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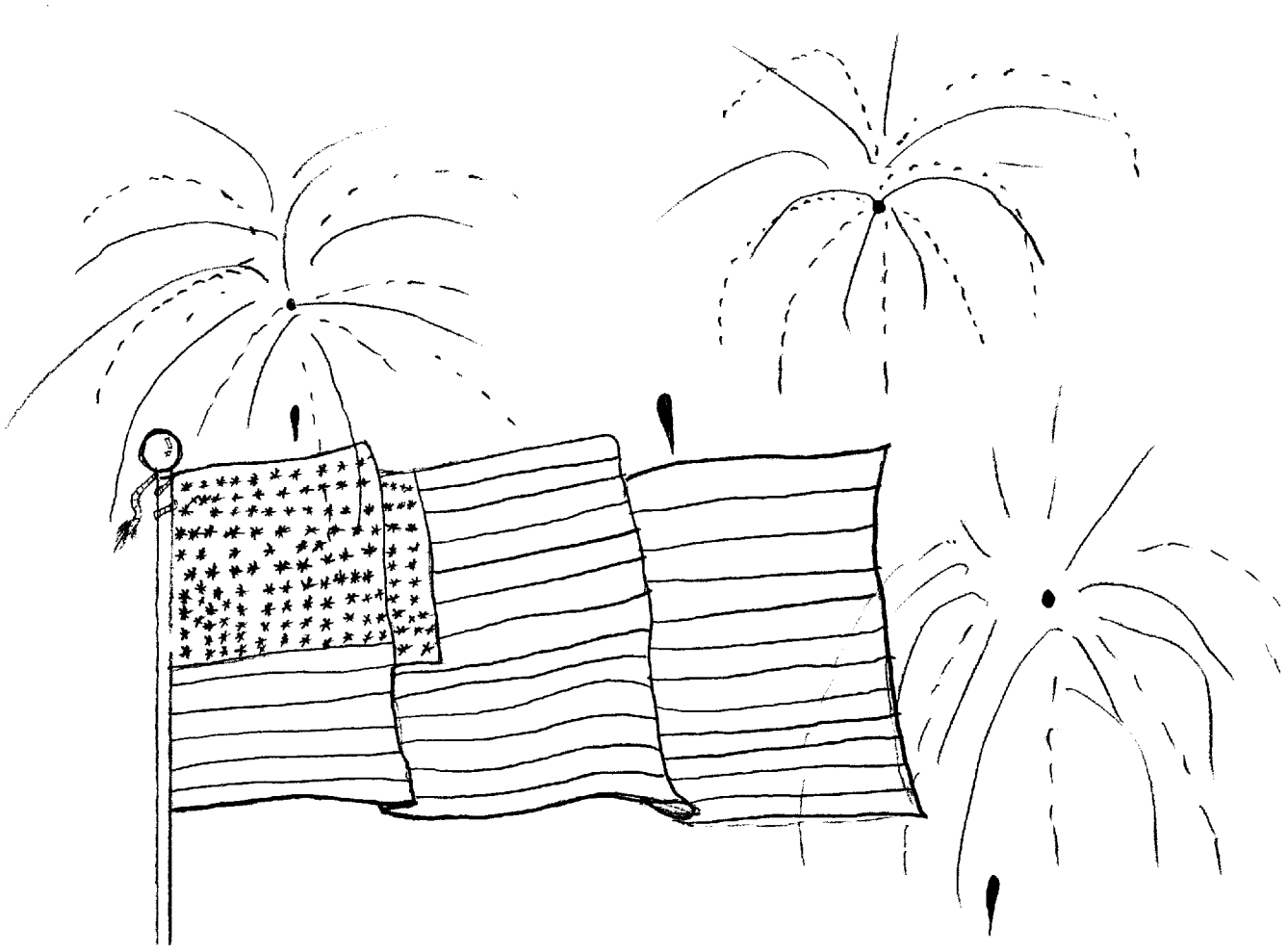

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

THE GOVERNOR

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

Executive Order

RP 45

Relating to the implementation mental health and mental retardation authority provider of last resort.

WHEREAS, The State of Texas is committed to providing the most effective mental health, chemical dependency and mental retardation services to the vulnerable Texans and their families who are eligible for these services; and

WHEREAS, it is imperative that consumers and their families have a choice from among the broadest range of services available so that these consumers have the opportunity to enjoy full lives of independence, productivity and self-determination; and

WHEREAS, it is imperative to ensure that the safety net of behavioral health services and services to persons who have mental retardation be strengthened and maintained, so that if a private provider of services does not operate effectively, then the services will continue to be available; and

WHEREAS, it is imperative to ensure that services to persons in rural and urban areas continue to be available; and

WHEREAS, it is imperative to ensure that input from both local leaders and local stakeholders be included in the continued development of the system of services for persons with mental illness, chemical dependency and persons with mental retardation; and

WHEREAS, it is imperative to ensure that the implementation of the provider of last resort provisions does not divert current funds away from the provision of services to administrative functions, and that any plan be implemented on a responsible timeline; and

WHEREAS, this action is in concert with previous Executive Orders which require the state's system of services for individuals with disabilities be comprehensive, community based, and provide for the broadest range of supports to most effectively meet their needs;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

Implementation Plan. The Texas Health and Human Services Commission ("HHSC") shall continue the implementation of Section 533.035 (e) through (g) of the Health and Safety Code as it relates to the requirement that community mental health and mental retardation authorities operate as providers of last resort. This process shall result in an implementation plan, developed through a negotiated rulemaking process that includes all relevant stakeholders. The plan shall ensure the following:

Protecting Consumer Choice: Current laws protecting the consumer's choice of provider shall be prioritized and upheld, regardless of any imposed limitations developed within the plan;

Protecting the Safety Net: The plan shall ensure that mental health and mental retardation authorities maintain sufficient infrastructure which reflects the needs of local communities in order to maintain a safety net which ensures that services continue to be available.

Recognizing of Local Differences: The plan shall accommodate the differences within local service delivery areas, so that the difference between rural and urban resources is recognized in the determination of a reasonable attempt to ensure the appropriate availability of a provider network.

Responsible timelines: HHSC will develop a timeline which is responsive to:

• the need for ensuring no disruption, to consumers, of their current service provision,

• the local communities readiness, and

• the required need for a safety net.

Protection of Service Funds: The HHSC implementation plan will ensure that funds directed for service delivery are not diverted for administrative purposes.

Mental Health Services: The executive commissioner of HHSC shall immediately request clarification from the Office of the Attorney General as to the applicability of Section 533.035 (e) through (g) of the Health and Safety Code to the provision of mental health services.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 17th day of June, 2005.

Rick Perry, Governor

TRD-200502573

♦ ♦ ♦

Proclamation 41-2996

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, education is the foundation for the economic and cultural future of the state of Texas; and

WHEREAS, the constitutional responsibility for the development of an efficient system of public education rests with the legislature; and

WHEREAS, Texas must maintain a system of school finance that ensures student performance and accountability are the primary goals; and

WHEREAS, educational excellence requires that the state provide resources to reward higher levels of student performance; and

WHEREAS, the state's system of accountability must include new measures of financial accountability and transparency in budgeting; and

WHEREAS, the current state of public school finance requires immediate action by the legislature to ensure the continued efficient and effective operation of Texas schools; and

WHEREAS, the people have placed the constitutional power to call and convene the legislature into special session in the hands of the Chief Executive Officer of the State;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by Article IV, Section 8, of the Texas Constitution, do hereby call an extraordinary session of the 79th Legislature, to be convened in the city of Austin, commencing at noon on Tuesday the 21st day of June 2005, for the following purposes:

To consider legislation that addresses educator compensation, benefits and certification.

To consider legislation that provides for public school financial accountability and that increases transparency in school district financial reporting.

To consider legislation that provides for performance-based incentives to educators and schools that attain higher levels of student achievement.

To consider legislation that funds textbooks and that creates the instructional materials allotment for public schools.

To consider legislation that provides for charter school funding and reform.

To consider legislation that provides for modifications to the recapture provisions of the public school finance system.

To consider legislation that provides for November elections for public school boards of trustees.

To consider legislation providing funding for the public school finance system and the continuation of the Texas Education Agency.

To consider legislation providing for end-of-course examinations to be used in public schools.

To consider legislation that provides for increased accountability and intervention for schools failing to meet state standards.

To consider legislation that provides for local property tax rate compression and voter approval of local property tax rates.

To consider legislation that establishes indicators of college readiness and higher levels of student achievement in the public school accountability system.

The Secretary of State will take notice of this action and will notify the members of the Legislature of my action.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 18th day of June 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200502572

♦ ♦ ♦

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

Opinion No. GA-0331

The Honorable Kerry Spears

Milam County and District Attorney

The Blake Building

204 North Central

Cameron, Texas 76520

Re: Whether federal law preempts Transportation Code section 471.007, which imposes a criminal penalty against a railway company if its train blocks a railroad crossing for more than ten minutes (RQ-0299-GA)

S U M M A R Y

Section 471.007 of the Transportation Code, which imposes a criminal penalty against a railway company if its train blocks a railroad crossing for more than ten minutes, is preempted by the federal Interstate Commerce Commission Termination Act of 1995 and the Federal Railroad Safety Act.

Opinion No. GA-0332

The Honorable Christopher G. Taylor

Tom Green County Attorney

Justice Center

122 West Harris

San Angelo, Texas 76903

Re: Authority of a commissioners court to assign the duties of collecting criminal fines, costs and fees to a county treasurer's deputies (RQ-0301-GA)

S U M M A R Y

Article 103.0031 of the Texas Code of Criminal Procedure does not authorize a county commissioners court to establish a collections department under the authority of a county treasurer without the consent of the county clerk.

The county clerk serves as the clerk of a county court or statutory county court pursuant to the Texas Constitution and Texas statutes. A judge of a county court is not authorized to appoint the clerk of the county court or statutory court and, therefore, may not appoint a deputy of the county treasurer as the clerk of the court for purposes of collecting criminal fines and fees.

Opinion No. GA-0333

The Honorable James M. Kuboviak

Brazos County Attorney

300 East 26th Street, Suite 325

Bryan, Texas 77803-5327

Re: Applicability of section 145.002 of the Civil Practice and Remedies Code to installers and repairers of lawn sprinkler and landscape lighting systems (RQ-0302-GA)

S U M M A R Y

A "residence," for purposes of chapter 145 of the Civil Practice and Remedies Code, is an enclosed home or other dwelling. If the job duties of an employee of an installer or repairer of lawn sprinkler and landscape lighting systems require entry into an enclosed home or other dwelling, or an attached garage, chapter 145 contemplates a criminal history background check of that employee. If the employee's job duties require entry into the yard or real estate surrounding the enclosed home or attached garage, but not entry into the residence, chapter 145 does not contemplate a background check. Chapter 1305 of the Occupations Code exempts from its coverage the kind of activity that nurserymen and landscape contractors engage in when installing lawn sprinkler and yard lighting systems.

Opinion No. GA-0334

The Honorable Troy Fraser

Chair, Committee on Business and Commerce

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Application of conflict of interest law and the Open Meetings Act to the governing board of a groundwater conservation district (RQ-0304-GA)

S U M M A R Y

The directors of an underground water conservation district are subject to chapter 171 of the Local Government Code, which regulates conflicts of interest involving local public officials. Chapter 171 requires

a local public official with a substantial interest in a business entity or real property on which board action will have a special economic effect to disclose his interest and abstain from further participation in the matter. A violation of this requirement is a Class A misdemeanor. When section 171.004(a) requires a local public official to abstain from further participation in a matter, it does not prohibit him from attending an executive session of his governmental body held to discuss the matter.

A contested permit hearing before the Board of Directors of the Clearwater Underground Water Conservation District is "litigation" within Government Code section 551.071(1)(A).

Opinion No. GA-0335

The Honorable John W. Smith

Ector County District Attorney

300 North Grant, Room 305

Odessa, Texas 79761

Re: Whether a business that holds an on-premises alcoholic beverage permit may host a poker tournament (RQ-0305-GA)

S U M M A R Y

A holder of an on-premises alcoholic beverage permit may not, without violating both section 47.04(a) of the Penal Code and Rule 35.31 of the Alcoholic Beverage Commission, host a poker tournament in which participants risk money or any other thing of value for the opportunity to win a prize. A holder of an on-premises alcoholic beverage permit may, without violating either section 47.04(a) of the Penal Code or Rule 35.31 of the Alcoholic Beverage Commission, host a poker tournament in which participants do not risk money or any other thing of value for the opportunity to win a prize.

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

TRD-200502574
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: June 22, 2005

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER J. AUTHORIZED LENDER'S DUTIES AND AUTHORITY

7 TAC §§1.828, 1.836, 1.839, 1.841, 1.845

The Finance Commission of Texas (the commission) proposes amendments to Subchapter J, §§1.828, 1.836, 1.839, 1.841, and 1.845, concerning authorized lender's duties and authority, in conjunction with the commission's review of Subchapters J, K, P, and R. Additional amendments to revise §§1.830 - 1.831, and 1.833 are anticipated in the near future.

In general, the purpose of the amendments to Subchapter J is to conform the rules to the commission's current practice, to eliminate obsolete provisions, to add clarification, and to correct typographical errors. In §1.828(b), the definition of "collected funds" has been added for clarification. New subsection (e) in §1.836 clarifies the procedure to correct errors made using the true daily earnings method. Section 1.839 has been extensively revised to conform with current agency practice in collecting follow-up examination fees. A clarification concerning the acceptable electronic formats for submitting non-standard contract filings has been added to subsection (c) of §1.841.

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

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

Comments on the proposed amendments may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to sealy.hutchings@occc.state.tx.us.

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

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

§1.828. Return of Instruments to Borrower.

(a) Upon discharge of an indebtedness by payment, renewal, or refinancing, a lender shall return an original or true and correct copy of the instrument creating the indebtedness marked "PAID" or, in lieu of a marked original or copy, provide a discharge and release of all obligations under the loan to satisfy the requirements of §342.454, Texas Finance Code. In addition, if a loan has been paid off, a lender shall give the borrower, in a recordable form, a release of the lien, including a lien on a [~~an~~] motor vehicle title or real estate, or shall provide documentation for the release to the borrower, at the option of the lender whose loan has been paid, a copy of an endorsement, with or without recourse, representation or warranty, and assignment of the lien to a lender that is refinancing the loan. A lender shall comply with the requirements of this section within a reasonable time not to exceed 30 days after receipt of collected funds by the lender. An authorized lender must discharge or release a lien to a motor vehicle not later than the 10th day after the date of receipt of the collected funds by the lender pursuant to Texas Transportation Code, §501.115.

