.005
	>1 year, <= 5 years.....0.02
	>5 years.....0.04
OECD Country Risk Classification 2-3.....	<= 1 year.....0.01
	>1 year, <= 5 years.....0.03
	>5 years.....0.06
CORPORATE AND MUNICIPAL BONDS THAT ARE BANK-ELIGIBLE INVESTMENTS		
	Residual maturity for debt securities	Haircut without currency mismatch
All.....	<= 1 year.....0.02
All.....	>1 year, <= 5 years.....0.06
All.....	>5 years.....0.12
OTHER ELIGIBLE COLLATERAL		
Main index ⁶ equities (including convertible bonds).....		0.15
Other publicly traded equities (including convertible bonds).....		0.25
Mutual funds.....		Highest haircut applicable to any security in which the fund can invest
Cash collateral held.....		0

⁴ In cases where the currency denomination of the collateral differs from the currency denomination of the credit transaction, an additional 8.0% haircut will apply.

⁵ OECD Country Risk Classification means the country risk classification as defined in Article 25 of the OECD's February 2011 Arrangement on Officially Supported Export Credits Arrangement.

⁶ Main index means the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the covered company can demonstrate to the satisfaction of the Federal Reserve that the equities represented in the index have comparable liquidity, depth of market, and size of bid-ask spreads as equities in the Standard & Poor's 500 Index and FTSE All-World Index.

Figure: 22 TAC §137.31(c)

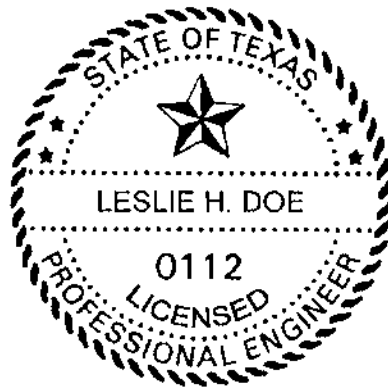


Figure: 22 TAC §577.15

(a) APPLICATION FOR INITIAL LICENSE

Type of License Application	Total Fee
Veterinary Regular License	\$555
Veterinary Special License	\$555
Veterinary Provisional License	\$605
Veterinary Temporary License	\$300
Equine Dental Provider License	\$200

(b) LICENSE RENEWALS

(1) Current License Renewals

Type of License	Board Fees	Professional Fees	Total Fee
Veterinary Regular License	\$169	\$200	\$369
Veterinary Special License	\$164	\$200	\$364
Veterinary Inactive License	\$169	\$0	\$169
Equine Dental Provider License	\$200	\$0	\$200
Equine Dental Provider Inactive License	\$100	\$0	\$100

(2) Expired License Renewals - Less Than 90 Days Delinquent

Type of License	Board Fees	Professional Fees	Total Fee
Veterinary Regular License	\$249	\$200	\$449
Veterinary Special License	\$244	\$200	\$444
Veterinary Inactive License	\$249	\$0	\$249
Equine Dental Provider License	\$300	\$0	\$300
Equine Dental Provider Inactive License	\$150	\$0	\$150

(3) Expired License Renewals - Greater Than 90 Days and Less Than 1 Year Delinquent

Type of License	Board Fees	Professional Fees	Total Fee
Veterinary Regular License	\$329	\$200	\$529
Veterinary Special License	\$324	\$200	\$524
Veterinary Inactive License	\$329	\$0	\$329
Equine Dental Provider License	\$400	\$0	\$400
Equine Dental Provider Inactive License	\$200	\$0	\$200

(c) SPECIALIZED LICENSE CATEGORIES

Type of License	Total Fee
Veterinary Reinstatement	\$369
Veterinary Re-Activation	\$225
Equine Dental Provider Re-Activation	\$25

(d) OTHER FIXED FEES AND CHARGES

- (1) Criminal History Evaluation Letter: \$32
- (2) Returned Check Fee: \$25
- (3) Duplication of License: \$40
- (4) Open Records Requests: Charges for all open records and other goods/services such as tapes and discs, will be in accordance with the Office of the Attorney General 1 TAC §§70.1 - 70.12 (relating to Cost of Copies of Public Information).

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.

Department of Aging and Disability Services

Notice of Public Hearing

The Texas Department of Aging and Disability Services (DADS) will conduct a public hearing on the Long-Term Care Plan for Individuals with Intellectual and Developmental Disabilities and Related Conditions on Thursday, September 13, 2012 at 10:00 a.m. Central Daylight Time (CDT) in the Texas Department of Aging and Disability Services Public Hearing Room, 701 W. 51st, Austin, Texas 78751. The hearing is held in compliance with Health and Safety Code, §533.062.

The numbers in the plan reflect the figures contained in the DADS Legislative Appropriations Request submitted to the Texas Health and Human Services Commission (HHSC), the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy. No changes to the numbers developed from previous stakeholder input for the development of the DADS legislative appropriations request have been made or are being proposed in this plan. HHSC will submit the proposed plan as part of the consolidated health and human services budget recommendation.

Persons attending the hearing and requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Elizabeth Santos at (512) 438-3512, 72 hours prior to the hearing, so appropriate arrangements can be made.

Written comments 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 email to elizabeth.santos@dads.state.tx.us or sent by U.S. mail to:

Elizabeth Santos

Center for Policy and Innovation

Mail Code W-578

Texas Department of Aging and Disability Services

P.O. Box 149030

Austin, Texas 78714-9030

TRD-201204460

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Filed: August 22, 2012

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 #203a) was published in the January 13, 2012, issue of the *Texas Register* (37 TexReg 132).

The contractor will provide investment consulting services to the Comptroller and the Texas Prepaid Higher Education Tuition Board.

The contract was awarded to Hewitt EnnisKnupp, Inc., 10 South Riverside Plaza, Suite 1600, Chicago, Illinois 60606. The total amount of the contract is not to exceed \$300,000.00 per annum. The term of the contract is September 1, 2012, through August 31, 2014, with option to renew for up to two (2) additional one (1) year periods, one (1) year at a time.

TRD-201204449

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: August 21, 2012

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/27/12 - 09/02/12 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/27/12 - 09/02/12 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/12 - 09/30/12 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/12 - 09/30/12 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201204425

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 21, 2012

Credit Union Department

Applications to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Del Rio SP Credit Union, Del Rio, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship in Val Verde County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any

application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201204454

Harold E. Feeney
Commissioner
Credit Union Department
Filed: August 22, 2012



Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Amend Articles of Incorporation - Approved

Energy Capital Credit Union, Houston, Texas - See *Texas Register* issue dated June 29, 2012.

Applications to Expand Field of Membership - Approved

Cabot & NOI Employees Credit Union, Pampa, Texas - See *Texas Register* issue dated June 29, 2012.

West Texas Educators Credit Union, Odessa, Texas - See *Texas Register* issue dated June 29, 2012.

Application to Expand Field of Membership - Denied

Texas Telcom Credit Union, Dallas, Texas - See *Texas Register* issue dated April 27, 2012.

TRD-201204455

Harold E. Feeney
Commissioner
Credit Union Department
Filed: August 22, 2012



Texas Council for Developmental Disabilities

Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for one project to increase the number of individuals who have intellectual and developmental disabilities (IDD) who serve as speakers and/or facilitators at conferences or trainings held in Texas. The selected grantee will be responsible to recruit and facilitate necessary supports for a diverse group of individuals with IDD who are willing to speak at conferences; conduct outreach to other organizations holding conferences in Texas; and provide administrative support for activities.

TCDD has approved funding up to \$125,000 per year, for up to four years, for one project. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required

for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this Request for Proposals (RFP) or more information about TCDD may be obtained through TCDD's website at <http://www.txddc.state.tx.us>. All questions pertaining to this RFP should be directed to Joanna Cordry, Planning Coordinator, at (512) 437-5410 or via email Joanna.Cordry@tcdd.state.tx.us. Application packets must be requested in writing or downloaded from the Internet.

Deadline: One hard copy, with original signatures, and one electronic copy must be submitted. All proposals must be received by TCDD, not later than 4:00 p.m. Central Time, Wednesday, October 31, 2012, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, TX 78741-7509 to the attention of Jeri Barnard. Faxed proposals cannot be accepted. Electronic copies should be addressed to Jerianne.Barnard@tcdd.state.tx.us.

Proposals will not be accepted after the due date.

Grant Proposers' Workshops: The Texas Council for Developmental Disabilities will conduct telephone conferences to help potential applicants understand the grant application process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD website. Please check the TCDD website at http://txddc.state.tx.us/grants_projects/rfp_announcements.asp for a schedule of conference calls for this RFP.

TRD-201204409

Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: August 20, 2012



Employees Retirement System of Texas

Contract Award Announcement

This contract award notice is being filed by the Employees Retirement System of Texas in relation to a contract awarded for specified retiree drug subsidy audit and reopening services under the Texas Employees Group Benefits Program. The contract was awarded to Part D Advisors, Inc., 47799 Halyard, Suite B, Plymouth, Michigan 48170.

The contract was executed on August 14, 2012, and terminates on December 31, 2014. The total amount of the Contract is based on a percentage of the amounts collected.

TRD-201204332

Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: August 17, 2012



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 opportunity to submit written comments on the proposed AOs. TWC,

§7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is October 1, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545, and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on October 1, 2012. 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: ADICO ENTERPRISES, INCORPORATED dba Anas Shell; DOCKET NUMBER: 2012-0531-PST-E; IDENTIFIER: RN100870831; LOCATION: Houston, Harris 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; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (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) and also by failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: \$12,044; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Andrew Hinojosa; DOCKET NUMBER: 2012-0596-MSW-E; IDENTIFIER: RN106090145; LOCATION: Stanton, Martin County; TYPE OF FACILITY: unauthorized scrap tire disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 9900 West IH 20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(3) COMPANY: Andy Ngo; DOCKET NUMBER: 2012-0457-WQ-E; IDENTIFIER: RN106108350; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: construction site; RULE VIOLATED: TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of sediment into water in the state; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Heather Brister, (254)

761-3034; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2012-0636-PWS-E; IDENTIFIER: RN102343175; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition; PENALTY: \$154; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: CCMH Potomac LLC dba Houston Marriott Medical Center; DOCKET NUMBER: 2012-0621-PST-E; IDENTIFIER: RN102401072; LOCATION: Houston, Harris County; TYPE OF FACILITY: hospital with a non-retail petroleum storage and dispensing facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the piping associated with the UST system; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$5,259; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: City of College Station; DOCKET NUMBER: 2012-1532-WQ-E; IDENTIFIER: RN104481346; LOCATION: College Station, Brazos County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: City of Kilgore; DOCKET NUMBER: 2012-0709-MWD-E; IDENTIFIER: RN102079985; LOCATION: Kilgore, Gregg County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.176(a), by failing to enact and enforce rules, ordinances, orders, or resolutions to control and regulate the type, character, and quality of waste which may be discharged to the disposal system and, where necessary, require pretreatment of waste to be discharged to the system, so as to protect the health and safety of personnel maintaining and operating the disposal system and to prevent unreasonable adverse effects on the disposal system; PENALTY: \$4,975; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: City of Marlin; DOCKET NUMBER: 2012-0270-SLG-E; IDENTIFIER: RN104915079; LOCATION: Marlin, Falls County; TYPE OF FACILITY: water treatment plant sludge beneficial land use site; RULE VIOLATED: 30 TAC §312.122(b), by failing to maintain authorization to land apply water treatment plant sludge in a land application unit; PENALTY: \$9,000; Supplemental Environmental Project offset amount of \$7,200 applied to City-Wide Collection Events; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: EOG Resources, Incorporated; DOCKET NUMBER: 2012-0441-AIR-E; IDENTIFIER: RN102550860; LOCATION: Carthage, Panola County; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O260/General Operating Permit Number 514, Site Wide Requirements (b)(2), by failing to submit a permit compliance certification (PCC) within 30 days after the end of the certification period and also by failing to submit a final PCC within 30 days after the date the permit was voided; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2012-0665-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Permit Number 1768, Special Conditions Number 1, Federal Operating Permit Number O1426, Special Terms and Conditions Number 28, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$25,000; Supplemental Environmental Project offset amount of \$12,500 applied to Houston Regional Monitoring Corporation (HRMC) - HRMC Houston Area Air Monitoring; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: FARMERS TRANSPORT, INCORPORATED dba Enchanted Harbor Utility; DOCKET NUMBER: 2012-1007-PWS-E; IDENTIFIER: RN101442556; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a water outage using the prescribed notification format as specified in 30 TAC §290.47(e); PENALTY: \$153; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: Flint Hills Resources Corpus Christi, LLC; DOCKET NUMBER: 2012-0736-AIR-E; IDENTIFIER: RN100235266; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: Federal Operating Permit Number O1272, Special Terms and Conditions Number 27, Flexible Permit Numbers 8803A and PSDTX413M9, General Process Requirements Number 1, 30 TAC §101.20(3), 116.715(a) and 122.143(4), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$14,063; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2012-0809-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3), 116.715(a), and 122.143(4), New Source Review Permit Numbers 16989 and PSD-TX-794, Special Conditions Number 1, Federal Operating Permit Number O1317, Special Terms and Conditions Number 22, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions during an event on December 8, 2011 (Incident Number 162629); PENALTY: \$7,500; Supplemental Environmental Project offset amount of \$3,000 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634;

REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Gary McNutt, Guy McNutt, and McNutt Bros. Dairy; DOCKET NUMBER: 2012-0746-AGR-E; IDENTIFIER: RN102670544; LOCATION: Dublin, Erath County; TYPE OF FACILITY: dairy operation; RULE VIOLATED: 30 TAC §321.36(k) and TCEQ General Permit Number TXG920386, Part III. A.9.(c), by failing to maintain a pond marker in the retention control structure which identifies the level of the design rainfall event; and 30 TAC §321.39(c)(1) and TCEQ General Permit Number TXG920386, Part III. A.9.(e), by failing to remove sludge in accordance with the design schedule for cleanout; PENALTY: \$3,010; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: GARY POOLS, INCORPORATED; DOCKET NUMBER: 2012-1024-PST-E; IDENTIFIER: RN100846351; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.10(b)(1)(B), by failing to maintain all UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$3,150; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: James E. Angel dba FABRITECH; DOCKET NUMBER: 2012-1098-AIR-E; IDENTIFIER: RN105327969; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: steel fabrication plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and operate a source of air emissions; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Mohammod Y. Hossaen dba West Davis Food Mart; DOCKET NUMBER: 2012-0365-PST-E; IDENTIFIER: RN102154267; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of the discovery; 30 TAC §334.74, by failing to investigate a suspected release of regulated substances within 30 days of discovery; and 30 TAC §334.10(b), by failing to maintain underground storage tank records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$14,890; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Monroe Center, Incorporated dba First Stop Food Store 16; DOCKET NUMBER: 2012-0864-PST-E; IDENTIFIER: RN101434603; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; 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 the petroleum underground storage tanks (USTs); 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 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); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency

personnel; PENALTY: \$13,172; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Nick and Sons, Incorporated dba Kwik Way Food Store 203; DOCKET NUMBER: 2012-0856-PST-E; IDENTIFIER: RN103017083; LOCATION: Mesquite, Dallas 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 (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: \$3,570; ENFORCEMENT COORDINATOR: Steven Van LANDINGHAM, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: PTCAA Texas, L.P. dba Flying J Travel Plaza 733; DOCKET NUMBER: 2012-1017-PST-E; IDENTIFIER: RN104726005; LOCATION: Lubbock, Lubbock 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; and 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; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(21) COMPANY: Raymond L. Jurica dba Tom's Food Market; DOCKET NUMBER: 2012-0038-PST-E; IDENTIFIER: RN101559656; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the UST system; PENALTY: \$4,505; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Richard Fessler dba Hallmark Jet Center; DOCKET NUMBER: 2012-1011-PST-E; IDENTIFIER: RN101823318; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: aircraft refueling; 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 per month (not to exceed 35 days between each monitoring); PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: Shivdeep, Incorporated dba Food Mart One; DOCKET NUMBER: 2012-0674-PST-E; IDENTIFIER: RN101560688; LOCATION: Garland, Dallas 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 UST

system; and 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: \$5,212; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Southern Crushed Concrete, LLC; DOCKET NUMBER: 2012-1065-AIR-E; IDENTIFIER: RN106383128; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: rock crushing plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a rock crusher; PENALTY: \$938; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Stephen W. Mathews, RS; DOCKET NUMBER: 2012-1540-OSI-E; IDENTIFIER: RN103627303; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §285.61(4), by failing, as an installer, to ensure that an authorization to construct has been issued prior to beginning construction of an On-Site Sewage Facility; PENALTY: \$175; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(26) COMPANY: SWEA GARDENS ESTATES UTILITY, INCORPORATED; DOCKET NUMBER: 2012-0571-PWS-E; IDENTIFIER: RN101456457; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(A)(i) and Texas Health and Safety Code, §341.0315(c), and TCEQ AO Docket Number 2008-1375-PWS-E, Ordering Provision (OP) Number 2.a.i., by failing to provide a well production capacity of 1.5 gallons per minute per connection; 30 TAC §290.41(c)(3)(B) and TCEQ AO Docket Number 2008-1375-PWS-E, OP Number 2.a.ii., by failing to extend the well casing a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility's systems and equipment; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.46(m)(1)(B), by failing to inspect the interior surface of a pressure tank provided with an inspection port every five years; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meters at least once every three years; PENALTY: \$3,742; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: TERRA RENEWAL SERVICES, INCORPORATED; DOCKET NUMBER: 2012-0917-IHW-E; IDENTIFIER: RN105137459; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: grease and grit trap waste processing; RULE VIOLATED: 30 TAC §335.4 and TWC, §26.121, by failing to prevent the unauthorized discharge of industrial solid waste; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Union Water Supply Corporation; DOCKET NUMBER: 2012-0731-MWD-E; IDENTIFIER: RN102915501; LOCATION: Starr County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Per-

mit Number WQ0014313001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; 30 TAC §305.125(17) and §319.1, and TPDES Permit Number WQ0014313001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring report for the monitoring period ending August 31, 2011; 30 TAC §305.125(17) and TPDES Permit Number WQ0014313001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2011, by September 30, 2011; and 30 TAC §305.125(1) and §319.1, and TPDES Permit Number WQ0014313001, Monitoring and Reporting Requirements Number 1, by failing to provide monitoring results at intervals specified in the permit; PENALTY: \$2,582; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(29) COMPANY: United Structures of America, Incorporated; DOCKET NUMBER: 2012-0692-AIR-E; IDENTIFIER: RN100219708; LOCATION: Houston, Harris County; TYPE OF FACILITY: metal building manufacturing plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(A) and (C), and 122.146(2), Federal Operating Permit Number O1107, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit complete and accurate permit compliance certifications and a deviation report within 30 days after the end of the certification and reporting periods; PENALTY: \$18,450; Supplemental Environmental Project offset amount of \$7,380 applied to Houston - Galveston Area Emission Reduction Credit Organization's 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.

(30) COMPANY: West Road Water Supply Corporation and McDonald's Corporation; DOCKET NUMBER: 2012-0820-IWD-E; IDENTIFIER: RN101610277; LOCATION: Aldine, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and §319.7(d) and Texas Pollutant Discharge Elimination System Permit Number WQ0002761000, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports for the monitoring periods ending August 31, 2011 - December 31, 2011, by the 20th day of the following month; PENALTY: \$1,891; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201204380

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 20, 2012



Enforcement Orders

An agreed order was entered regarding Effective Environmental, Inc., Docket No. 2011-0348-MLM-E on August 9, 2012 assessing \$16,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Orange, Docket No. 2011-0552-MWD-E on August 9, 2012 assessing \$98,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gardner Glass Products, Inc., Docket No. 2011-0621-AIR-E on August 9, 2012 assessing \$35,340 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ms. Molly's LLC, Docket No. 2011-0764-PWS-E on August 9, 2012 assessing \$3,476 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding GRIGGS SHELL ENTERPRISES, L.L.C., Docket No. 2011-0942-PST-E on August 9, 2012 assessing \$11,075 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leslie L. Morris dba Space Estates Mobile Home Park, Docket No. 2011-0982-PWS-E on August 9, 2012 assessing \$1,151 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paul Leggett dba Country Lake Water Supply, Docket No. 2011-1067-PWS-E on August 9, 2012 assessing \$5,279 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cowtown Excavating Company, Docket No. 2011-1207-MSW-E on August 9, 2012 assessing \$12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K C Utilities, Inc., Docket No. 2011-1270-PWS-E on August 9, 2012 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Henry M. Garza dba Cielo Azul Ranch, Docket No. 2011-1281-PWS-E on August 9, 2012 assessing \$2,892 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Canan Operating, Inc., Docket No. 2011-1453-WR-E on August 9, 2012 assessing \$4,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Shawn Kriese dba Crosscreek Cycle Park, Docket No. 2011-1507-SLG-E on August 9, 2012 assessing \$7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Omar Salinas, Docket No. 2011-1724-OSS-E on August 9, 2012 assessing \$787 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jasper Cindi, Inc. dba Bullfrogs Bar and Grill, Docket No. 2011-1743-PWS-E on August 9, 2012 assessing \$3,542 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sam's Truck Stop Business, Inc. dba Plateau Truck Stop, Docket No. 2011-1792-PWS-E on August 9, 2012 assessing \$3,340 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MC. D. C., Inc. dba Honeys Drive In, Docket No. 2011-1856-PST-E on August 9, 2012 assessing \$8,356 in administrative penalties with \$1,670 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JIND INTERESTS LLC dba Yours Citgo Mart, Docket No. 2011-1870-PST-E on August 9, 2012 assessing \$11,715 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Rod Darquea dba Affordable Home Construction, Docket No. 2011-1878-LII-E on August 9, 2012 assessing \$742 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Celanese Ltd., Docket No. 2011-1945-AIR-E on August 9, 2012 assessing \$17,743 in administrative penalties with \$3,548 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marine Quest - Hidden Cove, L.P., Docket No. 2011-1955-MWD-E on August 9, 2012 assessing \$8,484 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Susan Pape dba 3-S Construction and Shane Pape dba 3-S Construction, Docket No. 2011-1989-MSW-E on August 9, 2012 assessing \$900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Carbide Corporation, Docket No. 2011-2024-AIR-E on August 9, 2012 assessing \$11,550 in administrative penalties with \$2,310 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ray Rocha dba Paradise Point RV Marina, Docket No. 2011-2038-PST-E on August 9, 2012 assessing \$12,714 in administrative penalties with \$2,542 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Domino, Docket No. 2011-2047-MLM-E on August 9, 2012 assessing \$2,642 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Oil Company and Shell Chemical LP, Docket No. 2011-2121-AIR-E on August 9, 2012 assessing \$21,569 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walnut Cove Water Supply Corporation, Docket No. 2011-2178-MWD-E on August 9, 2012 assessing \$29,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H & K BEVERAGE CORP. dba Kwik Stop Beer & Wine C, Docket No. 2011-2207-PST-E on August 9, 2012 assessing \$20,105 in administrative penalties with \$4,021 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Royse City, Docket No. 2011-2273-MWD-E on August 9, 2012 assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF Corporation, Docket No. 2011-2315-AIR-E on August 9, 2012 assessing \$8,325 in administrative penalties with \$1,665 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding F.T. WOODS CONSTRUCTION SERVICES, INC., Docket No. 2011-2354-PST-E on August 9, 2012 assessing \$8,895 in administrative penalties with \$1,779 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Occidental Chemical Corporation, Docket No. 2011-2362-AIR-E on August 9, 2012 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WESTOVER AND WESTOVER GROUP, LLC dba Conoco Express, Docket No. 2012-0119-PST-E on August 9, 2012 assessing \$15,971 in administrative penalties with \$3,194 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mostafa A. Soliman dba Willowbrook Subdivision, Docket No. 2012-0267-PWS-E on August 9, 2012 assessing \$293 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magellan Pipeline Terminals, L.P., Docket No. 2012-0632-AIR-E on August 9, 2012 assessing \$112,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding City of Hawk Cove, Docket No. 2009-2074-MWD-E on August 7, 2012 assessing \$9,225 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SM & LEE, INC. dba On A Run Food Store, Docket No. 2011-1076-PST-E on August 7, 2012 assessing \$2,629 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201204453

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 22, 2012



Notice of Comment Period and Announcement of Public Meeting on Proposed Amendments to the Air Quality Standard Permit for Concrete Batch Plants

The Texas Commission on Environmental Quality (TCEQ or commission) is providing an opportunity for public comment and will conduct a public meeting to receive comments regarding proposed amendments to the concrete batch plant standard air permit, under the requirements of the Texas Health and Safety Code, §382.05195, Standard Permit, and 30 Texas Administrative Code Chapter 116, Subchapter F, Standard Permits.

Proposed Standard Permit Amendment

TCEQ originally issued the concrete batch plant standard permit in 2000 and amended it in 2003. The proposed amendments will account for the 2006 AP-42 emission factors, address 24-hour particulate matter less than or equal to ten microns in diameter (PM_{10}), annual $PM_{2.5}$, and will include engine requirements as promulgated by the United States Environmental Protection Agency.