(b) "Collected Funds" means cash or any other form of payment that is, or has become, final. For example, an electronic funds transfer that is actually received by the authorized lender from the borrower's financial institution would be deemed to be collected funds.

§1.836. Correction of Errors or Violations.

(a) Any amount found to be due a borrower may be credited to the next payment or payments on the account of the borrower[~~,~~] if the borrower has an existing obligation to the licensee. The licensee must notify the borrower in writing of the date and amount of the next payment due after this credit has been given.

(b) (No change.)

(c) If the error correction or adjustment to an account is related to an improper charge or proceeds improperly held by the licensee on which interest has been precomputed, the licensee may alternatively credit the final maturing installment or installments of the contract, provided that credit is also given the borrower for the proportionate interest originally charged on the amount being credited.

(d) (No change.)

(e) If the error correction or adjustment is made to an account where the interest charge is earned using the true daily earnings method, the licensee must refund the amount found to be due a borrower plus the amount of accrued interest on this correction or adjustment amount.

§1.839. Follow-Up Examination Fees.

[(a) Assessment. The commissioner will assess and collect a nonrefundable examination fee designed to recover the expenditures associated with the examination function, according to the formula in this section.]

[(1) General administrative fee per exam ($150.00). The administrative and necessary costs necessary for the expenditures related to an examination;]

[(2) Administrative fee for each additional day ($100.00). The administrative and indirect costs necessary for the expenditures related to each additional examination day required, and;]

[(3) Hourly examination rate ($60.00). The direct and indirect examiner cost for time required to conduct the examination.]

[(b) Calculation of a day. A day is measured as eight business hours spent on site conducting an examination.]

[(c) Due date. An examination fee is due upon delivery of the examination bill following the conclusion of an examination.]

[(d) Return examinations.] If a follow-up examination visit is required within nine (9) months [180 days] after a written deficiency report has been given as a result of a failure to comply with Chapter 342 of the Texas Finance Code, this chapter, or the special instruction section of the examination report, an examination fee at the hourly rate of $100 may be assessed. [the return examination will be assessed at the rates provided in subsection (a)(3) of this section.]

§1.841. Non-Standard Contract Filing Procedures.

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

(c) Filing requirements. Contract filings must be identified as to the transaction type. Contract filings must be submitted on paper that is suitable for permanent record storage and imaging. Handwritten forms or handwritten corrections will not be accepted. In addition to the paper submission, the licensee must also submit the contract filings in an electronic version. The electronic version must be submitted in a Corel WordPerfect (.wpd), MS Word (.doc), or a text (.txt) format.

(d) Contact person [Person]. One person shall be designated as the contact person for each filing submitted. Each submission should provide the name, address, phone number, and fax number, if available, 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) Filing deadlines. Submission of non-standard contracts is not required until the model contract provisions have been adopted by rule.]

[(1) For subchapter F loans under 342, non-standard contracts are not required to be filed before May 1, 2002.]

[(2) For subchapter E loans under 342, non-standard contracts are not required to be filed until September 1, 2002.]

[(3) For home equity loans, non-standard contracts are not required to be filed before February 1, 2003.]

[(4) For subchapter G purchase money loans, non-standard contracts are not required to be filed before May 1, 2003.]

[(5) For subchapter G home improvement loans, non-standard contracts are not required to be filed before September 1, 2003.]

[(6) For retail installment transactions under Chapter 348, non-standard contracts are not required to be filed before March 1, 2004.]

§1.845. Complaints and Inquiries Notice.

(a) (No change.)

(b) Required notice [Notice].

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

(5) In addition to the notice required to be included on each privacy notice, a [A] notice is also required on each contract of a licensed lender pursuant to §14.104, Texas Finance Code.

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

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

Filed with the Office of the Secretary of State on June 17, 2005.

TRD-200502515
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: July 31, 2005
For further information, please call: (512) 936-7640

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SUBCHAPTER K. PROHIBITIONS ON AUTHORIZED LENDERS

7 TAC §§1.856 - 1.858, 1.861

The Finance Commission of Texas (the commission) proposes amendments to Subchapter K, §§1.856 - 1.858 and 1.861, concerning prohibitions on authorized lenders, in conjunction with the commission's review of Subchapters J, K, P, and R.

The purpose of the amendments to Subchapter K is to add clarification and to correct typographical errors. A clarification has been added to §1.856 to note that a substantially similar statement to the quote contained in this section may be utilized when using the state agency's name. In §1.861, corrections have been made as to whom may be contacted for collection purposes, and in particular, removing the borrower's spouse as a contact in subsections (b) and (e). The remaining changes are technical and non-substantive in nature.

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

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

Comments on the proposed amendments may be submitted in writing to Sealy Hutchings, General Counsel, Office of

Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to sealy.hutchings@occc.state.tx.us.

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

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

§1.856. Use of State Agency Name.

It shall be permissible for a licensee of the Office of Consumer Credit Commissioner to publicly display or advertise the following or a substantially similar statement: "This office is licensed and examined by the Office of Consumer Credit Commissioner of the State of Texas."

§1.857. Full Disclosure Requirements--Other Than Open-End or Revolving Loan Plans.

(a) (No change.)

(b) The information required by this section [~~subsection~~] shall be clearly shown in such a manner as not to be deceiving or misleading.

(c) (No change.)

(d) For purposes of this section, compliance by an authorized lender with the federal [~~Federal~~] Truth in Lending [~~Truth-In-Lending~~] Act and regulations promulgated thereunder relating to closed-end transactions shall constitute compliance with §342.505, Texas Finance Code and these administrative rules.

§1.858. Full Disclosure Requirements--Open-End or Revolving Loan Plans.

(a) Any advertisement of an open-end or revolving loan plan which states any of the specific terms of that plan, shall also clearly and conspicuously set forth the following items:

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

(4) the method by which any charge for insurance, if any, is to be calculated, and;

(5) when periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

(b) For purposes of this section, compliance by an authorized lender with the federal [~~Federal~~] Truth in Lending [~~Truth-In-Lending~~] Act and regulations promulgated thereunder relating to open-end credit transactions shall constitute compliance with the Texas Credit Title and these administrative rules.

§1.861. Collection Contacts.

(a) A licensee or the licensee's agent shall have the right to contact any person in order to secure information concerning a borrower, unless any person other than the borrower, the borrower's spouse, a member of the borrower's household, a co-borrower [~~comaker~~], endorser, surety, or guarantor of the obligation, objects to any contact by a licensee or the licensee's agent. Upon receipt of the objection, the licensee or agent, shall cease and desist from any further contact with the person.

(b) A licensee or the licensee's agent shall not solicit the payment of all or any part of any debt subject to this title from any person other than the borrower, [~~the borrower's spouse, a member of the borrower's household,~~] a co-borrower [~~comaker~~], endorser, surety, or guarantor of the obligation.

(c) (No change.)

(d) [~~Without the prior written consent of the borrower given directly to the licensee or the express permission of a court of competent jurisdiction,~~] A [~~a~~] licensee may not communicate with a borrower in connection with the collection of a loan at the borrower's place of employment if the licensee has received written notification from the borrower or the borrower's employer to cease communications with the borrower while at the place of employment [~~knows or has reason to believe that the borrower's employer prohibits the borrower from receiving the communication~~]. This restriction may be overridden by court order.

(e) Without the prior written consent of the borrower given directly to the licensee or the express permission of a court of competent jurisdiction, a licensee may not communicate any information pertaining to a debt or obligation unless the person receiving the information is the borrower, [~~the borrower's spouse,~~] the borrower's attorney, a consumer reporting agency, another creditor, or the attorney of the creditor. Unless notified pursuant to subsection (a), this prohibition does not apply to a licensee seeking information about the location of the borrower.

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

Filed with the Office of the Secretary of State on June 17, 2005.

TRD-200502517
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: July 31, 2005
For further information, please call: (512) 936-7640

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SUBCHAPTER P. REGISTRATION OF RETAIL CREDITORS

7 TAC §1.901, §1.902

The Finance Commission of Texas (the commission) proposes amendments to Subchapter P, §1.901 and §1.902, concerning registration of retail creditors, in conjunction with the commission's review of Subchapters J, K, P, and R.

The amendments to Subchapter P remove obsolete provisions and correct typographical errors. Subsection (c) has been removed from §1.901, as subsection (c) was only intended to address issues arising within one year after the initial adoption of this rule. In §1.902, the references to Chapter 348 have been deleted, as lenders under Chapter 348 are now required to be licensed (not just registered) with the agency, and are no longer required to pay annual registration fees.

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

For each year of the first five years the Subchapter P rules are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. There is no anticipated cost to persons who are required to comply with the amendments as proposed.

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

Comments on the proposed amendments may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to sealy.hutchings@occc.state.tx.us.

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

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 347, Subchapters J and K.

§1.901. Consumer Notifications.

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

~~[(c) A retail seller as that term is defined in Chapter 345 or in Chapter 348 or a creditor as that term is defined in Chapter 347 may continue to use the notice as previously required by this section without modification for a period of one year following the effective date of this rule.]~~

§1.902. Annual Registration Fees.

(a) (No change.)

(b) An annual fee is required under the provisions of Texas Finance Code, §345.351 or [,] §347.451 [~~or §348.401~~] and shall be payable as follows:

(1) A [~~a~~] retail seller, creditor, holder, or assignee shall pay a registration fee for every chapter under which business is conducted.

(2) A retail seller, holder, creditor, or assignee who begins business under Texas Finance Code, Chapter 345 or [,] 347[~~, or 348~~] shall pay the annual fee within sixty days after the first day of commencing regulated operations.

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

(5) No annual fee is required for a location operated by a retail seller, creditor, holder, or assignee operating under the provisions of Texas Finance Code, Chapter 345 or [,] 347[~~, or 348~~] provided the personnel at the location are not conducting regulated business with the consumer (e.g. storage, web-hosting, or data processing facility).

(c) Evidence of registration. The Office of Consumer Credit Commissioner will issue a decal evidencing registration under the provisions of Texas Finance Code, Chapter 345 or [,] 347[~~, or 348~~] and this rule. This decal shall be:

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

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

Filed with the Office of the Secretary of State on June 17, 2005.

TRD-200502516
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: July 31, 2005
For further information, please call: (512) 936-7640

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SUBCHAPTER R. MOTOR VEHICLE INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§1.1301, 1.1303, 1.1307, 1.1308

The Finance Commission of Texas (the commission) proposes amendments to Subchapter R, §§1.1301, 1.1303, 1.1307 and 1.1308, concerning motor vehicle installment sales contract provisions, in conjunction with the commission's review of Subchapters J, K, P, and R.

The purpose of the amendments to Subchapter R is to make technical corrections, to add clarification, and to update the revised section numbers referencing other law. In §1.1303, the definition of "contract rate" has been added. In §1.1308, clarification has been made concerning the meaning of "peacefully." The remaining changes are technical and non-substantive in nature. Technical corrections to several figures have been made as well.

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

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

Comments on the proposed amendments may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to sealy.hutchings@occc.state.tx.us.

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 authorizes the commission to adopt rules for the enforcement of the motor vehicle installment sales chapter.

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

§1.1301. Purpose.

(a) The purpose of this subchapter is to provide [~~a~~] model provisions and a model plain language contract in English for Texas Finance Code, Chapter 348 motor vehicle installment sales contract provisions. 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. 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 7 TAC §1.841. The commissioner 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.

(b) These provisions are intended to constitute a complete plain language motor vehicle installment sales contract;[,] however, a seller is not limited to the contract provisions contained in these rules.

§1.1303. Definitions.

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

(1) (No change.)

(2) Add-on method--A method for calculating a precomputed time price differential charge in which the retail buyer agrees to pay the total of payments. The total of payments includes both the principal balance of the contract and the time price differential charge. The add-on time price differential charge is calculated at the inception of the contract on the principal balance for the full term, as if the principal balance of the contract did not decline over the term of the contract.

(3) Contract rate--The annual time price differential rate stated in the retail installment contract that accrues or is assessed against the principal balance that is subject to a finance charge for the term of the contract. The contract rate cannot exceed the daily rate converted to an annualized rate.

(4) [~~(3)~~] Creditor--The seller or any subsequent holder or assignee of the retail installment contract.

(5) [~~(4)~~] Daily rate [~~Rate~~]--The rate authorized under Texas Finance Code §348.105, [~~§303.201 or 303.202~~] or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code §348.104, computed on a daily basis using a 365-day [~~365 day~~] calendar year.

(6) [~~(5)~~] Irregular payment contract [~~Payment Contract~~]--A contract:

(A) That is payable in installments that are not consecutive, monthly, and substantially equal in amount; or

(B) The first scheduled installment of which is due later than 1 month and 15 days after the date of the contract.

(7) [~~(6)~~] Regular payment contract [~~Payment Contract~~]--Any contract that is not an irregular payment contract.

(8) [~~(7)~~] Scheduled installment earnings method--The scheduled installment earnings method is a method to compute a 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 [~~subsection~~], the creditor may also earn a $150 acquisition fee for a heavy commercial vehicle, or a $25 fee for other vehicles, 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 [~~Irregular Payment Contract~~] or a regular payment contract [~~Regular Payment Contract~~]. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(9) [~~(8)~~] Seller--The seller of the motor vehicle.

(10) [~~(9)~~] Sum of the periodic balances method (Rule of 78s)--

(A) Under this method, the finance charge refund is calculated as follows:

(i) Subtract an acquisition fee not greater than $150 for a heavy commercial vehicle, or $25 for other vehicles, from the total finance charge.

(ii) Multiply the amount computed in clause (i) of this subparagraph by the refund percentage computed below. The result is the finance charge refund.

(iii) Compute the refund percentage by:

(I) Computing the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full;[,] that is, the date of a month that corresponds to the date of the month that the first installment is due under the contract, or;

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Dividing the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(B) As an alternative for heavy commercial vehicles, as defined in the Texas Finance Code, the sum of the periodic balances method may be computed as follows:

(i) Multiply the total finance charge by a refund percentage determined as follows:

(I) Compute the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full;[,] that is, the date of a month that corresponds to the date of the month that the first installment is due under the contract, or;

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Divide the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(ii) From the result derived in clause (i) of this subparagraph, deduct an acquisition fee not to exceed $150.

(C) The creditor is not required to give a finance charge refund if it would be less than $1.00.

(D) These methods may not be used with an irregular payment contract.