The proposed amendments to the standard permit will be effective for standard permits issued after December 21, 2012. Those plants still permitted using a concrete batch plant permit by rule (PBR) will not need to register for a standard permit until there is a change in the facility that makes it unable to meet the requirements of the PBR. In this case, the facility would need to apply for a different method of authorization.

The New Source Review Program, under Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, requires any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of the state to obtain a permit in accordance with §116.111, General Application, satisfy the *de minimis* criteria of §116.119, De

Minimis Facilities or Sources, or satisfy the conditions of a standard permit or a PBR before any actual work is begun on the facility. A standard permit authorizes the construction of new facilities or modification of existing facilities that are similar in terms of operations, processes, and emissions.

A standard permit is subject to the procedural requirements of §116.603, Public Participation in Issuance of Standard Permits, which includes a 30-day public comment period and a public meeting to provide an additional opportunity for public comment. Any person is entitled to submit written or verbal comments regarding the proposed amendments to the standard permit.

Public Meeting

The commission will hold a public meeting on this proposal in Austin on October 3, 2012, at 10:00 a.m., in Building E, Room 201E, located at 12100 Park 35 Circle. TCEQ will structure the meeting 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 with the audience will not occur during the meeting; however, TCEQ staff members will be available to discuss the proposal 30 minutes prior to the meeting and staff will answer questions after the meeting.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Make requests as far in advance as possible.

Obtain copies of the proposed amendments at http://www.tceq.texas.gov/permitting/air/nav/nsr_news.html or by contacting TCEQ, Office of Air, Air Permits Division at (512) 239-1638. Mail comments to Ms. Becky Southard, TCEQ, Office of Air, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or fax them to (512) 239-1070. Submit electronic comments at <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments submitted using the eComments system. All comments should reference Project Number 2012-017-OTH-NR. The comment period closes on October 5, 2012. For further information, please contact Ms. Becky Southard at (512) 239-1638.

Si desea información en español, puede llamar al (800) 687-4040.

TRD-201204383

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 20, 2012



Notice of Minor Amendment

Radioactive Material License Number R04100

APPLICATION. Waste Control Specialists LLC (WCS) applied to the Texas Commission on Environmental Quality (TCEQ) for various amendments to Radioactive Material License R04100 on January 25, 2011, August 2, 2011, and January 4, 2012, submittal which was revised and resubmitted on July 20, 2012, and two submissions on April 30, 2012. Radioactive Material License R04100 authorizes commercial disposal of low-level radioactive waste. WCS currently conducts a variety of waste management services at its site in Andrews County, Texas and is the licensed operator of the Compact Waste Disposal Facility (CWF) and Federal Facility Waste Facility (FWF) for commercial and federal low-level radioactive waste disposal. The land disposal facility for low-level radioactive waste disposal is located at 9998 State Highway 176 West in Andrews County,

Texas. The following link to an electronic map of the 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=32.4425&ing=-103.063055&zoom=13&type=>. For an exact location, refer to the application. The Executive Director has determined that the amendment requests constitute a minor amendment. The amendments to the license are as follows. License Condition 27 is amended to specify maintenance requirements for access roads. License Condition 97 is amended to authorize receipt of waste by rail. License Condition 143, Table 2 is amended to authorize disposal of both utility and non-utility decommissioning waste streams. License Condition 144 is amended to authorize the use of wastewater treatment plants at both the CWF and FWF for collected contact water. License Condition 186 is amended to reflect the previously noted submittals, including the August 2, 2011, and April 30, 2012 requests for design changes to the FWF which did not necessitate amendment to other license conditions. The TCEQ Executive Director has completed the technical review of the amendment application and supporting documents and has prepared a draft license. The draft license, if approved, would refine and add detail to the conditions under which the land disposal facility must operate with regard to existing authorized receipt of wastes and does not change the concentration limits of wastes to be received. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The license amendment application with supporting documents, the Executive Director's technical summary, and the amended draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas and at the Andrews Public Library in Andrews, Texas.

PUBLIC COMMENT/PUBLIC MEETING. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. The TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the applications or if requested by a local legislator. A public meeting is not 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.

EXECUTIVE DIRECTOR ACTION. The application is subject to Commission rules which direct the Executive Director to act on behalf of the Commission and provide authority to the Executive Director to issue final approval of the application for amendment after consideration of all timely comments submitted on the application.

MAILING LIST. If you submit public comments or a request for reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific 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 license or permit number; and/or (2) the mailing list for a specific county. If you wish 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. All 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 within 10 days from the date of this notice or 10 days from the date of publication in the *Texas Register*, whichever is later.

AGENCY CONTACTS AND INFORMATION. If you need more information about this license application or the licensing process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Further information may also be obtained

from WCS at the address stated above or by calling Mr. Scott Kirk at (432) 525-8500.

TRD-201204452

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 22, 2012



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 **October 1, 2012**. 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 October 1, 2012**. 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: A & M BUSINESS INC d/b/a Aggies Food Store; DOCKET NUMBER: 2011-2088-PST-E; TCEQ ID NUMBER: RN102354396; LOCATION: 301 University Drive, College Station, Brazos County; TYPE OF FACILITY: underground storage tank (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); 30 TAC §334.72, by failing to report a suspect release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; PENALTY: \$11,100; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Choice Exploration, Inc.; DOCKET NUMBER: 2011-0718-AIR-E; TCEQ ID NUMBER: RN105909899; LOCATION: Private Road (PR) 103 approximately 6.1 miles north from the intersection of PR 103 and Highway 90 East, Devers, Liberty

County; TYPE OF FACILITY: oil and gas production site; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization to construct and operate a source of air emissions; and THSC, §382.054 and §382.085(b) and 30 TAC §122.121 and §122.130(b), by failing to obtain a federal operating permit; PENALTY: \$17,040; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Harris County Fresh Water Supply District 1B; DOCKET NUMBER: 2011-0608-UTL-E; TCEQ ID NUMBER: RN102944147; LOCATION: 1721 Jones Road, Highlands, Harris County; TYPE OF FACILITY: public water utility; RULES VIOLATED: TWC, §13.1395(b) and 30 TAC §290.39(o)(1) and §291.162(a) and (j), by failing to submit to the executive director for approval by the required deadline, an adoptable Emergency Preparedness Plan that demonstrates the facility's ability to provide emergency operations; PENALTY: \$262; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: McJunkin Red Man Corporation f/k/a Labarge Pipe & Steel Company; DOCKET NUMBER: 2011-2206-MWD-E; TCEQ ID NUMBER: RN102045564; LOCATION: 400 South Sheldon Road, approximately 3,100 feet south of Interstate Highway 10, near the southwest side of Cactus property, Channelview, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014700001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014700001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010, by September 1, 2010; PENALTY: \$714; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: NABIHA ENTERPRISES, L.L.C. d/b/a Boyd Pit Stop; DOCKET NUMBER: 2012-0118-PST-E; TCEQ ID NUMBER: RN101908267; LOCATION: 108 South Allen Street, Boyd, Wise County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), 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); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: \$2,624; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Niranjana S. Patel d/b/a Aldine Express; DOCKET NUMBER: 2011-2015-PST-E; TCEQ ID NUMBER: RN102431038; LOCATION: 4203 Aldine Mail Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY:

\$2,886; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Oak Valley Mobile Home Park LLC d/b/a Oak Ridge Mobile Home Park; DOCKET NUMBER: 2012-0266-PWS-E; TCEQ ID NUMBER: RN102676277; LOCATION: 4719 County Road 288, Brazoria County; TYPE OF FACILITY: mobile home park with public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A), by failing to timely submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter and by failing to provide public notice of the failure to submit a DLQOR to the executive director; 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to timely submit the results of nitrate sampling for 2010 and by failing to timely submit the results of metal and mineral sampling for the monitoring period from January 1, 2008 - December 31, 2010; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit DLQOR to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: \$838; STAFF ATTORNEY: Ryan Rutledge, Litigation Division MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: RETAIL INVESTORS OF TEXAS, LTD. d/b/a Market Basket Express 47; DOCKET NUMBER: 2012-0106-PST-E; TCEQ ID NUMBER: RN102018637; LOCATION: 3915 Phelan Boulevard, Beaumont, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §344.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; TWC, §26.3475(c)(1) and 30 TAC §344.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once each month in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.246(4), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; and THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back-pressure at least once every 36 months, or upon major system replacement or modification, whichever occurs first; PENALTY: \$23,366; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: SALIMA, INC. d/b/a Dairyway Store 7; DOCKET NUMBER: 2012-0229-PST-E; TCEQ ID NUMBER: RN102928496; LOCATION: 2854 West Davis Street, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: \$2,250; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: SNI Corporation d/b/a Broadway Food Mart; DOCKET NUMBER: 2011-1631-PWS-E; TCEQ ID NUMBER: RN101252732; LOCATION: 2682 Highway 71, Columbus, Colorado

County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.41(c)(1)(A) and TCEQ Agreed Order Docket Number 2004-0043-PWS-E, Ordering Provision Number 2.c., by failing to locate the groundwater sources so there will be no danger of pollution from unsanitary sources; and 30 TAC §290.41(c)(1)(F) and TCEQ Agreed Order Docket Number 2004-0043-PWS-E, Ordering Provision Number 2.d., by failing to provide a sanitary control easement for the well; PENALTY: \$11,176; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Star Tex Gasoline & Oil Distributors, Inc.; DOCKET NUMBER: 2011-2333-MSW-E; TCEQ ID NUMBER: RN106264286; LOCATION: 5412 Leopard Street, Corpus Christi, Nueces County; TYPE OF FACILITY: oil and gasoline distribution facility; RULES VIOLATED: 30 TAC §330.15(c), by failing to comply with the general prohibitions regarding disposal of municipal solid waste; PENALTY: \$1,125; STAFF ATTORNEY: Jim Sallans, Litigation Division MC 175, (512) 239-2053; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(12) COMPANY: TAHIR ENTERPRISES, INC. d/b/a Buy N Bye Drive In; DOCKET NUMBER: 2012-0540-PST-E; TCEQ ID NUMBER: RN101782043; LOCATION: 1310 North Pine Street, Kountze, Hardin County; TYPE OF FACILITY: underground storage tank (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); 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: \$6,900; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: TRISTAR CONVENIENCE STORES, INC. DBA Handi Stop 75; DOCKET NUMBER: 2011-1241-PST-E; TCEQ ID NUMBER: RN102446218; LOCATION: 3543 Oak Forest Drive, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs at the facility 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; PENALTY: \$2,679; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201204426

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 21, 2012



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 **October 1, 2012**. 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 October 1, 2012**. 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: Glenn E. Galloway; DOCKET NUMBER: 2012-0645-PST-E; TCEQ ID NUMBER: RN101738714; LOCATION: 13868 Old Sour Lake Road, Beaumont, Jefferson County; TYPE OF FACILITY: property with an underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.54, by failing to temporarily remove from service a UST system for which the normal operation and use of the UST system is deliberately, but temporarily, discontinued for any reason; 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: \$9,187; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Richard Valadez d/b/a Rocking V Hides and Skins; DOCKET NUMBER: 2012-0316-IHW-E; TCEQ ID NUMBER: RN106218290; LOCATION: northwest corner of North Clarkwood and Agnes Streets, Corpus Christi, Nueces County; TYPE OF FACILITY: animal hide curing and preserving facility; RULES VIOLATED: 30 TAC §335.2(b), by failing to prevent the disposal of industrial solid waste or municipal hazardous waste at an unauthorized facility; PENALTY: \$6,078; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: SCHOPPE AUTO SUPPLY, INC.; DOCKET NUMBER: 2011-1401-MLM-E; TCEQ ID NUMBER: RN101670842; LOCATION: 1422 Avenue B, Somerville, Burleson County; TYPE OF FACILITY: auto repair shop; RULES VIOLATED: 30 TAC

§§328.56(d)(2), 328.59(b)(1), and 328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground; 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; and 40 Code of Federal Regulations, §279.22(d) and 30 TAC §324.1 and §324.4(1), by failing to prevent the unauthorized discharge of used oil; PENALTY: \$6,562; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201204427

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 21, 2012



Notice of Opportunity to Comment on Shutdown/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 Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 1, 2012**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 1, 2012**. 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: Ayman International, Inc. d/b/a Eagle Mart 2; DOCKET NUMBER: 2012-0042-PST-E; TCEQ ID NUMBER: RN102480134; LOCATION: 13334 Chiswick Road, Houston, Harris 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: \$5,000; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939 REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Khurram Adnan d/b/a Store T 24; DOCKET NUMBER: 2012-0105-PST-E; TCEQ ID NUMBER: RN101743284; LOCATION: 274 North Main Street, Paris, Lamar County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), 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: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201204428

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 21, 2012



Notice of Water Quality Applications

The following notices were issued on August 10, 2012 through August 17, 2012.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF NEW BOSTON has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010482001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,700,000 gallons per day. Based on new information, the whole effluent toxicity (WET) limits for Pimephales promelas that were added to the first version of the draft permit Outfall 001 have been removed in the final version of the draft permit. The facility is located 2,500 feet southeast of the intersection of State Highway 8 and Farm-to-Market Road 1840 and approximately 1.75 miles southeast of the City of New Boston in Bowie County, Texas 75570.