(11) [~~(10)~~] True daily earnings method--The true [~~truly~~] 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 as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(12) [~~(11)~~] Vehicle--A motor vehicle as defined by §348.001(4).

§1.1307 Contract Provisions.

A Chapter 348 motor vehicle installment sales contract may include, the following contract provisions to the extent not prohibited by law or regulation. If the seller desires to assess certain charges or exercise certain rights under one of the following provisions, except provisions relating to default, repossessions, acceleration, and assignment of the contract, the seller must include the provision in the contract. A seller may delete inapplicable provisions. A seller who does not desire to apply a provision is not required to include it in the contract. For example, the seller may omit the balloon payment provisions if there is no balloon payment. A seller may also exclude non-relevant portions of a model clause. For example, a seller who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 348 motor vehicle installment sales contract [~~provisions~~] may contain the following provisions:

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

(8) An itemization [~~Itemization~~] of amount financed [~~Amount Financed~~] box.

(9) - (24) (No change.)

(25) An agreement to keep the motor vehicle insured.

(26) - (29) (No change.)

(30) A transfer of rights provision [~~provisions~~].

(31) - (32) (No change.)

(33) Agreements regarding the care of the motor vehicle, which may include: [~~including~~] keeping the motor vehicle in good working order and repair;[~~,~~] keeping the vehicle free from liens and encumbrances;[~~,~~] not [~~to~~] exposing the motor vehicle to seizure, confiscation, or other involuntary transfer;[~~,~~] and repaying the creditor for any amounts paid to satisfy liens or encumbrances.

(34) - (45) (No change.)

§1.1308. Model Clauses.

The following model clauses provide [~~clause provides~~] the plain language equivalent of provisions found in contracts subject to Chapter 348.

(1) Identification of parties. This information identifies the parties to the contract.

(A) The model identification clause lists the name and address of the creditor, the date of the contract, and the name and address of the buyer. At the creditor's option, a creditor may include an account number or contract number. The model clause reads:
Figure: 7 TAC §1.1308(1)(A)

(B) (No change.)

(2) Assignment of contract [~~Contract~~]. The model clause regarding assignment [~~Assignment~~] of contract [~~Contract~~] reads: "This contract may be transferred by the Seller."

(3) Buyer's affirmation [~~Affirmation~~] and promise [~~Promise~~] to pay [~~Pay~~]. The model clause regarding buyer's affirmation [~~Buyer's Affirmation~~] and promise [~~Promise~~] to pay [~~Pay~~] reads: "The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not."

(4) Inspection acknowledgement [~~Acknowledgement~~]. The model clause regarding inspection acknowledgement [~~Inspection Acknowledgement~~] reads: "I have thoroughly inspected, accepted, and approved the motor vehicle in all respects."

(5) Identification of the motor vehicle [~~Motor Vehicle~~]. The motor vehicle identification information provision should contain the following information about the motor vehicle: the seller's stock number; the manufacturer's year model; the manufacturer's make; the manufacturer's model type or number; the vehicle identification number; the license plate number (if applicable); a new/used designation; and the primary purpose designation. The seller's stock number and the license number are both optional; the omission will not make a contract non-standard. The motor vehicle identification information provision may include additional information about the vehicle including, odometer reading, color, the designation as a heavy commercial vehicle, and key code. If the creditor includes this additional information about the motor vehicle, the change will not make the provision a non-standard provision. The model clause regarding identification [~~Identification~~] of the motor vehicle [~~Motor Vehicle~~] reads:
Figure: 7 TAC §1.1308(5)

(6) Trade-in vehicle description [~~Vehicle Description~~]. The model clause regarding trade-in vehicle description [~~Trade-in Vehicle Description~~] reads:
Figure: 7 TAC §1.1308(6) (No change.)

(7) Truth-in-Lending Act disclosure [~~Disclosure~~]. The model clause regarding Truth-in-Lending Act disclosure [~~Disclosure~~] reads:
Figure: 7 TAC §1.1308(7) (No change.)

(8) Itemization of amount financed [~~Amount Financed~~]. The creditor drafting the contract is given considerable flexibility regarding the itemization [~~Itemization~~] of amount financed [~~Amount Financed~~] disclosure so long as the itemization [~~Itemization~~] of amount financed [~~Amount Financed~~] disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization [~~Itemization~~] of the amount financed [~~Amount Financed~~] discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization [~~Itemization~~] of amount financed [~~Amount Financed~~] would be amended to reflect the dollar amount of the manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) The model clause regarding itemization [~~Itemization~~] of amount financed-sales tax advance [~~Amount Financed-Sales Tax Advance~~] reads:
Figure: 7 TAC §1.1308(8)(A) (No change.)

(B) The model clause regarding itemization [~~Itemization~~] of amount financed-sales tax deferred [~~Amount Financed-Sales Tax Deferred~~] reads:
Figure: 7 TAC §1.1308(8)(B) (No change.)

(9) Documentary fee [~~Fee~~].

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

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

(10) Deferred downpayments [~~Downpayments~~]. The creditor has considerable flexibility in disclosing the deferred downpayments. The model provision discloses the deferred downpayments by placing the information, the due date and dollar amount of the deferred downpayments, in several boxes. If a creditor uses this model provision, the creditor would enter the due date and dollar amount of each deferred downpayment in the appropriate boxes. As an alternative to this model provision, a creditor may disclose the deferred downpayments in the Payment Schedule of the Amount Financed in the federal disclosure box. If a creditor elects this option, the due date and the dollar amount of the deferred downpayment must be shown. If the total amount of the deferred downpayment is not satisfied by the date of the second regularly scheduled installment, the deferred downpayment must be included in the Payment Schedule. As another alternative, the creditor may disclose the deferred downpayment amount [~~or~~] in the Payment Schedule. The model clause regarding deferred downpayments [~~Deferred Downpayments~~] reads:
Figure: 7 TAC §1.1308(10) (No change.)

(11) Required physical damage insurance [~~Physical Damage Insurance~~]. The creditor may chose to omit the statement of the borrower's [~~borrowers~~] right to obtain substitute coverage from another source. The model clause regarding required physical damage insurance [~~Required Physical Damage Insurance~~] reads:
Figure: 7 TAC §1.1308(11)

(12) Optional insurance coverages [~~Insurance Coverages~~]. The model clause regarding optional insurance coverages [~~Optional Insurance Coverages~~] reads:
Figure: 7 TAC §1.1308(12)

(13) Optional credit life [~~Credit Life~~] and accident [~~Accident~~] and health insurance [~~Health Insurance~~]. The model clause regarding optional credit life [~~Optional Credit Life~~] and accident [~~Accident~~] and health insurance [~~Health Insurance~~] reads:
Figure: 7 TAC §1.1308(13)

(14) Liability insurance [~~Insurance~~]. If liability insurance coverage is not included in the contract, any [~~either~~] of the following notices are sufficient to satisfy the requirements of Texas Finance Code §348.205 if printed in a size equal to at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

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

(15) Prohibition against oral modifications [~~Against Oral Modifications~~]. The contract may include a provision barring oral modifications of the contract. A unilateral change to a contract may nevertheless occur as prescribed by the procedures in Subchapter C of Chapter 349. The model clause regarding prohibition against oral modifications [~~Prohibition Against Oral Modifications~~] reads:
Figure: 7 TAC §1.1308(15) (No change.)

(16) Finance charge earnings methods [~~Charge Earnings Methods~~].

(A) Regular transaction [~~Transaction~~] using sum of the periodic balances method.

(i) Sales tax advance [~~Tax Advance~~]. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance [~~Sales Tax Advance~~].

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

(ii) Deferred sales tax [~~Sales Tax~~]. The model clause regarding deferred sales tax [~~Deferred Sales Tax~~] reads: "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00."

(B) True daily earnings method [~~Daily Earnings Method~~].

(i) Sales tax advance [~~Tax Advance~~]. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance [~~Sales Tax Advance~~].

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

(ii) Deferred sales tax [~~Sales Tax~~]: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges."

(C) Scheduled installment earnings method [~~Installment Earnings Method~~]:

(i) Sales tax advance [~~Tax Advance~~]: At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance [~~Sales Tax Advance~~].

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

(ii) Deferred sales tax [~~Sales Tax~~]: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges."

(17) Consumer warning [~~Warning~~]. The following notices satisfy the requirements of Texas Finance Code §348.102(d) if printed in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous.

(A) (No change.)

(B) For contracts using the true daily earnings method. [~~The bracketed portion of the notice may be included at the creditor's option.~~] The notice may read: "NOTICE TO THE BUYER -- I WILL NOT SIGN THIS CONTRACT BEFORE I READ IT OR IF IT CONTAINS ANY BLANK SPACES. I AM ENTITLED TO A COPY OF THE CONTRACT I SIGN. UNDER THE LAW, I HAVE THE RIGHT TO PAY OFF IN ADVANCE ALL THAT I OWE AND UNDER CERTAIN CONDITIONS MAY SAVE A PORTION OF THE FINANCE CHARGE. I WILL KEEP THIS CONTRACT TO PROTECT MY LEGAL RIGHTS."

(18) Buyer's acknowledgment [~~Acknowledgment~~] of contract receipt [~~Contract Receipt~~].

(A) The following acknowledgments conform to the requirements of Texas Finance Code §348.112 if they appear directly above the place for the buyer's signature in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. A creditor may choose [~~close~~] the most appropriate option:

(i) - (iv) (No change.)

(B) Acceptance of contract receipt [~~Contract Receipt~~]. The model clause [~~clauses~~] regarding acceptance [~~Acceptance~~] of contract receipt [~~Contract Receipt~~] reads:
Figure: 7 TAC §1.1308(18)(B) (No change.)

(19) Consumer credit commissioner notice [~~Credit Commissioner Notice~~]. The following notice satisfies the requirements of Texas Finance Code §14.104 and §1.901 of this title relating to Consumer Notifications. The telephone number of the retail seller, creditor, or holder may be printed in conjunction with the name and address of the retail seller, creditor, or holder elsewhere on the contract or agreement provided the notice required by Texas Finance Code §14.104 is amended to direct the reader's attention to the area of the contract where the telephone number may be found. The consumer credit commissioner notice reads: "To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, Texas 78705-4207; (800) 538-1579; (512) 936-7600, and can be contacted relative to any inquiries or complaints."

(20) Finance charge refund method [~~Charge Refund Method~~]. If a contract uses the finance charge refunding method of the sum of the periodic balances or the scheduled installment earnings method, the finance charge refund [~~Finance Charge Refund~~] provision reads: "If I prepay in full, I may be entitled to a refund of part of the Finance Charge." On contracts using the true daily earnings method, this Finance Charge Refund provision should not be disclosed because it is not applicable.

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

(21) Application of payments [~~Payments~~]. In this provision, the term "finance charge" should not be construed to have the same meaning as Finance Charge as defined by the Truth in Lending [~~Truth-in-Lending~~] Act. A default or late charge is considered to be a finance charge under Texas law; therefore, a default or late charge can be charged and collected as part of the earned finance charge. At the creditor's option the creditor may modify the application [~~Application~~] of payments [~~Payments~~] language by adding "and late charges" following the phrase "earned but unpaid finance charge." The model clause reads:
Figure: 7 TAC §1.1308(21) (No change.)

(22) Effect of early [~~Early~~] and late payments [~~Late Payments~~]. True daily earnings method: The model clause reads: "You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase."

(23) Interest on matured amount [~~Matured Amount~~]. The model provision for interest on any matured amount at any rate permitted by law reads: "If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due." In this provision, the maximum rate allowed by law refers to the rate found in Chapter 303 of the Texas Finance Code.

(24) Balloon payments [~~Payments~~]. If the contract has a balloon payment, the creditor must include a provision in the contract that allows the buyer to refinance the balloon payment over time. The provision must comply with Section 348.123 of the Texas Finance Code. The model provision for defining the balloon payment reads: "A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment."

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

(25) Agreement to keep [~~Keep~~] the motor vehicle insured [~~Motor Vehicle Insured~~]. The model clause regarding agreement [~~Agreement~~] to keep [~~Keep~~] the motor vehicle insured [~~Motor Vehicle Insured~~] reads: "I agree to have physical damage insurance covering loss or damage to the motor vehicle for the term of this contract. The insurance must cover your interest in the vehicle." The creditor may include the following optional provision: "The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage."

(26) Your right [~~Right~~] to purchase required insurance [~~Purchase Required Insurance~~] if I fail [~~Fail~~] to keep [~~Keep~~] the motor vehicle insured [~~Motor Vehicle Insured~~]. The model clause regarding agreement [~~Agreement~~] to allow creditor [~~Allow Creditor~~] to purchased required insurance [~~Purchase Required Insurance~~] if buyer fails [~~Buyer Fails~~] to keep [~~Keep~~] the motor vehicle insured [~~Motor Vehicle Insured~~] reads: "If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file."

(27) Physical damage insurance proceeds [~~Damage Insurance Proceeds~~]. The model clause regarding physical damage insurance proceeds [~~Physical Damage Insurance Proceeds~~] reads: "I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me."

(28) Returned insurance premiums [~~Insurance Premiums~~] and service contract charges [~~Service Contract Charges~~]. The contract may authorize a creditor to apply charges returned to the creditor for canceled insurance, service contract, and extended warranty charges to the buyer's obligation under the agreement as permitted by law, regardless of whether or not the buyer is in default under the contract.

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

(29) Application of credits [~~Credits~~]. The model clause regarding application [~~Application~~] of credits [~~Credits~~] reads: "Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments."

(30) Transfer of rights [~~Rights~~]. The seller does not have a duty to disclose the terms on which a contract or a balance under a contract is acquired, including any discount or difference between the rates, charges, or balance under the contract and the rates, charges, or balance acquired as provided by Texas Finance Code, §348.301. The model clause regarding transfer [~~Transfer~~] of rights [~~Rights~~] reads: "You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies."

(31) Grant of a security interest [~~Security Interest~~] in collateral [~~Collateral~~]. The model clause regarding a description of a security interest granted in a typical motor vehicle installment sale reads:[.]
Figure: 7 TAC §1.1308(31) (No change.)

(32) Agreements regarding [~~Regarding~~] the use [~~Use~~] and transfer [~~Transfer~~] of the motor vehicle [~~Motor Vehicle~~]. The contract may contain a provision prohibiting a buyer from transferring any interest in the motor vehicle without the creditor's written permission, requiring the buyer to notify the seller of change of address, or prohibiting the removal of the motor vehicle from Texas. The transfer fee limitation establishes the maximum fee that a creditor could contract for, charge, or collect for transferring the buyer's equity in the motor vehicle to another party. If desired, a creditor could amend the model provision to reflect a lower transfer fee amount. The model clause regarding agreements regarding the use and transfer of the motor vehicle reads: "I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of $25.00 ($50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission."

(33) Care of the motor vehicle [~~Motor Vehicle~~]. The contract may obligate the buyer to keep the motor vehicle free of liens and encumbrances, require the buyer to keep the motor vehicle in good working order and repair, or prohibit the buyer from allowing the motor vehicle to be exposed to seizure, confiscation, or other involuntary transfer. The model clause regarding care of the motor vehicle reads: "I agree to keep the motor vehicle free from all liens, and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount."

(34) Default rights [~~Rights~~] and repossession provisions [~~Repossession Provisions~~]. This subsection details agreements allowing acceleration of the buyer's obligation upon the buyer's default or upon the creditor's determination of insecurity as permitted by Business and Commerce Code, §1.309 [~~1.208~~]. The following provisions are samples of model clauses of some of the default rights and remedies of a creditor in a typical motor vehicle installment sale transaction:

(A) Acceleration and default [~~Default~~]. The model clause regarding acceleration [~~Acceleration~~] and default [~~Default~~] reads:
Figure: 7 TAC §1.1308(34)(A) (No change.)

(B) Late charge [~~Charge~~]. The model clause regarding late charge [~~Late Charge~~] reads: "I will pay you a late charge as agreed to in this contract when it accrues."

(C) Repossession. At the creditor's option a creditor may choose one of the following model provisions [~~provision~~] pertaining to repossession [~~repossessions~~]. The model clauses regarding repossession read [~~reads~~]:

(i) "If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle." In this provision, the term "peacefully" is intended to have the same meaning as "without breaching the [~~breach of~~] peace," as determined by the Texas courts, and as found under clause (ii) of this subparagraph.

(ii) (No change.)

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

(35) Acceleration, waiver [~~Waiver~~] of notice [~~Notice~~] of intent [~~Intent~~] to accelerate [~~Accelerate~~], and notice [~~Notice~~] of acceleration [~~Acceleration~~]. A model clause regarding the holder's right to accelerate maturity of the contract and to waive the buyer's or co-buyer's common law right to notice of intent to accelerate, notice of acceleration, or both reads: "If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe."

(36) Refund upon acceleration [~~Upon Acceleration~~]. Sum of the periodic balances method or scheduled installment earnings method: The model clause regarding the buyer's right to a finance charge refund upon acceleration of the contract reads: "If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full."

(37) Integration and severability [~~Severability~~]. The contract may include an integration clause indicating that the parties to the contract intend it to be final written expression their agreement, such as: "This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle." The contract may also include a severability clause providing that the invalidity of any portion of the contract does not render invalid other parts of the contract that would otherwise be valid. The model clause regarding severability reads: "If any part of this contract is not valid, all other parts stay valid."

(38) No waiver [~~Waiver~~] and limitations [~~Limitations~~] on creditor's rights [~~Creditor's Rights~~] and usury savings [~~Usury Savings~~].

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

(39) Applicable law [~~Law~~]. A model clause to establish the law that will apply to the contract reads: "Federal and Texas law apply to this contract."

(40) Warranty disclaimer [~~Disclaimer~~]. The disclaimer of express and implied warranties should be set out from the surrounding text so that the disclosure is conspicuous. A disclaimer of express and implied warranties, such as the following, is permitted by Article 2, Subchapter C [~~Section 3~~] of the Business and Commerce Code, and reads: "Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide."

(41) Preservation of consumer's claims [~~Consumer's Claims~~] and defenses notice [~~Defenses Notice~~]. This notice only applies if the motor vehicle financed in the contract was purchased for personal, family, or household use. The preservation of consumer's claims and defenses notice disclosure should be set out from the surrounding text so that the disclosure is in all capitals, boldfaced [~~bold faced~~] and in at least 10-point [~~10 point~~] type. The preservation of consumer's claims and defenses notice disclosure, as required by the Federal Trade Commission's preservation [~~Preservation~~] of consumer's claims and defenses notice, 16 C.F.R. §433.1 et seq., reads: "NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS AND SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use."

(42) Used car buyer's guide [~~Car Buyers Guide~~]. The used car buyer's guide [~~Used Car Buyers Guide~~] disclosure should be set out from the surrounding text so that the disclosure is conspicuous. The disclosure should be prefaced by the words "In this box only, the word "you" refers to the Buyer." The used car buyer's guide [~~Used Car Buyers Guide~~] disclosure, as required by the Federal Trade Commission's Used Car Regulation, 16 C.F.R. §455.1 et seq., reads:

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

(43) Negotiability and assignment [~~Assignment~~]. The disclosure of the negotiability of the contract should be placed on the front side of the contract and may read:

(A) "The Annual Percentage Rate may be negotiated with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge";

(B) "The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance"; or

(C) "A customer may obtain their own financing. The finance charge may be negotiable. The dealership may assign the retail installment contract. There is no duty to disclose the terms for the sale of this contract (e.g., price paid to retail seller to purchase retail installment contract)."

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

Filed with the Office of the Secretary of State on June 17, 2005.

TRD-200502518
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: July 31, 2005
For further information, please call: (512) 936-7640

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. RULES OF OPERATION FOR PAWNSHOPS

SUBCHAPTER B. PAWNSHOP LICENSE

7 TAC §§85.202, 85.203, 85.205, 85.206, 85.210, 85.211

The Finance Commission of Texas (the commission) proposes amendments to Subchapter B, §§85.202, 85.203, 85.205, 85.206, 85.210, and 85.211, concerning pawnshop license, in conjunction with the commission's review of Chapter 85.

In general, the purpose of the amendments is to conform the rules to the commission's current practice, to add clarification, to correct section numbers referencing other law, and to correct typographical errors. Sections 85.202, 85.205, and 85.210 have been revised, mainly to update form numbers and to align the rules with current agency licensing application procedures. In §85.203, three types of revisions have occurred: (1) the substantive language of §85.409 (which is being proposed for repeal separately in this issue of the *Texas Register*) has been added to §85.203, in order to more logically group together in one section the relocation of the pawnshops as well as the pawn transactions; (2) form number updates have been made; and (3) typographical errors have been corrected. In §85.206, a citation concerning the rules governing administrative hearings has been corrected. Section 85.211 has been updated to correlate with current agency practice concerning annual licensing fees.

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

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

Comments on the proposed amendments may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to sealy.hutchings@occc.state.tx.us.

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 §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 371.

§85.202. Filing of New Application.

(a) An application for issuance of a new pawnshop license must be submitted on forms prescribed by the commissioner at the date of filing. The application shall include the following:

(1) Required forms. All questions must be answered.

(A) Application for License (ADM 10a) [~~form~~ (~~Form ADM-10/11~~)].

(i) A physical street address must be listed for the proposed location for which the applicant can show proof of ownership or an executed lease agreement. A post office box or a mail box location at a private mail-receiving service may not be used except for a physical location that does not receive general mail delivery. An application will not be accepted if the address or the full legal property description has not yet been determined or the application is for an inactive license.

(ii) Each person who is responsible for the day-to-day operation of one or more of the applicant's proposed locations must be named. This person must be:

(I) a principal party as defined below;

(II) a licensed pawnshop employee identified by license number; or

(III) an applicant for a pawnshop employee license with the date of application.

(iii) On an application for a sole proprietorship or a partnership, the proprietor and each general partner must sign. On an application for a corporate applicant, two officers must sign unless only one officer of the corporation has been appointed. On an application for a limited liability company, two authorized members must sign unless the company only has one member. On an application for a trust or an estate, each trustee or executor must sign.

(B) Application Questionnaire (ADM 10b). All questions must be answered.

(C) Disclosure of Owners and Principal Parties (ADM 11).

(i) [~~(ii)~~] If the applicant is a corporation, then the officers and directors' sections on the form (ADM 11 [~~ADM-011~~]) must be completed.

(ii) [~~(iii)~~] The section inquiring about owners requires an answer based upon the applicant's entity type. If an individual's interest in an entity is community property, then a spouse with a community property interest must also be listed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming that status must be provided.

(I) Sole proprietorship. The individual owning and operating the business must be named.

(II) General partnership. Each partner must be listed and the percentage of ownership stated.

(III) Corporation. Each shareholder holding voting stock must be named if the corporation is privately held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be attached that describes each level of ownership and management. This narrative or diagram requires the listing of the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(IV) Limited partnership. Each partner, general and limited, must be listed and the percentage of ownership stated. If a partner is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership. This narrative or diagram requires the listing of the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(V) Limited liability company. Each manager, officer, agent, and member, as those terms are used by the Texas Limited Liability Company Act, Texas Civil Statutes Art. 1528n, must be named. If a member is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership. This narrative or diagram requires the listing of the names of all

officers, directors, and stockholders owning 5% or more stock at each level.

(VI) Trusts or estates. Each beneficiary, trustee, and executor must be named.

~~*[(iv)* Manager. Each person who is responsible for the day-to-day operation of one or more of applicant's proposed locations must be named. The manager must be:]~~

~~*[(I)* a principal party as defined above;]~~

~~*[(II)* a licensed pawnshop employee identified by license number; or]~~

~~*[(III)* an applicant for a pawnshop employee license with the date of application.]~~

~~*[(v)* Supervisor. Each person who will be responsible for the supervision of a licensed location must be named. The supervisor must be:]~~

~~*[(I)* a principal party as defined above;]~~

~~*[(II)* a licensed pawnshop employee identified by license number; or]~~

~~*[(III)* an applicant for a pawnshop employee license with the date of application.]~~

~~*[(vi)* Signature. On an application for a sole proprietorship or a partnership, each proprietor and general partner must sign. On an application for a corporate applicant, two officers must sign unless only one officer of the corporation has been appointed. On an application for a limited liability company, two authorized members must sign unless the company only has one member. On an application for a trust or an estate, each trustee or executor must sign.]~~

(D) [~~(B)~~] Statutory Agent Disclosure [~~agent disclosure~~] (ADM 13 [~~Form ADM-13~~]). This form must be completed by all applicants. 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 an individual, the address must be a residential address. On an application for a corporation, the statutory agent listed on Form ADM 13 [~~ADM-13~~] should be the registered agent listed in the articles of incorporation. On an application for a limited liability company, the statutory agent listed on Form ADM 13 [~~ADM-13~~] must be the registered agent listed in the articles of organization. If the statutory agent is not listed in the relevant organizational document, then the applicant must submit certified minutes appointing the new agent.

(E) [~~(C)~~] Personal Affidavit [~~affidavit~~] (ADM 15a) [~~(Form ADM-15/16)~~]. Each individual listed on the Disclosure of Owners and Principal Parties (ADM 11) [~~license application (ADM-10/11)~~] as a principal party[~~, except for a pawnshop employee or an applicant for a pawnshop employee license,~~] must complete this form. [~~The percentage of ownership stated on this form must correspond to the individual's percentage listed on the license application Form ADM-10/11.~~] The record of business association must also include the individual's association with the entity applying for the license.

(F) Personal Employment History (ADM 15b). A continuous 10-year history must be provided.

(G) Personal Questionnaire (ADM 16). All questions must be answered.

(H) [~~(D)~~] Fingerprint Cards [~~cards~~]. A complete set of legible fingerprints shall be provided for each individual having a substantial relationship with the applicant. An individual has a substantial relationship with an applicant if it is a "principal party" as that term is defined in [~~7 TAC~~] §85.102 of this title. An individual who has previously been licensed by the commissioner or a principal party of an entity currently licensed by the commissioner is not required to provide fingerprints. The commissioner may require fingerprints of an employee or another person with some relationship to the applicant if the commissioner believes that the individual's involvement in the pawnshop operation is relevant to the applicant's eligibility for a license. All fingerprints should be submitted on the format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation. A request for fingerprint cards may be made by submitting a completed Fingerprint Order Form (ADM 68) [~~Form ADM-030~~].

(I) [~~(E)~~] Personal Financial Statement [~~statement~~] (ADM 17 [~~Form ADM-17/18/19~~]) and Supporting Financial Information (ADM 18/19).

(i) General information. A financial statement must be dated no earlier than sixty (60) days prior to the date of application. An applicant may also submit an audited financial statement dated within one year prior to the application date in lieu of completing the Supporting Financial Information (ADM 18/19) [~~in order to expedite verification procedures~~]. A financial statement must be certified as true, correct, and complete by a principal party. A financial statement should be prepared in accordance with generally accepted accounting principles (GAAP). A financial statement must reflect the net assets as defined in the Texas Pawnshop Act §371.003 of at least the lesser of the following amounts:

(I) As [~~The amount~~] required in the Texas Pawnshop Act §371.072(a), $150,000; or

(II) The amount required by the Texas Pawnshop Act §371.072(b) as the license existed or should have existed under the law and rules in effect on August 31, 1999. A change in net asset requirement occurs with respect to any change of ownership or other event causing a change in the net asset requirement that may have occurred prior to September 1, 1999. The change in the net asset requirement is effective as of the date of change of ownership or other event causing the change of the net asset requirement.

(ii) Sole proprietorship. A sole proprietor must complete all sections of the Personal Financial Statement (ADM 17) [~~Form ADM-17~~] and the Supporting Financial Information (ADM 18/19) [~~attached schedules, Form ADM-18/19~~], or provide a personal financial statement that contains all of the information requested by Forms ADM 17/18/19 [~~ADM-17/18/19~~].

(iii) Partnership. A balance sheet for the partnership itself must be submitted. In addition, each general partner must submit a balance sheet. Each balance sheet for the partnership and the partners must be dated the same day. The information requested in Supporting Financial Information (ADM 18/19) [~~Schedules 1-6 (ADM-18/19)~~] must be submitted and attached to any balance sheet that is appended to the application.

(iv) Corporation or limited liability company. A corporation or a limited liability company must file a balance sheet. The information requested in Supporting Financial Information (ADM 18/19) [~~Schedules 1-6 (ADM-18/19)~~] must be submitted and attached to any balance sheet that is appended to the application. A financial statement is generally not required of related parties, but may be required by the commissioner if the commissioner believes the information is relevant.

(v) Trusts or estates. A trust or an estate must file a balance sheet. The information requested in Supporting Financial

Information (ADM 18/19) [~~Schedules 1-6 (ADM-18/19)~~] must be submitted and attached to any balance sheet that is appended to the application. A financial statement is generally not required of related parties, but may be required by the commissioner if the commissioner believes the information is relevant.