SOUTH HAMPTON RESOURCES INC which operates a bulk organic chemicals manufacturing plant, has applied for a renewal of TPDES Permit No. WQ0001403000, which authorizes the discharge of process wastewater commingled with cooling tower blowdown, boiler blowdown, and storm water runoff at a daily average flow not to exceed 114,000 gallons per day via Outfall 001; storm water bypass, boiler blowdown, cooling tower blowdown, and steam condensate on an intermittent and flow variable basis via Outfall 002; storm water

from the diked storage tank areas (tanks 52, 54, 55, 56, 57, 61, 64, 83 and 84) on an intermittent and flow variable basis via Outfall 003; and storm water from the diked storage tank area (product storage/shipment facility) on an intermittent and flow variable basis via Outfall 004. The manufacturing plant is located on Farm-to-Market Road 418 West, approximately 1,000 feet north of the intersection of Farm-to-Market Road 418 and Farm-to-Market Road 1122, and 3.5 miles northwest of the City of Silsbee, Hardin County, Texas; and the storage and shipping facility is located approximately one mile north of the intersection of Farm-to-Market Road 418 and State Highway 92, on Loading Dock Road, in the City of Silsbee, Hardin County, Texas 77656.

JERRY LYNN COOPER which operates Texas Remediation, a facility that collects and processes wastes from trucks handling septic and holding tank wastes, and grease and grit trap wastes, has applied for a renewal of TPDES Permit No. WQ0003987000, which authorizes the discharge of treated wastewater at a volume not to exceed 200,000 gallons per day via Outfall 001. The facility is located approximately east-northeast of the intersection of Wallisville Road and Loop 610, and north of Wallisville Road on Zaballos Court, at 10217 Wallisville Road, Houston, Harris County, Texas 77013.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495111, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 13,340,000 gallons per day. The facility is located at 10518 Bellaire Boulevard, approximately 1,700 feet north of Bellaire Boulevard and 3,400 feet west of Roark Road in the City of Houston in Harris County, Texas 77072.

KINGSLAND MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011549001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located at 100 Ingram Street, at the intersection of Ingram Street and Reynolds Street, south of the Southern Pacific Railroad and approximately 2,000 feet west of the confluence of the Colorado River and Llano River arms of Lake Lyndon B. Johnson in the City of Kingsland in Llano County, Texas 78639.

TOWN OF LITTLE ELM has applied for a major amendment to TPDES Permit No. WQ0011600001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 3,000,000 gallons per day to an annual average flow not to exceed 4,000,000 gallons per day. TCEQ received this application on February 23, 2012. The facility is located at 1600 Mark Tree Lane, approximately 1,000 feet south of Farm-to-Market Road 720 and approximately 2,600 feet east of the intersection of Farm-to-Market Road 720 and Hart Road in Little Elm in Denton County, Texas 75068.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 148 has applied for a renewal of TPDES Permit No. WQ0011818003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day in the final phase. The facility is located 1,400 feet south of the intersection of Greensbrook Forest Drive and Greenspark Lane, 2,800 feet west of Lockwood Road in Harris County, Texas 77044.

TRINITY RCT GP LLC has applied for a renewal of TPDES Permit No. WQ0012450001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.065 MGD. The facility is located at 14003 West Hardy Road, Houston, Texas, approximately one mile south of Aldine-Bender Road in the City of Houston in Harris County, Texas 77060.

CHAMPS WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0012571001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000

gallons per day. The facility is located at 3902 Wilson Road, Humble, approximately 3/4 of a mile south of the intersection of Atascocita Road and Wilson Road in Harris County, Texas 77396.

CITY OF STANTON has applied to for a major amendment to TCEQ Permit No. WQ0014609001, to authorize an increase in the disposal of treated domestic wastewater from a daily average flow not to exceed 100,000 gallons per day to a daily average flow not to exceed 218,000 gallons per day. Also, included is authorization to increase the acreage irrigated from 34.2 acres to 68.4 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located one mile southeast of the intersection of State Highway 137 and U.S. Highway 80 and 0.5 mile south of the City of Stanton in Martin County, Texas 79782.

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.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of TPDES Permit No. WQ0011211001 issued to Texas A&M University, 1509 Aggie Drive, Beaumont, Texas 77713, to authorize the change of the expiration date from July 1, 2012 to July 1, 2015. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located at 1509 Aggie Drive, approximately one mile north of the intersection of U.S. Highway 90 and Aggie Drive and approximately 2.5 miles east of the City of China in Jefferson County, Texas 77713.

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.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201204451

Bridget C. Bohac
Chief Clerk

Texas Commission on Environmental Quality
Filed: August 22, 2012

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General Land Office

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 July 25, 2012, through August 1, 2012. 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 web site. The notice was published on the web site on August 22, 2012. The public comment period for this project will close at 5:00 p.m. on September 24, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: Interstate Grain Corporation; Location: The project is located in the Corpus Christi Inner Harbor, in the Tule Lake Channel portion of the Corpus Christi Ship Channel (CCSC), between Corps of Engineers stations 1356+00 to 1370+00, at 5700 Up River Road, in Corpus Christi, Nueces County, Texas. NAD 83, Latitude: 27.81419 North; Longitude: -97.46192 West. Project Description: The applicant proposes to amend his existing permit to allow redistribution of the maintenance dredge materials within his barge slip area, but outside of the Federal Channel limits. This method of disposal would be used instead of placing the dredged material into the previously authorized contained dredged material disposal areas (DMPAs): South Shore DMPA - Cell A, Cell B, or Cell C, DMPA Number 1, Rincon DMPA, and Tule Lake DMP No. 6. The maintenance dredging is for 70,000 square feet of area in front of the applicant's docking facility in order to maintain the previously authorized depth of -40 feet mean low tide plus an additional 2 feet for advance maintenance. Approximately 8,300 cubic yards of material will be hydraulically dredged. This project was originally authorized under Department of the Army Permit 18707. Maintenance dredging for this project was previously authorized under General Permit 19350(02)/021. Currently, a 10-year maintenance dredging program is authorized for the project site under SWG-1991-01796 issued on 18 October 2011 using the previously named DMPAs. CMP Project No.: 12-0826-F1. Type of Application: U.S.A.C.E. permit application #SWG-1991-01796 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).

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-201204459

Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: August 22, 2012

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 12-035 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The requested effective date for the proposed amendment is September 1, 2012.

The Texas Medicaid Program makes cost sharing payments for Medicare services provided to certain individuals, referred to as dual eligibles, who are eligible for both Medicare and Medicaid. This cost sharing is paid for Medicare Part A hospital services and Medicare Part

B physician and other outpatient services. On January 1, 2012, Texas Medicaid began limiting payment for Medicare Part B services provided to dual eligibles to no more than the Medicaid payment amount for the same service, pursuant to direction in the 2012 - 2013 General Appropriations Act (House Bill 1, 82nd Legislature, Regular Session, 2011). This policy, called Medicare Equalization, aligned policies on payment of cost sharing for Medicare Part B services with payment of Medicare Part A services, which already were subject to a similar payment methodology.

The purpose of this amendment is to exempt emergency ambulance transports and hospital to hospital transport services from Medicare Equalization. The exemption will allow Texas Medicaid to make higher cost-sharing payments for these services. HHSC has determined that a higher payment amount is necessary for these services to ensure adequate access to care.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$284,615 for the remainder of federal fiscal year (FFY) 2012, consisting of \$165,703 in federal funds and \$118,912 in state general revenue. For FFY 2013, the estimated additional annual expenditure is \$3,522,969, consisting of \$2,089,121 in federal funds and \$1,433,848 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Armandina Zamora-Torres by mail at P.O. Box 85200, Austin, Texas 78708-5200, Mail Code H-390 91X; by fax to (512) 249-3707; or by e-mail to armandina.zamora-torres@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201204461

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: August 22, 2012

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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	Amendment #	Date of Action
Grand Prairie	Environmental Safety & Health Services, Inc. dba ES&H Consulting Services, Inc.	L06498	Grand Prairie	00	08/14/12
Houston	Avance Biosciences, Inc.	L06493	Houston	00	08/01/12
Houston	Ensorce Corporation	L06496	Houston	00	08/13/12
Plano	Health Texas Provider Network dba Cardiovascular Consultants of North Texas	L06494	Plano	00	08/08/12
Throughout TX	Trans-Environmental Services, L.L.C.	L06495	Valley View	00	08/09/12

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Alice	Fesco, Ltd.	L06343	Alice	03	08/09/12
Arlington	The University of Texas at Arlington	L00248	Arlington	53	08/01/12
Arlington	LML Engineering, Inc.	L06173	Arlington	03	08/08/12
Austin	Seton Family of Hospitals dba University Medical Center at Brackenridge	L00268	Austin	121	08/14/12
Austin	Lower Colorado River Authority	L02738	Austin	49	08/02/12
Austin	Seton Family of Hospitals dba Seton Medical Center Austin	L02896	Austin	131	08/14/12
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L05856	Austin	09	08/06/12
Austin	Seton Family of Hospitals dba Dell Children's Medical Center of Central Texas	L06065	Austin	27	08/14/12
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba Heart Hospital of Austin	L06372	Austin	02	08/10/12
Beaumont	E. I. DuPont De Nemours & Co., Inc.	L00517	Beaumont	81	08/01/12
Channelview	Lyondell Chemical Company	L04439	Channelview	28	08/06/12
Dallas	Fugro Consultants, Inc.	L03461	Dallas	28	08/03/12
Dallas	North Texas Cardiovascular Associates, P.A.	L05602	Dallas	12	08/15/12
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	25	08/03/12
Dallas	Prime Imaging Partners, L.L.C. dba Prime Diagnostic Imaging, L.L.C.	L06309	Dallas	05	08/06/12
Dallas	Triad Isotopes, Inc.	L06334	Dallas	01	08/10/12
Denton	University of North Texas	L00101	Denton	90	08/07/12
Fort Worth	Texas Health Harris Methodist Hospital Fort Worth	L01837	Fort Worth	132	08/10/12
Houston	The Zimmerman Medical Clinic	L00244	Houston	24	08/13/12
Houston	St. Luke's Episcopal Health System Corporation dba St. Luke's Episcopal Health System and Texas Heart Institute	L00581	Houston	95	08/13/12
Houston	Texas Children's Hospital	L04612	Houston	56	07/31/12
Houston	Diagnostic Cardiology of Houston	L04888	Houston	14	08/08/12
Houston	Houston Medical Imaging	L05184	Houston	16	08/08/12
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	78	08/13/12
Houston	Cardinal Health	L05536	Houston	36	08/07/12
Houston	University General Hospital, L.P.	L06018	Houston	09	08/14/12

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Houston	Houston Northwest Operating Company, L.L.C. dba Houston Northwest Medical Center	L06190	Houston	17	08/03/12
Houston	Southampton Medical Imaging, L.L.C.	L06319	Houston	03	08/06/12
Irving	Healthcare Associates of Irving, L.L.P.	L05371	Irving	12	08/03/12
Linden	Good Shepherd Medical Center Linden, Inc.	L02721	Linden	27	08/01/12
Longview	Eastman Chemicals Company	L00301	Longview	116	08/13/12
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	56	08/10/12
Lufkin	Memorial Medical Center of East Texas	L01346	Lufkin	86	08/07/12
Lufkin	East Texas Hematology and Oncology, P.A.	L06039	Lufkin	03	08/02/12
Marshall	Harrison County Hospital Association dba Good Shepherd Medical Center - Marshall	L02572	Marshall	32	08/10/12
Mount Pleasant	Titus County Memorial Hospital	L02921	Mount Pleasant	38	08/01/12
Mount Pleasant	Titus County Memorial Hospital	L02921	Mount Pleasant	39	08/03/12
Mount Pleasant	Cardiology Consultants of East Texas, P.A.	L06274	Mount Pleasant	02	08/01/12
Orange	Lanxess Corporation	L00976	Orange	59	08/10/12
Paris	Advanced Heart Care, P.A.	L05290	Paris	33	08/10/12
Pasadena	Oxy Vinyls, L.P.	L02257	Pasadena	26	08/02/12
Pasadena	Microtec Services, Inc.	L04656	Pasadena	14	08/06/12
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	203	08/06/12
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	137	08/03/12
San Antonio	Southwest General Hospital, L.L.P. dba Southwest General Hospital	L02689	San Antonio	41	08/07/12
San Antonio	Alamo Heart Associates, P.A.	L04909	San Antonio	16	08/10/12
San Antonio	Methodist Healthcare System of San Antonio, Ltd. dba The Gamma Knife Center	L05076	San Antonio	32	07/30/12
San Antonio	Wellmed Networks, Inc. dba Specialists for Health NE Cardiology	L06448	San Antonio	01	08/03/12
Sweetwater	Ludlum Measurements, Inc.	L01963	Sweetwater	96	08/06/12
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	97	08/03/12
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	98	08/08/12
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	99	08/13/12
The Woodlands	Lamco & Associate	L05152	The Woodlands	11	08/09/12
Throughout TX	SK Nelson Engineering, L.L.C.	L06463	Burnet	01	08/06/12
Throughout TX	IESCO, L.L.C.	L06351	Corpus Christi	04	07/31/12
Throughout TX	Encon International, Inc.	L04528	El Paso	16	08/03/12
Throughout TX	Varco, L.P.	L00287	Houston	132	08/15/12
Throughout TX	Marco Inspection Services, L.L.C.	L06072	Kilgore	40	08/01/12
Throughout TX	Non Destructive Inspection Corporation	L02712	Lake Jackson	144	08/15/12
Throughout TX	Traccco	L03096	Pasadena	80	08/01/12
Throughout TX	The Lane Construction Corporation	L06218	Roanoke	01	08/06/12
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	68	07/31/12
Tyler	Cardiovascular Associates of East Texas, P.A.	L04800	Tyler	28	07/31/12
Waco	Providence Health Center	L01638	Waco	59	08/01/12
Webster	CHCA Clear Lake, L.P. dba Clear Lake Regional Medical Center	L01680	Webster	83	08/01/12

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	Aviles Engineering Corporation	L03016	Houston	29	08/06/12
Throughout TX	Alpha Process Sales, Inc.	L03305	Sugar Land	14	07/31/12

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dallas	JRJ Paving, Inc.	L05307	Dallas	10	08/15/12
Grapevine	Cardiovascular Consultants of North Texas, L.L.P.	L04627	Grapevine	22	08/08/12
Plano	Cardiovascular Consultants of North Texas dba Cardiovascular Consultants Plano	L05690	Plano	09	08/08/12
Throughout TX	General Electric Company dba GE Healthcare	L05653	Raywood	09	08/06/12

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 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-201204360
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: August 20, 2012

The application is subject to public inspection at the offices of the Texas Department of Insurance, General Counsel Division, Legal Section - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Coventry Health and Life Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application and comments, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-201204456
 Sara Waitt
 General Counsel
 Texas Department of Insurance
 Filed: August 22, 2012

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Texas Department of Insurance

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Coventry Health and Life Insurance Company

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Texas Department of Insurance, Division of Workers' Compensation

Hearing

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will hold a meeting on Wednesday, September 12, 2012, at 9:30 a.m. CDT in the Tippy Foster Room of the Division's Central Office, 7551 Metro Center Drive, Suite 100, in Austin, Texas. At this meeting, the Commissioner of Workers' Compensation (Commissioner) will consider a Corrected Proposal for Decision issued on June 22, 2012, by the State Office of Administrative Hearings (SOAH) in the matter of *Texas Department of Insurance, Division of Workers' Compensation, Petitioner v. Jesse William Vredenburg, D.O., Respondent*; SOAH Docket No. 454-12-1534.C1. This posting is made pursuant to §148.16(f) of Title 28 of the Texas Administrative Code. The Commissioner will provide up to 20 minutes at the meeting for each party or the party's representative to this matter to address the Commissioner concerning any action that the party proposes that the Commissioner should take concerning the SOAH Corrected Proposal for Decision. The parties to this matter will be notified of the final decision of the Commissioner by verifiable means.

The Division provides reasonable accommodations for person attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require accommodations in order to attend this meeting, contact Idalia Salazar at (512) 804-4403 a minimum of two business days prior to the meeting date.

If there are any questions regarding the information in this notice, contact Craig H. Smith at (512) 804-4047 or craig.smith@tdi.state.tx.us.

TRD-201204450

Dirk Johnson

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: August 21, 2012

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Texas Lottery Commission

Instant Game Number 1460 "Roadrunner Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1460 is "ROADRUNNER TRIPLER". The play style is "row/column/diagonal".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1460 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1460.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: "X" SYMBOL, MONEY BAG SYMBOL, \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$100 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1460 - 1.2D

PLAY SYMBOL	CAPTION
X SYMBOL	1X
X SYMBOL	2X
X SYMBOL	3X
X SYMBOL	4X
X SYMBOL	5X
X SYMBOL	6X
X SYMBOL	7X
X SYMBOL	8X
X SYMBOL	9X
MONEY BAG SYMBOL	1M
MONEY BAG SYMBOL	2M
MONEY BAG SYMBOL	3M
MONEY BAG SYMBOL	4M
MONEY BAG SYMBOL	5M
MONEY BAG SYMBOL	6M
MONEY BAG SYMBOL	7M
MONEY BAG SYMBOL	8M
MONEY BAG SYMBOL	9M
\$1.00	ONES\$
\$2.00	TWOS\$
\$3.00	THREES\$
\$5.00	FIVES\$
\$10.00	TENS\$
\$20.00	TWENTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier-Prize - A prize of \$1.00, \$2.00, \$3.00, \$5.00, \$6.00, \$9.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier-Prize - A prize of \$30.00, \$60.00, \$100 or \$300.

H. High-Tier-Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1460), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1460-0000001-001.

K. Pack - A Pack of "ROADRUNNER TRIPLER" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "ROADRUNNER TRIPLER" Instant Game No. 1460 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "ROADRUNNER TRIPLER" Instant Game is determined once the latex on the Ticket is scratched off to expose 10 (ten) Play Symbols. If a player reveals three "X" Play Symbols in any one row, column or diagonal, the player wins the PRIZE. If a player reveals three "MONEY BAG" Play Symbols in any one row, column or diagonal, the player wins TRIPLE the PRIZE. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 10 (ten) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the

Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to one (1) time on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play Symbol patterns. Two (2) Tickets have identical Play Symbol patterns if they have the same Play Symbols in the same positions.

C. Non-Winning Tickets will contain either two (2) "X" or two (2) "MONEY BAG" Play Symbols together in at least one (1) row, column or diagonal.

D. All Tickets will contain four (4) "X"s and five (5) "MONEY BAG" Play Symbols or five (5) "X"s and four (4) "MONEY BAG" Play Symbols.

E. Tickets that win triple will have three (3) "MONEY BAG" Play Symbols in a winning pattern as dictated by the prize structure.

F. On Tickets that win triple and have three (3) "MONEY BAG" Play Symbols, there will never be an occurrence of three (3) "X"s in a row, column or diagonal.

2.3 Procedure for Claiming Prizes.

A. To claim a "ROADRUNNER TRIPLER" Instant Game prize of \$1.00, \$2.00, \$3.00, \$5.00, \$6.00, \$9.00, \$10.00, \$15.00, \$20.00, \$30.00, \$60.00, \$100 or \$300, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$60.00, \$100 or \$300 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ROADRUNNER TRIPLER" Instant Game prize of \$1,000, the claimant must sign the winning Ticket and present it at

one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "ROADRUNNER TRIPLER" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "ROADRUNNER TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "ROADRUNNER TRIPLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 11,040,000 Tickets in the Instant Game No. 1460. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1460 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,324,800	8.33
\$2	147,200	75.00
\$3	588,800	18.75
\$5	73,600	150.00
\$6	73,600	150.00
\$9	73,600	150.00
\$10	18,400	600.00
\$15	36,800	300.00
\$20	18,400	600.00
\$30	8,878	1,243.52
\$60	4,600	2,400.00
\$100	460	24,000.00
\$300	92	120,000.00
\$1,000	46	240,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.66. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1460 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1460, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201204401
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: August 20, 2012



Instant Game Number 1462 "Haunted Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1462 is "HAUNTED TRIPLER". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1462 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1462.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: BAT SYMBOL, CANDLE SYMBOL, CANDY SYMBOL, CAT SYMBOL, CAULDRON SYMBOL, FROG SYMBOL, HAT SYMBOL, HAUNTED HOUSE SYMBOL, MONSTER SYMBOL, MOON SYMBOL, OWL SYMBOL, SKULL SYMBOL, SPIDER SYMBOL, GHOST SYMBOL, PUMPKIN SYMBOL, \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$60.00, \$200, \$1,000, or \$20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1462 - 1.2D

PLAY SYMBOL	CAPTION
BAT SYMBOL	BAT
CANDLE SYMBOL	CANDLE
CANDY SYMBOL	CANDY
CAT SYMBOL	CAT
CAULDRN SYMBOL	CAULDRN
FROG SYMBOL	FROG
HAT SYMBOL	HAT
HAUNTED HOUSE SYMBOL	HOUSE
MONSTER SYMBOL	MONSTR
MOON SYMBOL	MOON
OWL SYMBOL	OWL
SKULL SYMBOL	SKULL
SPIDER SYMBOL	SPIDER
GHOST SYMBOL	GHOST
PUMPKIN SYMBOL	TRIPLE
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$30.00	THIRTY
\$60.00	SIXTY
\$200	TWO HUND
\$1,000	ONE THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$60.00, or \$200.

H. High Tier Prize - A prize of \$1,000, or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code, which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1462), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1462-0000001-001.

K. Pack - A Pack of "HAUNTED TRIPLER" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HAUNTED TRIPLER" Instant Game No. 1462 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "HAUNTED TRIPLER" Instant Game is determined once the latex on the Ticket is scratched off to expose 20 (twenty) Play Symbols. If a player reveals a "GHOST" Play Symbol, the player

wins the PRIZE for that Play Symbol. If a player reveals a "PUMP-KIN" Play Symbol, the player wins TRIPLE the PRIZE for that Play Symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 20 (twenty) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 20 (twenty) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 20 (twenty) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.
- B. No three or more duplicate non-winning prize symbol(s) on a Ticket.
- C. A non-winning prize symbol will never be the same as a winning prize symbol.
- D. No duplicate non-winning Play Symbols on a Ticket.
- E. The "GHOST" (auto win) Play Symbol will only appear as dictated by the prize structure.
- F. The "PUMPKIN" (tripler) Play Symbol will only appear as dictated by the prize structure.
- G. The top prize symbol will appear on every Ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "HAUNTED TRIPLER" Instant Game prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$60.00, or \$200, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$60.00, or \$200 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B of these Game Procedures.

B. To claim a "HAUNTED TRIPLER" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HAUNTED TRIPLER" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Com-

mission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.C of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "HAUNTED TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "HAUNTED TRIPLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 Tickets in the Instant Game No. 1462. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1462 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	362,880	13.89
\$3	443,520	11.36
\$5	100,000	50.00
\$10	70,560	71.43
\$15	30,240	166.67
\$20	40,320	125.00
\$30	16,800	300.00
\$60	12,474	404.04
\$200	2,940	1,714.29
\$1,000	84	60,000.00
\$20,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.66. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1462 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1462, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201204353
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: August 17, 2012



Instant Game Number 1469 "Holiday Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1469 is "HOLIDAY BREAK THE BANK". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1469 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1469.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, MONEY SYMBOL, \$2.00, \$4.00, \$6.00, \$10.00, \$20.00, \$50.00, \$200, \$1,000, \$3,000, and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1469 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
MONEY SYMBOL	MONEY
\$2.00	TWO\$
\$4.00	FOUR\$
\$6.00	SIX\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$1,000	ONE THOU
\$3,000	THR THOU
\$30,000	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$6.00, \$8.00, \$10.00, \$12.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$200.

H. High-Tier Prize - A prize of \$1,000, \$3,000, or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code, which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1469), a seven (7) digit Pack number, and

a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1469-0000001-001.

K. Pack - A Pack of "HOLIDAY BREAK THE BANK" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOLIDAY BREAK THE BANK" Instant Game No. 1469 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket.