(J) [~~(F)~~] Assumed Name Certificate [~~name certificate (Forms ADM-20 and ADM-21)~~]. For an applicant that does business under an assumed name as that term is defined in Tex. Bus. & Comm. Code, §36.02(7), an assumed name certificate must be filed as provided in this subparagraph [~~subsection~~].

(i) Corporation, limited partnership, or limited liability company. An applicant using or planning to use an assumed name must file an assumed name certificate (ADM-21 or its equivalent) in compliance with Tex. Bus. & Comm. Code, §36.0011, as amended. Evidence of the filing bearing the appropriate filing stamp must be submitted or, alternatively, a certified copy.

(ii) All other applicants. An applicant using or planning to use an assumed name must file an assumed name certificate (ADM-20 or its equivalent) with the county clerk of the county where the proposed business is located in compliance with Tex. Bus. & Comm. Code, §36.0010, 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.

(2) Other required filings.

(A) (No change.)

(B) Entity documents.

(i) (No change.)

(ii) Corporation.

(I) A corporate applicant, domestic or foreign, must provide the following documents:

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

(-c-) Minutes of corporate meetings that record the election of each current officer and director as listed on the Disclosure of Owners and Principal Parties (ADM 11) [~~license application (Form ADM-10/11)~~]; and

(-d-) (No change.)

(II) - (III) (No change.)

(iii) - (iv) (No change.)

(C) - (E) (No change.)

(F) Proof of general liability and fire insurance. Each applicant shall file proof of insurance as required in §85.403 of this title [~~a copy of a general liability and fire insurance policy in an amount sufficient to protect pledged goods including jewelry~~]. The policy must explicitly cover loss of pledged goods.

(b) Subsequent applications. If the applicant is currently licensed and filing an application for a new location, the applicant must provide the forms and other information that are unique to the new location including the Application for License (ADM 10a) [~~application form (ADM 10/11)~~] and an updated financial statement as provided in this section. Other information required by this section need not be filed if the information on file with the agency is current and valid.

(c) (No change.)

§85.203. Relocation.

(a) Definition.

(1) As used in [~~this~~] §371.059 of the Texas Pawnshop Act and in this section, the "relocation of a licensed pawnshop" means either:

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

(2) As used in §371.059 of the Texas Pawnshop Act and in this section, ["]the relocation of a licensed pawnshop["] means the act of moving an existing pawnshop license from a location at which or premises in which a pawnbroker holds a pawnshop license to a new location.

(b) (No change.)

(c) Filing requirements. An application for relocation must be submitted on forms prescribed by the commissioner. The application for relocation shall include the following:

(1) Application for Relocation (ADM 36) [~~Change of address application form (Form ADM-22)~~].

(2) Personal Financial Statement [~~statement~~] (ADM 17) and Supporting Financial Information (ADM 18/19) [~~(ADM-17/18/19)~~]. If the license requested for relocation includes the activation of a license that is inactive at the date of the request for relocation, an updated financial statement is required. The instructions in [~~7 TAC~~] §85.202 of this title are applicable to this filing.

(3) Other required filings.

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

(D) Proof of general liability and fire insurance. If the license requested for relocation includes the activation of a license that is inactive at the date of the request for relocation, proof of insurance as required in §85.403 of this title [~~a copy of a general liability and fire insurance policy in an amount sufficient to protect pledged goods including jewelry~~] must be filed. The policy shall explicitly cover loss of pledged goods.

(d) (No change.)

(e) Notice to customer. A written notice of relocation must be given to each pledgor [~~pledger~~] whose pledged goods will be moved. Five days prior to relocation the pawnbroker must mail written notices to each pledgor [~~pledger~~] who has not been given a written notice prior to that date. A notice must identify the pawnshop, both the old and the new locations [~~location~~], the telephone number of the new location, and the date the relocation is effective. The commissioner may modify the notification requirement if the relocation adversely affects pledgors [~~pledgers~~]. The modification may require the pawnbroker to extend the maturity date of pawn transactions or waive the collection of pawn service charges which may accrue after relocation. No relocation may be made which will adversely affect pledgors [~~pledgers~~] to the extent that redemption is unreasonable or impossible due to the distance between the locations. The commissioner may approve notification by signs in lieu of notification by mail if no pledgors [~~pledgers~~] will be adversely affected. When a relocation also involves a transfer of ownership, the buyer may agree to assume responsibility for compliance with this subsection.

(f) (No change.)

(g) Pawn transactions. If the pawnbroker is only transferring pawn transactions from one licensed location to another licensed location, the pawnbroker must comply with subsection (e) of this section and provide, if requested, a list of pawn transactions transferred. This list of transferred pawn transactions shall include the pawn ticket number and the full name of the pledgor.

§85.205. Transfer of License.

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

(c) Filing requirements. An application for transfer of a pawnshop license must be submitted on forms prescribed by the commissioner. The application for transfer must include the following:

(1) Application for License (ADM 10a) [~~Application form (Form ADM-10/11)~~]. The instructions in [~~7 TAC~~] §85.202 of this title are applicable to this filing.

(2) Application Questionnaire (ADM 10b). The instructions in §85.202 of this title are applicable to this filing.

(3) Disclosure of Owners and Principal Parties (ADM 11). The instructions in §85.202 of this title are applicable to this filing.

(4) [~~(2)~~] Statutory Agent Disclosure [~~agent disclosure~~] (ADM 13 [~~Form ADM-13~~]). The instructions in [~~7 TAC~~] §85.202 of this title are applicable to this filing.

(5) [~~(3)~~] Personal Affidavit [~~affidavit~~] (ADM 15a [~~Form ADM-15/16~~]). Each individual listed on the Disclosure of Owners and Principal Parties (ADM 11) as [~~license application (ADM-10/11) who is~~] a principal party, [~~except for a pawnshop employee or an applicant for a pawnshop employee license,~~] of the transferee must complete this form. The instructions set forth in [~~7 TAC~~] §85.202 of this title are applicable to this filing.

(6) Personal Employment History (ADM 15b). A continuous 10-year history must be provided.

(7) Personal Questionnaire (ADM 16). All questions must be answered.

(8) [~~(4)~~] Fingerprint Cards [~~Fingerprints~~]. A complete set of legible fingerprints shall be provided for each individual having a substantial relationship with the applicant. An individual has a substantial relationship with an applicant if it is a "principal party" as that term is defined in [~~7 TAC~~] §85.102 of this title. An individual who has previously been licensed by the commissioner or a principal party of an entity currently licensed by the commissioner is not required to provide fingerprints. The commissioner may require fingerprints of an employee or another person with some relationship to the applicant if the commissioner believes that the individual's background history is relevant to the applicant's eligibility for a license. All fingerprints should be submitted on a format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation. A request for acceptable fingerprint cards may be made by submitting a completed Fingerprint Order Form (ADM 68) [~~Form ADM-030~~].

(9) [~~(5)~~] Evidence of the transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application. This must include one of the following:

(A) a copy of the asset purchase agreement when the license or other assets have been purchased, including a statement relating to the sale of the license;

(B) a copy of the stock purchase agreement or other evidence of a stock transfer; or

(C) a copy of any document that transferred ownership in a license [~~licensee~~] by gift, devise, or descent, such as a probated will or a court order.

(10) [~~(6)~~] Personal Financial Statement (ADM 17) and Supporting Financial Information (ADM 18/19) [~~statement (ADM-17/18/19)~~]. The instructions in [~~7 TAC~~] §85.202 of this title are applicable to this filing.

(11) [~~(7)~~] Other required filings. All filings required of new license applicants pursuant to [~~7 TAC~~] §85.202 of this title must be filed and completed by any applicant for transfer of a license. If the applicant is currently licensed and acquiring another location, the applicant must provide the information that is unique to the new location. Other information required by this subsection need not be filed if the information on file with the agency is current and valid.

(d) Transferee operating under transferor's [~~transferors~~] license. The commissioner may approve a written agreement whereby a transferor grants a transferee the authority to operate under the transferor's license pending approval of the transferee's license application. Within three (3) business days after the date of sale the written agreement between the transferor and transferee must be submitted with a request to operate under the transferor's license. The agreement must provide that the transferor accepts full responsibility to the commissioner and any customer of the licensed business for any acts of the transferee in connection with the operation of the business. The written agreement between the transferor and the transferee must be submitted with a request to operate under the transferor's license. The agreement may include a provision whereby the transferee may operate using the transferee's name during the pendency of the application if the transferee has an existing pawnshop license issued under this chapter. The agreement shall be for a limited time as provided in the agreement and in no case may such authority extend beyond 180 days. The commissioner may deny a request for permission to operate during the pendency of the application.

(e) (No change.)

§85.206. Processing of Application.

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

(g) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. Also, upon a proper and timely protest pursuant to subsection (e) of this section, a hearing shall be set. This hearing shall be conducted within 60 days of the date of the appeal or protest unless the parties agree to an extension of time or the administrative law judge grants an extension of time pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and §9.1 [~~7 TAC §9.01~~] et seq. of this title. The commissioner shall make a final decision approving or denying the license.

(h) (No change.)

§85.210. Designation of Active or Inactive Status.

(a) Inactivation of an active license. A licensee may cease operating a pawnshop and render the license inactive by giving notice of the cessation of operations to the commissioner not less than 30 days prior to the anticipated cessation date. Notification must be filed on the license amendment form (ADM 37) [~~(ADM-22)~~]. The notice must include a valid mailing address, the fee for amending the license, a certification that no loans will be made or collected under this license until it is activated, a notice to pledgors that pawn loans are being relocated, and a plan ensuring pledged goods are made available for redemption. If an active license is not being used for the active operation of a pawnshop, the commissioner may unilaterally place the license in inactive status.

(b) (No change.)

§85.211. Fees.

(a) New licenses. A $500 investigation fee is assessed each time an application for a new license is filed and is non-refundable. In addition, the applicant is initially required to pay the fees required by subsection (e)(6) of this section [~~an annual license fee of $100 that is not prorated but is refundable if the license application is denied~~].

(b) Subsequent licenses. A $250 investigation fee is assessed each time an application for a new license of an existing licensee is

filed or if the application involves substantially identical principals and owners of a licensed pawnshop and is non-refundable. In addition, the applicant is initially required to pay the fees required by subsection (e)(6) of this section [~~an annual license fee of $100 that is not prorated but is refundable if the license application is denied~~].

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

(e) Annual renewal [~~Renewal~~] and examination assessment [~~Examination Assessment~~].

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

(6) Upon approval of a new pawnshop license pursuant to [~~7 TAC~~] §85.206 of this title, the first year's operational assessment fee shall be $430.

(f) - (j) (No change.)

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

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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SUBCHAPTER C. PAWNSHOP EMPLOYEE LICENSE

7 TAC §§85.301, 85.303, 85.304

The Finance Commission of Texas (the commission) proposes amendments to Subchapter C, §§85.301, 85.303, and 85.304, concerning pawnshop employee license, in conjunction with the commission's review of Chapter 85. In addition, the commission proposes the adoption of new §85.308, published elsewhere in this issue of the *Texas Register*.

In general, the purpose of the amendments is to conform the rules to the commission's current practice, to correct a section number referencing other law, to add clarification, and to correct typographical and grammatical errors. A form number has been updated in §85.301 in order to align the rule with current agency licensing application procedures. A phrase has been moved for clarity to correct a grammatical error in §85.303. In §85.304, a citation concerning the rules governing administrative hearings has been corrected.

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

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

Comments on the proposed amendments may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to sealy.hutchings@occc.state.tx.us.

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 §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 371.

§85.301. Filing of New Application.

An application for issuance of a new employee license must be submitted on forms prescribed by the commissioner. The application shall include the following required forms. All questions must be answered.

(1) Application Form [~~form~~] (ADM 30/31 [~~Form ADM-30/31~~]).

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

(2) Fingerprint Cards [~~cards~~]. A complete set of legible fingerprints shall be provided for each applicant. An individual who has previously been licensed by the commissioner is not required to provide fingerprints. The commissioner may require fingerprints of an employee if the commissioner believes that the individual has not been fingerprinted for a significant amount of time and believes a new set of fingerprints might provide additional information about the person's criminal background. All fingerprints should be submitted on the format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation. A request for acceptable fingerprint cards may be made by submitting a completed ADM 68 [~~Form ADM-025~~].

§85.303. Notification of Hiring.

It is the responsibility of a pawnshop to notify the commissioner within a reasonable period of time when a licensed employee begins working at a pawnshop [~~within a reasonable period of time~~] whose address is different from that printed on the employee's license. A reasonable period of time is within one week from the issuance of the initial wage payment or in accordance with a standard preapproved reporting schedule.

§85.304. Processing of Application.

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

(e) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. This hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and [~~7 TAC~~] §9.1 [~~9.01~~] et seq. of this title. When a hearing is requested following an initial license application denial, the hearing shall be held within 60 days after a request for a hearing is made unless the parties agree to an extension of time. The commissioner shall make a final decision approving or denying the license application after receipt of the proposal for decision from the administrative law judge.

(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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Leslie L. Pettijohn
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Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7640

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7 TAC §85.308

The Finance Commission of Texas (the commission) proposes new §85.308, concerning the availability of pawnshop employee license information, in conjunction with the commission's review of Chapter 85. The purpose of the new rule is to require that pawnbrokers maintain readily available copies of pawnshop employee licenses and documents relating to pending pawnshop employee applications. This rule formalizes an existing examination practice and the recordkeeping commonly in place by pawnshops relative to pawnshop employee licenses.

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

Commissioner Pettijohn also has determined that for each year of the first five years the new rule as proposed will be in effect, the public benefit anticipated as a result of the new rule will be to help ensure that pawnshop employees are properly licensed to conduct pawn transactions and that pawnshop records will appropriately reflect an employee's status (i.e., licensed or pending). There is no anticipated cost to persons who are required to comply with the new rule as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the section as proposed, as it is the agency's experience that many pawnshop employees already display their licenses within the pawnshops.

Comments on the proposed new rule may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to sealy.hutchings@occc.state.tx.us.

This new rule is 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 §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the proposed new section are contained in Texas Finance Code, Chapter 371.

§85.308. Availability of Pawnshop Employee License Information.

A pawnbroker must maintain adequate written documents demonstrating that all pawnshop employees are either properly licensed pursuant to Texas Finance Code, §371.101 or have applied for a pawnshop employee license. During an examination by the commissioner or the commissioner's representative, or an inspection by a peace officer, copies of the pawnshop employee licenses or copies of records relating to any pending applications for pawnshop employee licenses must be readily available.

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. OPERATION OF PAWNSHOPS

7 TAC §§85.401, 85.404, 85.407, 85.410, 85.413, 85.416, 85.418, 85.420

The Finance Commission of Texas (the commission) proposes amendments to Subchapter D, §§85.401, 85.404, 85.407, 85.410, 85.413, 85.416, 85.418, and 85.420, concerning operation of pawnshops, in conjunction with the commission's review of Chapter 85. The commission is proposing the repeal of §85.409, which is published elsewhere in this issue of the *Texas Register*. Amendments to §85.402 and §85.405 will be proposed at a later date, depending upon the outcome of pending legislation.

In general, the purpose of the amendments is to add clarification, to correct section numbers referencing other law, and to correct typographical errors. The word "national" has been replaced by "federal" to clarify which holidays fall under §85.401. Citation references have been corrected in §85.404 and §85.420. Clarifying language has been added to §85.407 and §85.413. In §§85.410, 85.413, and 85.418, typographical errors have been corrected. New subsection (c) has been added to §85.416 in reference to the translation of foreign text in advertisements. Also, technical corrections have been made to figures contained within §85.407 and §85.418.

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

Commissioner Pettijohn also has determined that for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of the proposed amendments 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 addition of subsection (c) to §85.416 provides parallel language to that which is contained in 7 TAC §1.834, which is applicable to regulated lenders, concerning the translation of foreign text in advertisements. There might be a minimal cost associated in complying with new subsection (c), but only for those licensees who have not already translated their advertisements into English. There will be little to no effect on individuals required to comply with the amendments as proposed, aside from the small cost noted above in connection with foreign advertisement translations. To reduce or eliminate such costs, licensees may utilize public domain translation resources that are available at no cost. Other than the negligible potential cost under §85.416(c), there are no other anticipated costs to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to sealy.hutchings@occc.state.tx.us.

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 §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 371.

§85.401. Hours and Days of Operation.

(a) (No change.)

(b) Approved closing.

(1) Holiday closing.

(A) A pawnshop may be closed on any federal [~~national~~] holiday without notice.

(B) (No change.)

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

(c) Effect of closing.

(1) Non-holiday closing. The amount of pawn service charge scheduled to accrue on each pawn transaction from the date of non-holiday closing pursuant to subsection (b)(2) of this section until actual redemption must be waived for any person who states an attempt was made to redeem goods during the closing.

(2) (No change.)

§85.404. Security of Pledged Goods.

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

(c) Exterior storage of pledged goods. If pledged goods are accepted and cannot reasonably be stored inside the pawnshop (e.g., motor vehicles, boats, trailers, construction equipment), the goods must be stored adjoining the pawnshop and must be securely enclosed by protective fencing unless those goods are stored in compliance with subsection (d) of this section. Any damage or deterioration of the pledged goods resulting from outdoor storage will be handled in accordance with §85.413 [~~§85.412~~] of this title.

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

§85.407. Memorandum of Extension.

(a) Prescribed form and content. If an extension of a pawn transaction is made, a written memorandum must be used to document the extension of the maturity date. The prescribed memorandum form is shown in Figure: 7 TAC §85.407(a). The printed portions of the memorandum must be legible and all the information must be reproduced on all parts.
Figure: 7 TAC §85.407(a)

(b) (No change.)

(c) Distribution of copies. The original memorandum must be given to the person paying for the extension or, if paid by mail, sent to the pledgor. The location of all memorandum copies relating to a particular pawn ticket must be documented:

(1) in the electronic system (if the memorandum of extension form can be reproduced in its actual original printed format); or

(2) (No change.)

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

§85.410. Lost or Destroyed Pawn Ticket.

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

(d) Suggested guidelines. These suggested guidelines are intended to give pawnshops considerable flexibility to fit individual needs while providing some guidance. Modifications to the guidelines may be made without the loss of protection from any liability defense. When oral notification that a pawn ticket has been lost or stolen is received, the pledgor is instructed to give the notice in writing within the next two (2) business days. If a person other than the pledgor presents the pawn ticket in an attempt to redeem the item prior to timely receiving written notice, it is suggested that:

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

§85.413. Lost or Damaged Goods.

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

(e) Communications with pledgors.

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

(6) When an attempt or offer to redeem, renew, or extend a pawn transaction is made and it is known or learned that pledged goods have been lost or damaged, the pledgor must accurately be informed of the facts of the situation, the status of the pledged goods, the pawnbroker's responsibility under the Texas Finance Code, Chapter 371, and the pledgor's rights under paragraph (5) of this subsection. A model disclosure is provided in Figure: 7 TAC §85.413(e)(6).
Figure: 7 TAC §85.413(e)(6) (No change.)

(f) (No change.)

(g) Partial redemption. If one or more items pledged on a pawn transaction are not lost or damaged and are available for redemption, the pledgor may redeem the available items by negotiating a partial, proportionate payment not to exceed the pawn service charge limitations in the Texas Finance Code, Chapter 371, Subchapter D.

(h) Replacement complaints. Upon request by the person attempting to redeem pledged goods, a complaint form issued by the commissioner must be provided. The complaint form is provided in Figure: 7 TAC §85.413(h). The agency will begin review of a complaint for lost or damaged items upon receipt of the written complaint.
Figure: 7 TAC §85.413(h) (No change.)

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

§85.416. Advertisements.

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

(c) Translation of foreign text of advertisement. If any language other than English is used in any advertising material, a true and correct translation must be maintained along with the advertising material.

(d) [~~(c)~~] Use of state agency name. Advertisements with the name of the Office of Consumer Credit Commissioner may only be used in connection with the following statement: "This office is licensed and examined by the Office of Consumer Credit Commissioner of the State of Texas."

§85.418. Acceptance of Goods.

(a) Monitoring of transactions and customers.

(1) (No change.)

(2) Written policy. A written policy must be established for the acceptance of pledged goods. The policy must expressly identify situations which may involve the attempted pawn of stolen goods and

must list procedures to be followed in order to avoid the acceptance of stolen goods. A copy of the policy must be provided to each employee. Each employee must sign a document acknowledging receipt and understanding of the policy. A copy of each signed receipt must be placed in the compliance file. Alternatively, a pawnshop may employ another systematic method of filing receipts that allows for the appropriate retrieval of records for inspection. A model policy may be found in Figure: 7 TAC §85.418(a)(2).
Figure: 7 TAC §85.418(a)(2)

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

(b) (No change.)

§85.420. Purchase Transactions.

(a) Relevant pawn provisions. Accepting goods in a purchase transaction must be done in compliance with all relevant administrative rules, in the context of the purchase transaction in the same manner as if the transaction were a pawn transaction. These rules include:

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

(3) §85.405(c) [~~§85.405(b)~~] of this title--Identification of pledged goods;

(4) §85.405(e) [~~§85.405(d)~~] of this title--Standards for describing goods;

(5) §85.405(f) [~~§85.405(e)~~] of this title--Titled goods;

(6) - (8) (No change.)

(b) (No change.)

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

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7 TAC §85.409

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

The Finance Commission of Texas (the commission) proposes the repeal of §85.409, concerning the sale of pawn transactions. As part of an agency rule review, the commission has determined that the substance of §85.409 would more logically be included as part of §85.203. Proposed amendments elsewhere in this issue of the*Texas Register* seek to incorporate the old §85.409 within §85.203, concerning relocation.

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

Commissioner Pettijohn also has determined that for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be a more logical location of this information for our licensees. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to sealy.hutchings@occc.state.tx.us.

The repeal is 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 §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the proposed repeal are contained in Texas Finance Code, Chapter 371.

§85.409. Sale of Pawn Transactions.

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. INSPECTIONS AND EXAMINATION

7 TAC §85.503

The Finance Commission of Texas (the commission) proposes amendments to Subchapter E, §85.503, concerning inspections and examination, in conjunction with the commission's review of Chapter 85.

In general, the purpose of the amendments is to conform the rule to the commission's current practice, to eliminate obsolete provisions, and to correct typographical errors. Section 85.503 has been extensively revised to align with current agency practice in collecting follow-up examination fees.

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

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

Comments on the proposed amendments may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to sealy.hutchings@occc.state.tx.us.

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 §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 371.

§85.503. Follow-Up Examination Fees.

[(a) Assessment. The commissioner will assess and collect a nonrefundable examination fee designed solely to recover agency expenditures applicable to the examination function, according to the formula set out below:]

[(1) General administrative fee per exam ($150.00) - The administrative and overhead costs necessary to cover agency expenditures related to an examination (e.g., computer support, examination function administration);]

[(2) Administrative fee for each additional day ($100.00) - The administrative and overhead costs necessary to cover agency expenditures for each additional day required to conduct the examination; and]

[(3) Hourly examination rate ($60.00) - The direct and indirect examiner cost including travel costs.]

[(b) Calculation of a day. A day is measured as eight (8) business hours spent on site conducting an examination.]

[(c) Due date. Unless specifically stated by the commissioner any examination fee is due at the time of billing.]

[(d)] If a[Return Examinations. A] follow-up examination visit is [may be] required within nine (9) months [ninety (90) days] after a written deficiency report has been given as a result of a failure to comply with Chapter 371 of the Texas Finance Code, [Chapter 371,] this chapter, or the special instructions section of the examination report, an examination fee at the hourly rate of $100 may be assessed. [The follow-up examination may result in an assessment at two (2) times the rates provided in subsection (a), paragraph (3) 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.

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SUBCHAPTER F. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

7 TAC §85.603, §85.607

The Finance Commission of Texas (the commission) proposes amendments to Subchapter F, §85.603 and §85.607, concerning license revocation, suspension, and surrender, in conjunction with the commission's review of Chapter 85.

In general, the purpose of the amendments is to conform the rules to the commission's current practice and to correct typographical errors. Section 85.603 has been updated to correlate with current agency practice concerning annual licensing fees. Typographical errors have been corrected in §85.607.

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

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

Comments on the proposed amendments may be submitted in writing to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to sealy.hutchings@occc.state.tx.us.

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 §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 371.

§85.603. Reinstatement of an Expired Pawnshop License.

If a pawnshop license expires on June 30 for failure to pay the annual renewal fee, the commissioner shall by July 31 of that same year notify the pawnshop license holder via certified mail that the license has expired and that the licensee may not make or renew a pawn loan. The holder of the expired license may elect to reinstate the license by submitting the fees required by §85.211(e) of this title [$125 annual fee] and a $1,000 reinstatement fee postmarked on or before December 27 of that same year. An expired pawnshop license holder may not conduct any licensed business at the formerly licensed location during the time the license is expired. Any unlicensed acts are subject to administrative action of the commissioner should the holder of the expired license not cease operations upon expiration of the license on July 1. An expired license is considered an operating pawnshop location for the duration of the period of reinstatement right for the purpose of statutory distance requirements.

§85.607. Hearings.

Hearings held under this chapter will be held in accordance with Administrative Hearing Process and Rules of Procedure [Procedures] in the Finance Commission Agencies, §9.1 et seq. of this title, the Administrative Procedure [Procedures] Act, the Texas Rules of Civil Procedure, and the Texas Rules of Evidence.

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

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.101

The Credit Union Commission proposes amendments to §91.101, concerning definitions and interpretations. The amendments add a definition for "catastrophic act" and clarify the definitions for "manufactured home" and "underserved area."

The amendments to the rule are proposed as a result of the Department's general rule review and the addition of the term catastrophic act to another rule.

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

Ms. Galvin has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the amendments will be to clarify terminology used in Department Rules. There is no anticipated effect on small businesses as a result of adopting amendments as proposed. There is no economic cost anticipated to credit unions for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 16, 2005, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

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

The specific sections affected by the proposed amendments are Texas Finance Code, §§122.004, 122.014, 122.101, 123.201.

§91.101. Definitions and Interpretations.

(a) Words and terms used in this chapter that are defined in Finance Code §121.002, have the same meanings as defined in the Finance Code. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(6) Catastrophic act--any natural disaster such as a flood, tornado, earthquake, etc. or major fire or other disaster resulting in some physical destruction or damage.

(7) [~~(6)~~] Community of interest--a unifying factor among persons that by virtue of its existence, facilitates the successful organization of a new credit union or promotes economic viability of an existing credit union. The types of community of interest currently recognized are:

(A) Occupational--based on an employment relationship that may be established by:

(i) employment (or a long term contractual relationship equivalent to employment) by a single employer, affiliated employers or employers under common ownership with at least a 10% ownership interest;

(ii) employment or attendance at a school; or

(iii) employment in the same trade, industry or profession (TIP) with a close nexus and narrow commonality of interest, which is geographically limited.

(B) Associational--based on groups consisting primarily of natural persons whose members participate in activities developing common loyalties, mutual benefits, or mutual interests. In determining whether a group has an associational community of interest, the commissioner shall consider the totality of the circumstances, which include:

(i) whether the members pay dues,

(ii) whether the members participate in furtherance of the goals of the association,

(iii) whether the members have voting rights,

(iv) whether there is a membership list,

(v) whether the association sponsors activities,

(vi) what the association's membership eligibility requirements are, and

(vii) the frequency of meetings. Associations formed primarily to qualify for credit union membership and associations based on client or customer relationships, do not have a sufficient associational community of interest.

(C) Geographic--based on a clearly defined and specific geographic area where persons have common interests and/or interact. More than one credit union may share the same geographic community of interest. There are currently four types of affinity on which a geographic community of interest can be based: persons, who

(i) live in,

(ii) worship in,

(iii) attend school in, or

(iv) work in that community. The geographic community of interest requirements are met if the area to be served is in a recognized single political jurisdiction, e.g., a city or a county, or a portion thereof.

(D) Other--The commissioner may authorize other types of community of interest, if the commissioner determines that either a credit union or foreign credit union has sufficiently

demonstrated that a proposed factor creates an identifiable affinity among the persons within the proposed group . Such a factor shall be well-defined, have a geographic definition, and may not circumvent any limitation or restriction imposed on one of the other enumerated types.

(8) [~~(7)~~] Construction or development loan--a financing arrangement for acquiring property or rights to property, including land or structures, with the intent of converting the property into income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar use.

(9) [~~(8)~~] Core capital--has the same meaning as "tier one capital" as set forth in the capital regulations adopted by the appropriate federal banking regulatory agency.

(10) [~~(9)~~] Corporate credit union--a credit union whose field of membership consists primarily of other credit unions.

(11) [~~(10)~~] Day--whenever periods of time are specified in this title in days, calendar days are intended. When the day, or the last day fixed by statute or under this title for taking any action falls on Saturday, Sunday, or a state holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a state holiday.