A prize winner in the "HOLIDAY BREAK THE BANK" Instant Game is determined once the latex on the Ticket is scratched off to expose 19 (nineteen) Play Symbols. If the player matches any of YOUR NUMBERS Play Symbols to any of the 3 LUCKY NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "money" Play Symbol, the player wins that PRIZE instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 19 (nineteen) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 19 (nineteen) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 19 (nineteen) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a Ticket.

C. No duplicate LUCKY NUMBERS Play Symbols on a Ticket.

D. There will be no correlation between the matching symbols and the prize amount.

E. The "MONEY" (auto win) Play Symbol will never appear more than once on a Ticket.

F. No duplicate non-winning YOUR NUMBERS Play Symbols on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY BREAK THE BANK" Instant Game prize of \$2.00, \$4.00, \$6.00, \$8.00, \$10.00, \$12.00, \$20.00, \$50.00, or \$200, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$200 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOLIDAY BREAK THE BANK" Instant Game prize of \$1,000, \$3,000 or \$30,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOLIDAY BREAK THE BANK" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "HOLIDAY BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to

an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "HOLIDAY BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,120,000 Tickets in the Instant Game No. 1469. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1469 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	893,760	10.20
\$4	528,960	17.24
\$6	145,920	62.50
\$8	36,480	250.00
\$10	91,200	100.00
\$12	109,440	83.33
\$20	54,720	166.67
\$50	33,820	269.66
\$200	6,384	1,428.57
\$1,000	80	114,000.00
\$3,000	40	228,000.00
\$30,000	10	912,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.80. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1469 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1469, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201204354
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: August 17, 2012



Instant Game Number 1472 "Double Action"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1472 is "DOUBLE ACTION". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1472 shall be \$10.00 per Ticket.

1.2 Definitions in Instant Game No. 1472.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 2X SYMBOL, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$200,000.

D. Play Symbols caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1472 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FTO
42	FFT
43	FTE
44	FRF
45	FRV
46	FRS
47	FSN

48	FRE
49	FNI
50	FTY
2X SYMBOL	DOUBLER
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$200,000	2 HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$200,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1472), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1472-0000001-001.

K. Pack - A Pack of "DOUBLE ACTION" Instant Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DOUBLE ACTION" Instant Game No. 1472 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "DOUBLE ACTION" Instant Game is determined once the latex on the Ticket is scratched off to expose 68 (sixty-eight) Play Symbols. Each game plays separately on GAME 1 and GAME 2. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for

that number. If a player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that Play Symbol instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 68 (sixty-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 68 (sixty-eight) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 68 (sixty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 68 (sixty-eight) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to thirty two (32) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical play and prize symbol patterns. Two (2) Tickets have identical play and prize symbol patterns if they have the same play and prize symbols in the same positions.

C. Each Ticket will contain four (4) different "WINNING NUMBERS" Play Symbols.

D. "YOUR NUMBERS" Play Symbols will never match the "WINNING NUMBERS" Play Symbols in another game (for example, a "WINNING NUMBER" in Game 1 will not match a "YOUR NUMBER" in Game 2).

E. The "2X" Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

F. The "2X" Play Symbol will only appear as dictated by the prize structure.

G. Non-winning "YOUR NUMBERS" Play Symbols will all be different in each of the two (2) Games.

H. No Ticket will ever contain more than six (6) identical non-winning prize symbols.

I. Non-winning prize symbols will never be the same as the winning prize symbol(s).

J. The top prize symbol will appear on every Ticket unless otherwise restricted.

K. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "DOUBLE ACTION" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DOUBLE ACTION" Instant Game prize of \$1,000, or \$200,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DOUBLE ACTION" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "DOUBLE ACTION" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "DOUBLE ACTION" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 Tickets in the Instant Game No. 1472. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1472 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	652,800	6.25
\$20	489,600	8.33
\$50	81,940	49.79
\$100	54,400	75.00
\$500	3,400	1,200.00
\$1,000	204	20,000.00
\$200,000	4	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.18. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1472 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing

will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1472, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant

to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201204402

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: August 20, 2012



Instant Game Number 1476 "Jingle Bell Crossword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1476 is "JINGLE BELL CROSSWORD". The play style is "crossword".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1476 shall be \$3.00 per Ticket.

1.2 Definitions in Instant Game No. 1476.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the Ticket. Each Play Symbol is printed in symbol font in black ink in positive. The possible Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BELL SYMBOL, WREATH SYMBOL, COOKIE SYMBOL, STOCKING SYMBOL, SLEIGH SYMBOL, NUTCRACKER SYMBOL, SNOWMAN SYMBOL, HOLLY SYMBOL, \$3.00, \$5.00, \$10.00, \$20.00, and \$50.00.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1476 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
BELL SYMBOL	
WREATH SYMBOL	
COOKIE SYMBOL	COOKIE
STOCKING SYMBOL	STKNG
SLEIGH SYMBOL	SLEIGH
NUTCRACKER SYMBOL	NUTCRCKR
SNOWMAN SYMBOL	SNOWMAN
HOLLY SYMBOL	HOLLY
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number

is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$5.00, \$6.00, \$9.00, \$10.00, \$15.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$60.00, or \$100.

H. High-Tier Prize - A prize of \$1,000, \$3,000, or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code, which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1476), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1476-0000001-001.

K. Pack - A Pack of "JINGLE BELL CROSSWORD" Instant Game Tickets contain 125 Tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JINGLE BELL CROSSWORD" Instant Game No. 1476 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "JINGLE BELL CROSSWORD" Instant Game is determined once the latex on the Ticket is scratched off to expose up to 98 (ninety-eight) possible Play Symbols. The player must scratch only the letters in the puzzle that match those in the YOUR LETTERS play area. Scratch only the letters in the puzzle that match those in the YOUR LETTERS play area. The player must scratch each of the BELL and WREATH Play Symbols in the puzzle. Each BELL and WREATH Play Symbol is a Free Match and counts as a matched letter in that possible complete "word". If a player reveals 3 or more complete "words" in the puzzle, the player wins prize in the PRIZE KEY. If a player wins in the puzzle and any one of the completed "words" has a "BELL" Play Symbol in the word, the player wins DOUBLE the prize in the PRIZE KEY. If a player wins in the puzzle and any one of the completed "words" has a "WREATH" Play Symbol in the word, the player wins TRIPLE the prize in the PRIZE KEY. The player must scratch the BONUS spot and if the player reveals a dollar amount, the player wins that amount instantly! There will be only one prize per Ticket. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters including the BELL and WREATH symbols within the puzzle. Only letters within the puzzle that are matched with YOUR LETTERS and BELL and WREATH symbols can be used to form a complete "word". Words within words are not eligible for a prize. For example, all the YOUR LETTERS Play Symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". A complete "word" must contain at least three letters. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Ninety-eight (98) possible Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
 2. With the exception of the BONUS spot Play Symbols, the Play Symbols in this game do not have Play Symbol Captions. Each of the BONUS spot Play Symbols must have a Play Symbol Caption underneath, and each BONUS spot Play Symbol must agree with its Play Symbol Caption;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink;
 5. The Ticket shall be intact;
 6. The Serial Number, Retailer Validation Code, and Pack-Ticket number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
 8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
 9. The Ticket must not be counterfeit in whole or in part;
 10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket number must be right side up and not reversed in any manner;
 13. The Ticket must be complete and not miscut, and have 98 (ninety-eight) possible Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket number on the Ticket;
 14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
 15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
 16. Each of the 98 (ninety-eight) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
 17. Each of the 98 (ninety-eight) possible Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket number must be printed in the Pack-Ticket number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's

discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. Each grid will contain exactly the same amount of letters.

C. Each grid will contain exactly the same amount of words.

D. No duplicate words on a Ticket.

E. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.0.

F. All words will contain a minimum of 3 letters.

G. All words will contain a maximum of 9 letters.

H. No duplicate YOUR LETTERS Play Symbols.

I. There will be a minimum of 3 vowels (A, E, I, O, and U) in the YOUR LETTERS play area.

J. A minimum of 15 YOUR LETTERS Play Symbols will match at least one letter in the crossword grid.

K. The presence or absence of any letter or combination of letters in the YOUR LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

L. No consonant Play Symbol will appear more than 9 times in the crossword grid and no vowel will appear more than 14 times in the crossword grid.

M. On Non-Winning Tickets, each crossword grid will have at least 2 completed words, neither of which will contain a "BELL" (doubler) or "WREATH" (tripler) Play Symbol.

N. When the BONUS is completed as a winner, there will never be more than two completed words in the crossword grid.

O. Each Non-Winning Ticket will have at least 5 near wins (word with all but one letter revealed).

P. There will be exactly two (2) "BELL" (doubler) Play Symbols and two (2) "WREATH" (tripler) Play Symbols on every Ticket.

Q. The two (2) "BELL" (doubler) Play Symbols will be in words containing four (4) and five (5) letters, respectively.

R. The "BELL" (doubler) and "WREATH" (tripler) Play Symbols will never appear in a grid position that is used in more than one (1) word.

S. There will never be more than one (1) "BELL" (doubler) or "WREATH" (tripler) Play Symbol in a word.

T. No word containing the "BELL" (doubler) or "WREATH" (tripler) Play Symbols in the puzzle grid can be used to form any word on the rejected word list by either removing the "BELL" (doubler) or "WREATH" (tripler) Play Symbols and using the compressed letters to form a word.

U. No word containing the "BELL" (doubler) or "WREATH" (tripler) Play Symbols can be used to form any word on the rejected word list by using the "BELL" (doubler) or "WREATH" (tripler) Play Symbols as wild characters that could be any letter from A through Z.

V. There will never be more than one (1) word containing a "BELL" (doubler) or "WREATH" (tripler) Play Symbol completely revealed.

W. Winning BONUS Play Symbols will only appear as dictated by the prize structure.

X. There will never be more than ten (10) completed words on a Ticket.

Y. The "BELL" (doubler) and "WREATH" (tripler) Play Symbols will only win as dictated by the prize structure.

Z. Words from the TEXAS REJECTED WORD LIST v.2.0 will not appear horizontally, diagonally or vertically in the YOUR LETTERS area.

2.3 Procedure for Claiming Prizes.

A. To claim a "JINGLE BELL CROSSWORD" Instant Game prize of \$3.00, \$5.00, \$6.00, \$9.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$60.00, or \$100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$30.00, \$50.00, \$60.00, or \$100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "JINGLE BELL CROSSWORD" Instant Game prize of \$1,000, \$3,000 or \$30,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JINGLE BELL CROSSWORD" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "JINGLE BELL CROSSWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "JINGLE BELL CROSSWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel

as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated therefor, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated therefore. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 Tickets in the Instant Game No. 1476. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1476 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	792,960	8.93
\$5	509,760	13.89
\$6	169,920	41.67
\$9	113,280	62.50
\$10	212,400	33.33
\$15	56,640	125.00
\$20	42,480	166.67
\$30	11,800	600.00
\$50	18,880	375.00
\$60	6,490	1,090.91
\$100	5,900	1,200.00
\$1,000	100	70,800.00
\$3,000	75	94,400.00
\$30,000	21	337,142.86

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.65. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1476 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1476, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201204355
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: August 17, 2012



Instant Game Number 1478 "Happy Holidays"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1478 is "HAPPY HOLIDAYS". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1478 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1478.

A. Display Printing - That area of the instant game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, CANDY CANE SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000, and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1478 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
CANDY CANE SYMBOL	CANE
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV

\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code, which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1478), a seven (7) digit pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1478-0000001-001.

K. Pack - A pack of "HAPPY HOLIDAYS" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HAPPY HOLIDAYS" Instant Game No. 1478 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant Ticket. A prize winner in the "HAPPY HOLIDAYS" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins prize for that number. If a player reveals a "CANDY CANE" play symbol, the player wins PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the

Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty (20) times on a Ticket in accordance with the approved prize structure.

B. Adjacent non-winning Tickets within a pack will not have identical play symbol patterns. Two (2) Tickets have identical play symbol patterns if they have the same play symbols in the same positions.

C. Each Ticket will have five (5) different "WINNING NUMBERS" play symbols.

D. Non-winning YOUR NUMBERS play symbols will all be different.

E. Non-winning prize symbols will never appear more than three (3) times.

F. The "CANDY CANE" play symbol (auto win) will never appear in the "WINNING NUMBERS" play symbol positions.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. The top prize symbol (\$50,000) will appear on every Ticket unless otherwise restricted.

I. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" play symbol (i.e., 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "HAPPY HOLIDAYS" Instant Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HAPPY HOLIDAYS" Instant Game prize of \$1,000 or \$50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HAPPY HOLIDAYS" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "HAPPY HOLIDAYS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "HAPPY HOLIDAYS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed

on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1478. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1478 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	800,000	7.50
\$10	800,000	7.50
\$20	120,000	50.00
\$25	80,000	75.00
\$50	40,000	150.00
\$100	12,500	480.00
\$500	400	15,000.00
\$1,000	250	24,000.00
\$50,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.24. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1478 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant Ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1478, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201204356

Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: August 17, 2012



Instant Game Number 1479 "Match 3 Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1479 is "MATCH 3 TRIPLER". The play style is "match 3 of 9".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1479 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1479.

A. Display Printing - That area of the instant game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except

for dual-image games. The possible black play symbols are: \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$100, \$1,000, and 3X SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1479 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONES\$
\$2.00	TWOS\$
\$3.00	THREES\$
\$5.00	FIVES\$
\$10.00	TENS\$
\$20.00	TWENTY
\$100	ONE HUND
\$1,000	ONE THOU
3X SYMBOL	TRIPLER

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$5.00, \$6.00, \$9.00, \$10.00, \$15.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$60.00, \$100, or \$300.

H. High-Tier Prize - A prize of \$1,000 or \$3,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code, which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1479), a seven (7) digit pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1479-0000001-001.

K. Pack - A pack of "MATCH 3 TRIPLER" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MATCH 3 TRIPLER" Instant Game No. 1479 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant Ticket. A prize winner in the "MATCH 3 TRIPLER" Instant Game is determined once the latex on the Ticket is scratched off to expose 9 (nine) Play Symbols. If a player reveals 3 matching prize amounts play symbols, the player wins that amount. If a player reveals 2 matching prize amounts play symbols and a "3X" play symbol, the player wins TRIPLE that amount instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 9 (nine) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation, Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 9 (nine) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 9 (nine) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning Tickets will not have identical play data, spot for spot.
- B. No more than two pairs of matching play symbols on a Ticket.
- C. No more than three matching play symbols on a Ticket.

D. A Ticket may only win once.

E. No more than one pair of matching play symbols on a Ticket that contains the "3X" (tripler) play symbol.

F. The "3X" (tripler) play symbol will only appear as dictated by the prize structure.

G. The top prize will appear on every Ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "MATCH 3 TRIPLER" Instant Game prize of \$1.00, \$2.00, \$3.00, \$5.00, \$6.00, \$9.00, \$10.00, \$15.00, \$20.00, \$30.00, \$60.00, \$100, or \$300, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$60.00, \$100, or \$300 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MATCH 3 TRIPLER" Instant Game prize of \$1,000 or \$3,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MATCH 3 TRIPLER" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MATCH 3 TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "MATCH 3 TRIPLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize

that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 Tickets in the Instant Game No. 1479. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1479 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	873,600	11.54
\$2	940,800	10.71
\$3	218,400	46.15
\$5	67,200	150.00
\$6	50,400	200.00
\$9	33,600	300.00
\$10	33,600	300.00
\$15	33,600	300.00
\$20	16,800	600.00
\$30	3,906	2,580.65
\$60	2,100	4,800.00
\$100	630	16,000.00
\$300	220	45,818.18
\$1,000	60	168,000.00
\$3,000	30	336,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.43. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1479 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant Ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1479, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201204357
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: August 17, 2012



North Central Texas Council of Governments

Announcement of Competitive Call for Projects

The North Central Texas Council of Governments (NCTCOG) is issuing a competitive call for projects to award Federal Transit Administration Job Access/Reverse Commute (JA/RC) (49 U.S.C. §5316) and New Freedom (49 U.S.C. §5317) Program funds. Approximately \$2.6 million in Job Access/Reverse Commute and \$2.9 million in New Freedom funding is available for eligible projects in the Dallas-Fort Worth-Arlington and Denton-Lewisville Urbanized Areas.

The JA/RC Program has two components: the Job Access portion of the program provides funding for projects designed to transport low income individuals to and from employment and employment-related activities. The Reverse Commute portion of the program does not have an income requirement and provides funding to transport residents of urban, rural and suburban areas to suburban employment opportunities. The New Freedom Program supports new services and facility improvements that address transportation needs of individuals with disabilities that go beyond those required by the Americans with Disabilities Act. The programs are reimbursement programs and require a commitment of local matching funds. Private non-profit organizations, state or local governmental authorities, and operators of public transportation services, including private operators of public transportation services are encouraged to submit projects for consideration. More information regarding the 2012 Job Access/Reverse Commute and New Freedom Call for Projects can be obtained online at www.nctcog.org/jarc or by contacting Jamie Patel at jpatel@nctcog.org or (817) 608-2377.

Due Date

Project submittals are due at the NCTCOG offices no later than 5:00 p.m., on Friday, October 5, 2012. No late submittals will be accepted.

TRD-201204362

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: August 20, 2012

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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 August 17, 2012, 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 Cebridge Acquisition, L.P. d/b/a Suddenlink Communications to Amend its State-Issued Certificate of Franchise Authority; to add the City of Hideaway, Texas, Project Number 40660.

The requested amendment is to expand the service area footprint to include the municipality of Hideaway, 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 40660.

TRD-201204430

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 21, 2012

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 20, 2012, 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 Northland Cable Television, Inc., for an Amendment to its State-Issued Certificate of Franchise Authority; to add City of Granite Shoals, Texas, Project Number 40664.

The requested amendment is to expand the service area footprint to include the municipality of Granite Shoals, 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 40664.

TRD-201204432

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 21, 2012

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Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 17, 2012, for retail electric provider (REP) certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Iron Energy LLC for Retail Electric Provider Certification, Pursuant to Substantive Rule §25.107, Docket Number 40661.

Applicant's requested service area is the entire state of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (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 Docket Number 40661.

TRD-201204431

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 21, 2012

◆ ◆ ◆
Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on August 3, 2012, pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated §39.158 (Vernon 2007 & Supplement 2011).

Docket Style and Number: Application of NRG Energy, Inc. Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 40628.

The Application: NRG Energy, Inc. (applicant) filed an application for approval of the proposed merger of applicant and GenOn Energy, Inc. (GenOn). GenOn indirectly owns a 50% interest in the Sabine Cogeneration Station, a 108 MW gas-fired combined-cycle generating facility located in Orange, Texas within the SERC Reliability Corporation power region, outside of the Electric Reliability Council of Texas (ERCOT) footprint. As a result of the proposed merger transaction, NRG Energy, Inc. will own a 50% interest in the Sabine Cogeneration Station (equal to 54 MW). The applicant is required to obtain commission approval before closing the transaction if the electricity to be offered for sale in a power region will exceed one percent of the total electricity for sale in the power region if the application is approved. The commission shall approve the application unless the commission finds that it results in a violation of §39.154 of the Public Utility Regulatory Act. Under §39.154, upon the introduction of customer choice, a power generation company may not own and control more than 20% of the installed generation capacity located in or capable of delivering electricity to a power region in Texas. GenOn owns no other generation facilities in Texas. The combined, direct and indirectly owned generation owned and controlled by applicant following the transaction may exceed one percent of the installed generation capacity in SERC. However, applicant has stated that the transaction will not result in a viola-

tion of the installed capacity share limitations set forth in Public Utility Regulatory Act §39.154, which is the sole issue in this proceeding.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline to intervene in this proceeding is September 17, 2012. All correspondence should refer to Docket Number 40628.

TRD-201204385
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 20, 2012



Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on August 15, 2012, for an amendment to certificated service area boundaries within Montgomery County, Texas.

Docket Style and Number: Joint Application of CenterPoint Energy Houston Electric, LLC (CenterPoint Energy) and Entergy Texas, Inc. (ETI) to amend Certificate of Convenience and Necessity Service Area Boundaries within Montgomery County. Docket Number 40652.

The Application: The proposed transfer of service area boundaries applies to three tracts of land that consists of approximately 15.5, 88.0, and 35.0 acres. The proposed amendments would alter the official boundary lines to be consistent with the actual services being provided to the existing customers. Applicants stated that the transfer will not affect electric service to any existing customers, because the proposed boundary would reflect the utility currently serving the area. Both CenterPoint Energy and ETI have agreed to the proposed amendment.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than October 1, 2012 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 comments should reference Docket Number 40652.

TRD-201204386
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 20, 2012



Request for Comments on Application and Form Changes

The Public Utility Commission of Texas (commission) requests comments on its proposed changes to the Applications for a Certificate of Convenience and Necessity for Service Area Boundaries and Proposed Transmission Lines and the instruction form for Monthly Transmission Construction Progress Reports. The proposed forms can be found on the commission's website home page under "Filings," using Control Number 40511.

The applications are used by electric utilities to change their service area boundaries and to propose transmission lines pursuant to P.U.C. Substantive Rule §25.101. The form describes the required components of monthly transmission construction progress reports pursuant to P.U.C. Substantive Rule §25.83.

Comments on the proposed forms may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments on the forms are required to be filed. Initial comments on the forms are due Friday, September 21, 2012, and reply comments are due Monday, October 8, 2012. Comments should be organized in a manner consistent with the organization of the forms. All comments should refer to Project Number 40511.

Questions concerning Project Number 40511 should be directed to Jennifer Hubbs, Infrastructure and Reliability Division, at (512) 936-7233. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201204410
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 20, 2012



Texas State Soil and Water Conservation Board

Request for Proposals

INTRODUCTION

This request for proposals (RFP) provides instructions and guidance for applicants seeking funding from the Texas State Soil and Water Conservation Board (TSSWCB) under the Clean Water Act (CWA) §319(h) Nonpoint Source (NPS) Grant Program. The U.S. Environmental Protection Agency (EPA) distributes funds appropriated by Congress annually to the TSSWCB under the authorization of CWA §319(h). TSSWCB then administers/awards these federal funds as grants to cooperating entities for activities that address the goals, objectives, and priorities stated in the Texas NPS Management Program. The Texas NPS Management Program is the State's comprehensive strategy to protect and restore water quality in waterbodies impacted by NPS water pollution. This document can be accessed online at <http://www.tsswcb.texas.gov/files/docs/nps-319/npsmgmt-plans/2012mgmtprogram.pdf>.

The types of agricultural and silvicultural NPS pollution prevention and abatement activities that can be funded with §319(h) grants include the following: implementation of nine-element watershed protection plans (WPPs) and the agricultural and silvicultural NPS portion of Total Maximum Daily Load (TMDL) Implementation Plans (I-Plans), surface water quality monitoring, data analysis and modeling, demonstration of innovative best management practices (BMPs), technical assistance to landowners for conservation planning, public outreach/education, development of nine-element WPPs including the formation and facilitation of stakeholder groups, and monitoring activities to determine the effectiveness of specific pollution prevention methods. Strictly research activities are not eligible for §319(h) grant funding.

The TSSWCB is requesting proposals for watershed assessment, planning, implementation, demonstration and education projects within the boundaries of impaired or threatened watersheds as well as projects in unimpaired watersheds. The 2010 Texas Integrated Report describes the water quality conditions for waterbodies in the state. All proposals must focus on the restoration and protection of water quality consistent

with the goals, objectives, and priority watersheds and aquifers identified in the Texas NPS Management Program. Up to \$1.2 million of the TSSWCB's FY2013 CWA §319(h) grant will be eligible for this RFP. No more than 10% of these funds may be utilized for groundwater projects. A competitive proposal process will be used so that the most appropriate and effective projects are selected for funding.

Project proposals should, where applicable, stress interagency coordination, demonstrate new or innovative technologies, use comprehensive strategies that have statewide applicability, and stress public participation. Examples of project proposals previously funded by TSSWCB are available at <http://www.tsswcb.texas.gov/managementprogram/browseactive>. Additionally, applicants are encouraged to review EPA's expectations for well-crafted proposals described in the EPA Region 6 Review Guide for CWA §319(h) Workplans (June 2012) available at http://www.tsswcb.texas.gov/files/docs/nps-319/rfps/EPAR6WPRReview_Guide.pdf. EPA's Grant Guidelines for the NPS Program are available at http://www.epa.gov/owow_keep/NPS/cwact.html.

This RFP does not set a maximum or minimum amount for individual projects; however, project funding generally ranges between \$100,000 and \$400,000 for a two to three year project. The TSSWCB CWA §319(h) NPS Grant Program has a 60/40% match requirement. The cooperating entity will be reimbursed up to 60% from federal funds and must contribute a minimum of 40% of the total costs to conduct the project. The 40% match must be from non-federal sources and must be described in the budget justification. Reimbursable indirect costs are limited to no more than 15% of total federal direct costs.