(12) [~~(11)~~] Department newsletter--the monthly publication that serves as an official notice of all applications, and by which procedures to protest applications are described.

(13) [~~(12)~~] Field of membership (FOM)--refers to the totality of persons a credit union may accept as members. The FOM may consist of one group, several groups with a related community of interest, or several unrelated groups with each having its own community of interest.

(14) [~~(13)~~] Imminent danger of insolvency--a circumstance or condition in which a credit union is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities; or the credit union has a positive net worth ratio equal to two percent or less of its assets.

(15) [~~(14)~~] Improved residential property--real property consisting of a residential dwelling having one to four dwelling units, at least one of which is occupied by the owner of the property. This term shall also include a one to four unit dwelling occupied in whole or in part by the owner on a seasonal basis.

(16) [~~(15)~~] Indirect financing--a program in which a credit union makes the credit decision in a transaction where the credit is extended by the vendor and assigned to the credit union or a loan transaction that generally involves substantial participation in and origination of the transaction by a vendor.

(17) [~~(16)~~] Loan-to-value ratio--the aggregate amount of all sums borrowed including outstanding balances plus any unfunded commitment or line of credit from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.

(18) [~~(17)~~] Loan and extension of credit--a direct or indirect advance of funds to a member, or on that member's behalf, that is conditioned upon the repayment of the funds by the member or the application of collateral. The terminology also includes the purchase of a member's loan or other obligation, a lease financing transaction, a credit sale, a line of credit or loan commitment under which the credit union is contractually obligated to advance funds to or on behalf of a member, an advance of funds to honor a check or share draft drawn on the credit union by a member, or any other indebtedness not classified as an investment security.

(19) [~~(18)~~] Manufactured home--a HUD-code manufactured home as defined by the Texas Manufactured Housing Standards Act. The terminology may also include a mobile home, house trailer, or similar recreational vehicle if the unit will be used as the member's residence and the loan is secured by a first lien on the unit, and the unit meets the requirements for the home mortgage interest deduction under the Internal Revenue Code (26 U.S.C. Section 163(a), (h)(2)(D)).

(20) [~~(19)~~] Metropolitan Statistical Area (MSA)--a geographic area as defined by the director of the U. S. Office of Management and Budget.

(21) [~~(20)~~] Mobile office--a branch office that does not have a single, permanent site, including a vehicle that travels to various public locations to enable members to conduct their credit union business.

(22) [~~(21)~~] Office--includes any service facility or place of business established by a credit union at which deposits are received, checks or share drafts paid, or money lent. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements; however, it does not include the credit union's Internet website. This definition also includes a shared branch or a shared branch network if either:

(A) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or

(B) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

(23) [~~(22)~~] Overlap--the situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.

(24) [~~(23)~~] Person--an individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.

(25) [~~(24)~~] Principal office--the home office of a credit union.

(26) [~~(25)~~] Protestant--a credit union that opposes or objects to the relief requested by an applicant.

(27) [~~(26)~~] Remote service facility--an automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.

(28) [~~(27)~~] Reserves--allocations of retained earnings including regular and special reserves, except for any allowances for loan, lease or investment losses.

(29) [~~(28)~~] Resident of this state--a person physically located in, living in or employed in the state of Texas.

(30) [~~(29)~~] Respondent--a credit union or other person against whom a disciplinary proceeding is directed by the department.

(31) [~~(30)~~] Shared service center--a facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union

services that the credit union member could lawfully obtain at the principal office of the member's credit union.

(32) [~~(31)~~] Secured credit--a loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.

(33) [~~(32)~~] Title--Title 7, Part VI of the Texas Administrative Code (TAC), Banking and Securities, which contains all of the department's rules.

(34) [~~(33)~~] Underserved area--a geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:

(A) A majority of the residents earn less than 80 percent of the average for all wage earners as established by the U.S. [~~u.S.~~] Bureau of Labor Statistics [~~labor statistics~~];

(B) The annual household income for a majority of the residents falls at or below 80 percent of the median household income for the State of Texas, or the nation, whichever is higher; or

(C) The commission makes a determination that the lack of available or adequate financial services has adversely effected economic development within the specified area.

(35) [~~(34)~~] Uninsured membership share--funds paid into a credit union by a member that constitute uninsured capital under conditions established by the credit union and agreed to by the member including possible reduction under section 122.105 of the act, risk of loss through operations, or other forfeiture. Such funds shall be considered an interest in the capital of the credit union upon liquidation, merger, or conversion.

(36) [~~(35)~~] Unsecured credit--a loan or extension of credit based solely upon the general credit financial standing of the borrower. The term shall include loans or other extensions of credit supported by the signature of a co-maker, guarantor, or endorser.

(b) (No change.)

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

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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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7 TAC §91.115

The Credit Union Commission proposes amendments to §91.115, concerning safety at unmanned teller machines. The amendments add specific definitions from Texas Finance Code §59.301 for ease of use of the rule and clarify that the rule applies unless the unmanned teller machine is exempt under Texas Finance Code §59.302.

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

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

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

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 16, 2005, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §59.310, which authorizes the Commission to adopt rules to implement Chapter 59, Subchapter D of the Texas Finance Code.

The specific sections affected by the proposed amendments are Texas Finance Code, §59.301 and §59.302.

§91.115. Safety at Unmanned Teller Machines.

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

(1) Access area--a paved walkway or sidewalk that is within 50 feet of an unmanned teller machine. The term does not include a public right-of-way or any structure, sidewalk, facility, or appurtenance incidental to the right-of-way.

(2) Access device--has the meaning assigned by Regulation E (12 CFR Section 205.2), as amended, adopted under the Electronic Fund Transfer Act (15 USC Section 1693 et seq.), as amended.

(3) Candle power--the light intensity of candles on a horizontal plane at 36 inches above ground level and five feet in front of the area to be measured. For the purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand, or dust storm, or other similar condition.

(4) Control--the authority to determine how, when, and by whom an access area or defined parking areas may be used, maintained, lighted, and landscaped.

(5) Member--an individual to whom an access device is issued for personal, family, or household use.

(6) Defined parking area--the portion of a parking area open for unmanned teller machine member parking that is contiguous to an access area, is regularly, principally, and lawfully used during the period beginning 30 minutes after sunset and ending 30 minutes before sunrise for parking by members using the machine, and is owned or leased by the owner or operator of the machine or owned

or controlled by a person leasing the machine site to the owner or operator of the machine. The term does not include:

(A) a parking area that is physically closed or on which one or more conspicuous signs indicate that the area is closed; or

(B) a level of a multiple-level parking area other than the level considered by the operator of the unmanned teller machine to be the most directly accessible to a member.

(7) Operator--the person primarily responsible for the operation of an unmanned teller machine.

(8) Owner--a person having the right to determine which financial institutions are permitted to use or participate in the use of an unmanned teller machine.

(9) Unmanned teller machine--a machine, other than a telephone, capable of being operated solely by a member to communicate to a credit union:

(A) a request to withdraw money from the member's account directly or under a line of credit previously authorized by the credit union for the member;

(B) an instruction to deposit money in the member's account with the credit union;

(C) an instruction to transfer money between one or more accounts maintained by the member with the credit union;

(D) an instruction to apply money against an indebtedness of the member to the credit union; or

(E) a request for information concerning the balance of the account of the member with the credit union.

~~[(1) Words and terms used in this chapter that are defined in the Finance Code, §59.301, have the same meanings as defined in the Finance Code.]~~

~~[(2) For the purposes of measuring compliance with the Finance Code, §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.]~~

(b) Safety evaluations.

(1) The credit union owner or operator of an unmanned teller machine shall evaluate the safety of each machine on a basis no less frequently than annually, unless the machine is exempted under the Finance Code §59.302.

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

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

(e) Video surveillance equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The credit union owner or operator must determine whether video surveillance or unconnected video [~~vide~~] surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under the Finance Code, §59.308. If a credit union owner or operator determines that video surveillance equipment should be installed, the credit union must provide for selecting, testing, operating, and maintaining appropriate equipment.

~~[(f) Unmanned teller machines located in a credit union vestibule. The provisions of the Finance Code, Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a credit union vestibule if there is 24 hours access to the vestibule from outside the building.]~~

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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Harold E. Feeney
Commissioner
Credit Union Department
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7 TAC §91.125

The Credit Union Commission proposes new §91.125, concerning accuracy of advertising. The proposed rule sets forth standards for accuracy in advertising and allows the Commissioner to prohibit the use of advertising that is false, deceptive or misleading.

The new rule is proposed as a result of comments and inquiries received by the Department from Legislators and other interested parties regarding credit union advertising.

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

Ms. Galvin has also determined that for each year of the first five years the new rule is in effect, the public benefits anticipated as a result of enforcing the rule will truthful, accurate advertisements to help consumers make informed choices about providers of financial services. There is no anticipated effect on small businesses as a result of adopting the rule as proposed. There is no economic cost anticipated to credit unions for complying with the new rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 16, 2005, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The new section is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §15.4022, which authorizes the Commission to prohibit false, misleading or deceptive practices.

The specific sections affected by the proposed section are Texas Finance Code, §122.004 and §122.254.

§91.125. Accuracy of Advertising.

(a) As used in this rule, an advertisement is any informational communication, including oral, written, electronic, broadcast or any other type of communication, made to members, prospective members, or to the public at large in any manner designed to attract attention to the business of a credit union.

(b) No credit union shall disseminate or cause the dissemination of any advertisement that is in any way intentionally or negligently false, deceptive, or misleading. An advertisement shall be deemed by

the Commissioner to be intentionally or negligently false, deceptive, or misleading if it:

(1) contains materially false claims or misrepresentations of material facts;

(2) contains materially implied false claims or implied misrepresentations of material fact;

(3) omits material facts;

(4) makes a representation likely to create an unjustified expectation about credit union products or services;

(5) states that the credit union's services are superior to or of a higher quality than that of another financial institution unless the credit union can factually substantiate the statement;

(6) states that a service is free when it is not, or contains intentionally untruthful or deceptive claims regarding costs and fees; and

(7) fails to disclose that a person must meet certain membership eligibility requirements to participate in or enjoy the advantage of the product or service.

(c) Prior to placing an advertisement, a credit union must possess credible information which, when produced, substantiates the truthfulness of any assertion, representation or omission of material fact set forth in the advertisement.

(d) If the Commissioner notifies a credit union that an advertisement is deemed to be false, deceptive or misleading, the credit union will have ten days following the credit union's receipt of the notification to provide the Commissioner with information substantiating the truthfulness of the advertisement. If the credit union does not provide this information or the Commissioner, after receipt of the information, still deems the advertisement to be false, deceptive or misleading, the Commissioner may issue a cease and desist order to the credit union to stop the use of the advertisement.

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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Harold E. Feeney
Commissioner
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SUBCHAPTER B. ORGANIZATION PROCEDURES

7 TAC §91.202

The Credit Union Commission proposes amendments to §91.202, concerning form of bylaws; amendments to articles of incorporation and bylaws. The amendments insert proper rule references to correct incomplete cites.

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

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

Ms. Galvin has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the amendments will be to clarify the cites used in the rule to avoid any confusion. There is no anticipated effect on small businesses as a result of adopting the amendments as proposed. There is no economic cost anticipated to credit unions for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 16, 2005, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

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

The specific sections affected by the proposed amendments are Texas Finance Code, §§122.001, 122.002, and 122.005.

§91.202. Form of Bylaws; Amendments to Articles of Incorporation and Bylaws.

(a) - (e) (No change.)

(f) The commissioner does not need to provide notice as prescribed in §91.103 [~~§1.103~~] (relating to Public Notice of Department Activities) and §91.104 [~~§1.104~~] (relating to Notice of Applications) for applications that apply for standard optional field of membership provisions (1), (2), (3), and (4) as contained in the Standard Bylaws for State Chartered Credit Unions "Appendix A".

(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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7 TAC §91.205

The Credit Union Commission proposes amendments to §91.205 concerning use of credit union name. The amendments clarify and list examples of when a credit union must use its official name.

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

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

Ms. Galvin has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater compliance by credit unions and less confusion by the general public regarding which institution they are dealing with. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 16, 2005 at 9:00 am at 914 East Anderson Lane, Austin, Texas 78752.

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

The specific section affected by the proposed amendment is Texas Finance Code, §122.003.

§91.205. Use of Credit Union Name.

(a) A credit union shall do business under the name in which its certificate of incorporation was issued, unless a name change has been [~~Unless changed by a bylaw amendment~~] approved by the commissioner in accordance with the Act and these rules. [~~, a credit union shall do business under the name in which its charter was issued.~~]

(b) Subject to the requirements of this rule, [~~In addition to the official charter name,~~] a credit union may adopt [~~do business under~~] an assumed name. The credit union's [~~However, the~~] official name, however, [~~as it appears in the bylaws~~] must be used in all official or legal communications or documents, which includes account and membership agreements, loan contracts, title documents, account statements, checks, drafts, and correspondence with the Department or the National Credit Union Administration. The assumed name may also be used in those materials so long as it is identified as such (e.g. Generic Credit Union dba GCU). Further, a credit union using an assumed name shall clearly disclose the credit union's official name when the assumed name is used on any signs, advertising, mailings, or similar materials.

(c) [~~(b)~~] A credit union shall not use [~~do business under~~] any name other than its official name until it has received a certificate of authority to use an assumed business name from the commissioner and has registered the designation with the Secretary of State and the appropriate county clerk.[~~, and has received from the commissioner a certificate of authority to use an assumed business name.~~]

(d) [~~(c)~~] The commissioner shall not issue a certificate of authority to use an assumed business name if the designation might confuse or mislead the public, or if it is not readily distinguishable from, or is deceptively similar to, a name of another credit union lawfully doing business and that has established an office in this state.

(e) [~~(d)~~] It is the responsibility of the credit union officials to [~~make every reasonable attempt to~~] comply with state and federal law applicable to corporate names.

(f) [~~(e)~~] A credit union that intends to use an assumed name shall take reasonable steps to ensure that use of the name [~~members~~] will not result in confusion [~~become confused and believe~~] to the extent that its different facilities may [~~will~~] be mistaken as different [~~for separate~~] credit unions or that the shares and deposits deposited at or through [~~in~~] the different facilities are separately insured from those of the other facilities.

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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7 TAC §91.209

The Credit Union Commission proposes amendments to §91.209 concerning reports and charges for late filing. The amendments add a requirement that credit unions notify the Department of any crime or suspected crime or catastrophic act that occurs at the credit union.