Quarterly progress and final reports are the minimum project reporting requirements. All projects that include an environmental data collection component (e.g., water quality monitoring, modeling, bacterial source tracking) must have a Quality Assurance Project Plan (QAPP), to be reviewed and approved by TSSWCB and EPA. Project budgets and timelines should account for the development and review of QAPPs accordingly. More information on QAPPs and the TSSWCB Environmental Data Quality Management Plan is available at <http://www.tsswcb.texas.gov/quality>.

TSSWCB PRIORITIES

For this FY2013 RFP, the following priorities have been identified. Proposals that do not focus on these priorities are still welcomed. All things being equal between proposals, those proposals that do focus on these priorities have a greater probability of being selected.

Priority Project Activities

- Implement WPPs and TMDL I-Plans (See priority areas listed below).
- WPP development initiatives (See priority areas listed below), which include activities such as formation of watershed groups or water quality data collection and analysis. More information on developing WPPs is available at <http://www.tsswcb.texas.gov/wpp>.
- Conserve healthy watersheds with a goal to protect high quality waters and prevent future water quality impairments. See EPA's Healthy Watershed Initiative at <http://water.epa.gov/polwaste/nps/watershed/index.cfm>.
- Implement components of the Texas Coastal NPS Pollution Control Program in the Coastal Management Zone (<http://www.tsswcb.texas.gov/coastalnps>).
- Support use of federal Farm Bill Programs through Cooperative Conservation in impaired watersheds.
- Demonstration projects and/or development/delivery of statewide education programs.

- Conducting a comprehensive, site-specific analysis of the factors causing an impairment. Specifically for those waterbodies with the Strategy of Evaluation as listed in Appendix C of the 2012 Texas NPS Management Program (i.e., Segments 1304, 1401, and 1501).

- Conduct Recreational Use Attainability Analyses. Specifically for those waterbodies where an RUAA is identified as appropriate in Appendix C of the 2012 Texas NPS Management Program.

Priority Areas for WPP and TMDL Implementation Projects

WPPs

- Arroyo Colorado
- Geronimo Creek
- Granbury Lake
- Pecos River
- Plum Creek

TMDLs

- Adams and Cow Bayous (bacteria and dissolved oxygen)
- Aquilla Reservoir (atrazine)
- Gilleland Creek (bacteria)
- E.V. Spence Reservoir (salinity)
- Lake O' the Pines (dissolved oxygen through phosphorus)
- Lower San Antonio River (bacteria)
- North Bosque River (nutrients)
- Guadalupe River above Canyon Lake (bacteria)
- Lake Houston (bacteria)

For detailed information on these completed WPPs and adopted TMDLs, including links to the published documents, see <http://www.tsswcb.texas.gov/watersheds>.

Priority Areas for WPP Development Initiatives

- Watersheds identified in Appendix C of the 2012 Texas NPS Management Program where the development of a WPP is identified as the Strategy to address the water quality issue:
- Lake Conroe (Segment 1012)
- Lake Creek (Segment 1015)
- Wilbarger Creek (Tributary to Segment 1434)

ELIGIBLE ORGANIZATIONS

Grants will be available to public and private entities such as local municipal and county governments and other political subdivisions of the State (e.g., soil and water conservation districts), educational institutions, non-profit organizations, and state and federal agencies. Private organizations, for profit, may participate in projects as partners or contractors but may not apply directly for funding.

SELECTION PROCESS

Submitted proposals will be reviewed, scored, and ranked based on the evaluation and ranking criteria included in this RFP. A minimum scoring requirement (70%) is necessary for proposals to be eligible for consideration.

All applicants, unsuccessful and successful, will be notified. Those applicants whose proposals are recommended for funding will be contacted and then TSSWCB will work with the applicant to revise and

finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds.

SUBMISSION PROCESS

To obtain a complete copy of TSSWCB's RFP and proposal submission packet, please visit <http://www.tsswcb.texas.gov/managementprogram#rfp> or contact Pamela Casebolt at (254) 773-2250 ext. 247. All proposals must be submitted electronically (MS-Word) using the workplan template provided in this RFP; otherwise, proposals will be considered administratively incomplete and not considered for funding. All letters of support for the proposal, including letters from Project Partners confirming their role, must be received by the proposal due date to be considered. Submit proposals to casebolt@tsswcb.texas.gov. Proposals must be received electronically by 5:00 p.m. CDT, October 12, 2012, to be considered.

FY2013 GRANT TIMELINE

Issuance of RFP: August 31, 2012
Deadline for Submission of Proposals: October 12, 2012
Proposal Evaluation by TSSWCB: November - December 2012
Notification of Selected Proposals/Unsuccessful Applicants: December 2012
Work with Applicants to Finalize Selected Proposals: December - February 2013
Submit Grant Application to EPA: May 1, 2013
Contract Award: August 2013
Anticipated Project Start Date: September 1, 2013
TRD-201204359
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: August 17, 2012



Supreme Court of Texas

Order Adopting Amendments to Texas Rules of Appellate Procedure 9, 38, 49, 52, 53, 55, 64, 68, 70, and 71

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 12-9129

ORDER ADOPTING AMENDMENTS TO TEXAS RULES OF APPELLATE PROCEDURE 9, 38, 49, 52, 53, 55, 64, 68, 70, and 71

ORDERED that:

1. Pursuant to section 22.004 of the Texas Government Code, the Supreme Court of Texas amends Rules of Appellate Procedure 9, 38, 49, 52, 53, 55, 64, 68, 70, and 71 as follows, effective December 1, 2012.
2. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.

3. These amendments may be changed in response to public comments received on or before November 1, 2012. Any interested party may submit written comments directed to Marisa Secco, Rules Attorney, at P.O. Box 12248, Austin, TX 78711, or marisa.secco@txcourts.gov.

Dated: August 10th, 2012.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Dale Wainwright, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehmann, Justice

Rule 9. Papers Generally

* * *

9.4. Form

Except for the record, a document filed with an appellate court must - unless the court accepts another form in the interest of justice - be in the following form:

* * *

(e) Typeface. A document must be printed in standard 10-character-per-inch (epi) nonproportionally spaced Courier typeface or in 13-point or larger proportionally spaced typeface. But if the document is printed in a proportionally spaced typeface, footnotes may be printed in typeface no smaller than 10-point. A document produced on a computer must be printed in a conventional typeface no smaller than 14-point except for footnotes, which must be no smaller than 12-point. A typewritten document must be printed in standard 10-character-per-inch (cpi) monospaced typeface.

* * *

(i) Length.

(1) Contents Included and Excluded. In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix.

(2) Maximum Length. The documents listed below must not exceed the following limits:

(A) A brief and response in a direct appeal to the Court of Criminal Appeals in a case in which the death penalty has been assessed: 37,500 words if computer-generated, and 125 pages if not.

(B) A brief and response in an appellate court (other than a brief under subparagraph (A)) and a petition and response in an original proceeding in the court of appeals: 15,000 words if computer-generated, and 50 pages if not. In a civil case in the courts of appeals, the aggregate of all briefs filed by a party must not exceed 27,000 words if computer-generated, and 90 pages if not.

(C) A reply brief in an appellate court: 7,500 words if computer-generated, and 25 pages if not.

(D) A petition and response in an original proceeding in the Supreme Court, a petition for review and response in the Supreme Court, a petition for discretionary review and response in the Court of Criminal Appeals, and a motion for rehearing and response in an appellate court: 4,500 words if computer-generated, and 15 pages if not.

(E) A reply to a response to a petition for review in the Supreme Court, and a reply to a response to a petition for discretionary review in the Court of Criminal Appeals: 2,400 words if computer-generated, and 8 pages if not.

(3) Certificate of Compliance. A computer-generated document must include a certificate by counsel or an unrepresented party stating the number of words in the document. The person certifying may rely on the word count of the computer program used to prepare the document.

(4) Extensions. A court may, on motion, permit a document that exceeds the prescribed limit.

(ij) Nonconforming Documents. Unless every copy of a document conforms to these rules, the court may strike the document and return all nonconforming copies to the filing party. The court must identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format. If another nonconforming document is filed, the court may strike the document and prohibit the party from filing further documents of the same kind. The use of footnotes, smaller or condensed typeface, or compacted or compressed printing features to avoid the limits of these rules are grounds for the court to strike a document.

Comment to 2012 Change: Rule 9 is revised to consolidate all length limits and establish word limits for documents produced on a computer. All documents produced on a computer must comply with the word limits. Page limits are retained for documents that are typewritten or otherwise not produced on a computer.

Rule 38. Requisites of Briefs

* * *

38.4. Length of Briefs

An appellant's brief or appellee's brief must be no longer than 50 pages, exclusive of the pages containing the identity of parties and counsel, any statement regarding oral argument, the table of contents, the index of authorities, the statement of the case, the issues presented, the signature, the proof of service, and the appendix. A reply brief must be no longer than 25 pages, exclusive of the items stated above. But in a civil case, the aggregate number of pages of all briefs filed by a party must not exceed 90, exclusive of the items stated above. The court may, on motion, permit a longer brief.

Rule 49. Motion and Further Motion for Rehearing

* * *

49.10. Length of Motion and Response

A motion or response must be no longer than 15 pages.

Rule 52. Original Proceedings

* * *

52.6. Length of Petition, Response, and Reply

Excluding those pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, the certification, and the appendix, the petition and response must not exceed 50 pages each if filed in the court of appeals, or 15 pages each if filed in the Supreme Court. A reply may be no longer than 25 pages if filed in the court of appeals or 8 pages if filed in the Supreme Court, exclusive of the items stated above. The court may, on motion, permit a longer petition, response, or reply.

Rule 53. Petition for Review

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53.6. Length of Petition, Response, and Reply

The petition and any response must be no longer than 15 pages each, exclusive of pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, the proof of service, and the appendix. A reply may be no longer than 8 pages, exclusive of the items stated above. The Court may, on motion, permit a longer petition, response, or reply.

Rule 55. Brief on the Merits

* * *

55.6. Length of Briefs

A brief on the merits or brief in response must not exceed 50 pages, exclusive of pages containing the identity of parties and counsel, the table of contents, the index of authorities, the statement of the case, the statement of jurisdiction, the issues presented, the signature, and the proof of service. A brief in reply may be no longer than 25 pages, exclusive of the items stated above. The Court may, on motion, permit a longer brief.

Rule 64. Motion for Rehearing

* * *

64.6. Length of Motion and Response

A motion or response must be no longer than 15 pages.

Rule 68. Discretionary Review With Petition

* * *

68.5. Length of Petition and Reply

The petition must be no longer than 15 pages, exclusive of pages containing the table of contents, the index of authorities, the statement regarding oral argument, the statement of the case, the statement of procedural history, and the appendix. A reply may be no longer than 8 pages, exclusive of the items stated above. The Court may, on motion, permit a longer petition or reply.

Rule 70. Brief on the Merits

* * *

70.3. Brief Contents and Form

Briefs must comply with the requirements of Rules 9 and 38, except that they need not contain the appendix (Rule 38.1(k)). Copies must be served as required by Rule 68.11.

Rule 71. Direct Appeals

* * *

71.3. Briefs

Briefs in a direct appeal should be prepared and filed in accordance with Rules 9 and 38, except that the brief need not contain an appendix (Rule 38.1(k)); and the brief in a case in which the death penalty has been assessed may not exceed 425 pages. All briefs must be filed in the Court of Criminal Appeals. The brief must include a short statement of why oral argument would be helpful, or a statement that oral argument is waived.

TRD-201204458
Marisa Secco
Rules Attorney
Supreme Court of Texas
Filed: August 22, 2012



Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

Franklin County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Franklin County Airport during the course of the next five years through multiple grants.

Current Project: Franklin County.

TxDOT CSJ No.: 1301MTVRN.

Scope: Provide engineering/design services for rehabilitation of existing apron; inspection and cleaning of runway edge drains; regrading of outfall ditches; regrading and paving of runway shoulders; reconstruction of east hangar access taxiway; rehabilitation of west hangar access taxiway; and rehabilitation of stub taxiway.

The DBE goal for the current project is 7 percent. TxDOT Project Manager is Paul Slusser.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate auto parking
2. Replace Rotating Beacon and Tower
3. Rehabilitate and mark Runway 13-31
4. Replace MIRL
5. Install PAPI-2L on Runway 13

Franklin County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available

online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Franklin County Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, telephone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website 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 eight and one half by eleven inch pages of data plus two optional pages consisting of an illustration page and a proposal summary page. The optional illustration page shall be no larger than eleven inches by seventeen inches and may be folded to an eight and one half by eleven inch size. 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 or folded in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Six completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **September 25, 2012, 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 Aviation Division staff members and one local government member. 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 Evaluation Criteria for Engineering Proposals can be found at <http://www.txdot.gov/business/projects/aviation.htm> under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201204327
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 16, 2012



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)