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

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

Ms. Galvin has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater awareness and supervision by the Department of suspicious activities and catastrophic acts in credit unions. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 16, 2005 at 9:00 am at 914 East Anderson Lane, Austin, Texas 78752.

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

The specific sections affected by the proposed amendment are Texas Finance Code, §122.004 and §122.101.

§91.209. Reports and Charges for Late Filing.

(a) A credit union shall prepare and forward to the Department any report or other document that [~~which~~] the Commissioner or this rule requires and will comply with all instructions [~~instruction~~] relating to completing and submitting the report or document. For the purposes of this Section, the Commissioner's request may [~~shall~~] be directed to all credit unions or to a group of credit unions affected by the same or similar issue, shall be in writing and must specifically advise the credit union that the provisions of this Section apply to the request.

(b) Every credit union shall within ten (10) days after knowledge thereof report:

(1) The occurrence of any crime or suspected crime at any of the credit union's offices that requires the credit union to file a Suspicious Activity Report in accordance with federal regulations. This will include the discharge of any employee where the reason for such action was related to a crime or suspected crime; and

(2) The occurrence of any catastrophic act at any of the credit union's offices.

(c) A credit union may meet the reporting requirements of this subsection by providing the Department a copy of an applicable form required to be filed with an agency of the federal government or in any other manner acceptable to the commissioner.

(d) [~~(b)~~] If a credit union fails to file a report or provide a document within the timeframe specified in the instruction and after notice of non-receipt, the commissioner may assess a charge for the late filing of $100 per day. The credit union shall pay the late charge to the department within thirty days of the assessment.

(e) [~~(c)~~] If a credit union fails to file a report or provide the requested information within the specified time, the commissioner or any person designated by the commissioner may examine the books, accounts and records of the credit union, prepare the report or gather the information and charge the credit union a supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The credit union shall pay the fee to the department within thirty days of the assessment.

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

Filed with the Office of the Secretary of State on June 20, 2005.

TRD-200502540
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 31, 2005
For further information, please call: (512) 837-9236

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SUBCHAPTER J. CHANGES IN CORPORATE STATUS

7 TAC §91.1003

The Credit Union Commission proposes amendments to §91.1003, concerning mergers/consolidations. The amendments restructure and clarify the rule for ease of use and add additional requirements to the plan for merger and the procedures for approval by members.

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

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

Ms. Galvin has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the amendments will be greater clarity for members and credit unions regarding the merger/consolidation process. There is no anticipated effect on small businesses as a result of adopting the amendments as proposed. There is no economic cost anticipated to credit unions for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 16, 2005, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §121.1531 and §121.156, which authorize the Commission to adopt rules for mergers/consolidations.

The specific sections affected by the proposed amendments are Texas Finance Code, §§121.151, 121.152, 121.1531 and 121.156.

§91.1003. Mergers/Consolidations.

(a) (No change.)

(b) Two or more credit unions organized under the laws of [~~authorized to conduct business in~~] this state, another state, or the United States, may merge/consolidate, in whole or in part, with each other, or into a newly incorporated credit union to the extent permitted by applicable law, subject to the requirements of this rule [~~commission rules~~].

[~~(c) A credit union authorized to conduct business under the laws of this state may merge/consolidate with a credit union authorized to conduct business under the laws of another state or U.S. territory, to the extent permitted by the laws of the state or territory in question and subject to commission rules. A credit union authorized to conduct business under the laws of this state may also merge/consolidate with a credit union authorized to conduct business under the laws of the United States to the extent permitted by the laws of the United States and subject to commission rules. Each such application/plan shall comply with the applicable requirements of this section, and shall include a certified copy of an order from the appropriate supervisory authority approving the merger/consolidation, or other evidence satisfactory to the commissioner that all regulatory requirements of the out of state or federal supervisory authority have been satisfied.~~]

[~~(d) Approval to Merge/Consolidate. The following are required for the completion of a merger/consolidation of credit unions:~~]

[~~(1) approval of the merger/consolidation plan by resolution of the board of directors of each credit union;~~]

[~~(2) approval of the merger/consolidation plan by vote of the members of each credit union as set forth in §122.151 of the Act, unless waived by the commissioner; and~~]

[~~(3) approval by the commissioner of the merger/consolidation plan, the certificate of merger/consolidation, and the requisite amendment to the surviving credit union's articles of incorporation or bylaws.~~]

(c) [~~(e)~~] Notice of Intent to Merge/Consolidate. The credit unions shall notify the commissioner in writing of their intent to merge/consolidate within ten days after the credit unions' boards of directors formally agree in principle to merge/consolidate [~~by filing a copy of the resolution adopted by each credit union's board of directors that evidences their intent to merge/consolidate~~].

(d) [~~(f)~~] Plan for Merger/Consolidation. Upon approval of a proposition for merger/consolidation by the boards of directors, the

credit unions must prepare [~~the commissioner's acknowledgement of receipt of the notice of intent to merge/consolidate,~~] a plan for the proposed merger/consolidation [~~shall be prepared~~]. The plan shall include:

(1) the current financial reports of each credit union;

(2) the combined financial reports of the two credit unions;

(3) an analysis of the adequacy of the combined Allowance for Loan and Lease Losses account;

(4) [~~(3)~~] an explanation of any proposed adjustments to the members' shares, or provisions for [~~deposits,~~] reserves, dividends, or undivided profits;

(5) [~~(4)~~] a summary of the products and services proposed to be available to the members of the surviving credit union, with an explanation of any changes from the current products and services provided to the members;

(6) [~~(5)~~] a summary of the advantages and disadvantages of the merger/consolidation;

(7) [~~(6)~~] the projected location of the main office and any branch location(s) after the merger/consolidation and whether any existing office locations will be permanently closed; and

(8) [~~(7)~~] any other items deemed critical to the merger/consolidation agreement by the boards of directors.

(e) [~~(g)~~] Submission of an Application to Merge/Consolidate to Department.

(1) An application for approval of the merger/consolidation will be complete when the following information is submitted to the commissioner:

(A) the merger/consolidation plan, as described in this rule;

(B) a copy of the corporate resolution of each board of directors approving the merger/consolidation plan;

(C) the proposed Notice of Special Meeting of the members; [~~and~~]

(D) a copy of the ballot form to be sent to the members [~~used, unless approval by the members is waived by the commissioner~~];

(E) [~~(D)~~] the current delinquent loan summaries for each credit union;

[~~(E) evidence that relevant supervisory authorities and the share insurer are in agreement with the merger/consolidation proposal; and~~]

(F) if the merging credit union has $50 million or more in assets on its latest call report, a statement about whether the two credit unions intend to make a Hart-Scott Rodino Act premerger notification filing with the Federal Trade Commission and, if not, an explanation why not; and

(G) [~~(F)~~] a request for a waiver of the requirement that the plan be approved by the members of any of the affected credit unions, in the event the board(s) seek such a waiver, together with a statement of the reason(s) for the waiver(s).

(2) If the surviving credit union is organized under the laws of another state or of the United States, the commissioner may accept an application to merge or consolidate that is prescribed by the state or federal supervisory authority of the surviving credit union, provided that the commissioner may require additional information to determine whether to deny or approve the merger/consolidation. The application will be deemed complete upon receipt of all information requested by the commissioner.

(3) Notice of the proposed merger must be published in the *Texas Register* and Department Newsletter as prescribed in §91.104 (relating to Notice of Applications).

[~~(h) Upon receipt of a completed application, notice of the proposed merger/consolidation will be published in the *Texas Register* and Department Newsletter.~~]

(f) [~~(i)~~] Commissioner Action on the Application.

(1) The commissioner may grant preliminary approval of an [~~shall approve the~~] application for merger/consolidation conditioned upon specific requirements being met, but final approval shall not be granted unless such conditions have been met within the time specified in the preliminary approval [~~the finding from information submitted in the application that the proposed merger/consolidation will promote the welfare and stability of the merging and surviving credit unions~~].

(2) The commissioner shall deny an application for merger/consolidation if the commissioner finds any of the following:

(A) the financial condition of the surviving credit union before the merger/consolidation is such that it will likely jeopardize the financial stability of the merging credit union or prejudice the financial interests of the members, beneficiaries or creditors of either credit union;

(B) the plan includes a change in the products or services available to members of the merging credit union that substantially harms the financial interests of the members, beneficiaries or creditors of the merging credit union;

(C) the merger/consolidation would probably substantially lessen the ability of the surviving credit union to meet the reasonable needs and convenience of members to be served;

(D) the credit unions do not furnish to the commissioner all information requested by the commissioner which is material to the application;

(E) the credit unions fail to obtain any approval required from a federal or state supervisory authority; or

(F) the merger/consolidation would be contrary to law.

(3) For applications to merge/consolidate in which the products and services of the surviving credit union after merger/consolidation are proposed to be substantially the same as those of the merging and surviving credit unions, the commissioner will presume that the merger/consolidation will not significantly change or affect the availability and adequacy of financial services in the local community.

(g) [~~(j)~~] Procedures for Approval of Merger/Consolidation Plan by the Members of Each Credit Union.

(1) The credit unions have the option of allowing their members to vote on the plan in person at a meeting of the members, by mail ballot, or [~~by a combination of~~] both. With prior approval of the commissioner, a credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to vote.

(2) Members shall be given advance notice of the meeting in accordance with the credit union's bylaws. The notice of the meeting shall:

(A) specify the purpose of the meeting and state the date, time, and place of the special meeting;

(B) state the reasons for the proposed merger/consolidation;

(C) contain a summary of the merger plan and state that any interested person may obtain more detailed information about the merger from the credit union at its principal place of business, or by any method approved in advance by the commissioner [~~state that the merger/consolidation plan will be presented to the members~~];

(D) provide the name and location of the surviving credit union;

(E) specify the methods permitted for casting votes [~~whether the vote will be taken in person at the meeting, by mail ballot to be received by the credit union no later than the date and time of the meeting, or by combination of both methods~~]; and

(F) if applicable, be accompanied by a mail ballot [~~and a copy of the merger/consolidation plan if voting by mail is permitted~~].

(h) [~~(k)~~] Completion of Merger/Consolidation.

(1) Upon approval of the merger/consolidation plan by the membership, if applicable, the Certificate of Merger/Consolidation shall be completed, signed and submitted to the commissioner for final authority to combine the records. Necessary amendments to the surviving credit union's articles of incorporation or bylaws shall also be submitted at this time.

(2) Upon receipt of the commissioner's written authorization, the records of the credit unions shall be combined as of the effective date of the merger/consolidation. The board of the directors of the surviving credit union shall certify the completion of the merger/consolidation to the commissioner within 30 days after the effective date of the merger/consolidation.

(3) Upon receipt by the commissioner of the completion of [~~certification of~~] the merger/consolidation certification [~~in which the surviving credit union will operate under a Texas charter~~], any article of incorporation or bylaw amendments will be approved and [~~at the same time~~] the charter of the merging credit union will be [~~is~~] canceled.

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

Filed with the Office of the Secretary of State on June 20, 2005.

TRD-200502538
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 31, 2005
For further information, please call: (512) 837-9236

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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 256. ADMINISTRATION

SUBCHAPTER A. MANAGEMENT POLICIES OF EXECUTIVE COMMITTEE AND EXECUTIVE DIRECTOR

10 TAC §§256.1 - 256.15

The Office of Rural Community Affairs (Office) proposes new Chapter 256, Subchapter A, §§256.1 - 256.15, to provide for the establishment of Executive Committee and Executive Director management responsibilities including the provision for the opportunity for public comments at agency public hearings.

The new rules are proposed to clearly establish and separate the policy-making responsibilities of the executive committee and the management responsibilities of the executive director and to establish a process for public comment to the agency and the Executive Committee.

Charles S. (Charlie) Stone, Executive Director, has determined that for the first five-year period the new rules are in effect there will be no fiscal implications for state or local government as a result of administering the new rules.

Mr. Stone has also determined that for each year of the first five years the new rules are in effect the public benefit will be to help the public and the agency distinguish the separate responsibilities of the Executive Committee and Executive Director and the public's opportunity to offer comments to the agency. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rules.

Comments on the proposal may be submitted in writing to J. Randel (Jerry) Hill, General Counsel, at P.O. Box 12877, Austin, Texas 78711. Comments may also be submitted electronically to *jhill@orca.state.tx.us* or faxed to (512) 936-6776. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*. All requests for a public hearing on the proposed new rules submitted under the Administrative Procedure Act must be received by the General Counsel not more than 15 calendar days after notice of the proposed rules have been published in the *Texas Register*.

The new rules are proposed under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this Chapter.

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

§256.1. Executive Director.

(a) The Executive Committee, as defined in Chapter 487 of the Government Code, shall employ an Executive Director who will serve at the will of the Executive Committee.

(b) The Executive Director shall be the administrator of the agency and shall employ the staff necessary to conduct the activities of the agency.

(c) The Executive Director shall also be responsible for the operation of the agency in accordance with Executive Committee policy, state and federal law, and duties established by the Executive Committee.

(d) The Executive Director is empowered to make preliminary interpretations of the Act or of these sections, except that any interpretation by the Executive Director shall not be binding upon the Executive Committee.

(e) The Executive Director may appoint advisory committees from outside the agency staff to advise the staff, as the Executive Director may deem necessary.

§256.2. Staff.

(a) The Executive Director shall employ such staff as is authorized and necessary for the conduct of agency affairs. Applicants for employment with the office shall be notified that:

(1) No employee in a bona fide executive, administrative or professional capacity, as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair labor Standards Act of 1938 and any subsequent amendments, of the office may be related within the second degree of affinity or within the second degree of consanguinity to a person who is an officer, employee, or paid consultant of a Texas trade association in the field of rural affairs, or

(2) The applicant may not be employed by the Office if the person's spouse is an officer, manager or paid consultant of a Texas trade association in the field of rural affairs, or

(3) The applicant may not be employed by the office if the person is required to register as a lobbyist under Chapter 305 of the Texas Government Code.

(b) Each employee shall be hired without regard to race, color, handicap, sex, religion, age, or national origin.

§256.3. Presiding Officer.

Members of the Executive Committee shall annually elect a presiding officer from among the members of the Executive Committee. The presiding officer shall, when present, conduct all Executive Committee meetings. The presiding officer shall appoint such committees as authorized under §256.9 of this title (relating to Committees) and may delegate the signing of official documents. The presiding officer may sign orders on behalf of the Executive Committee after the Executive Committee has approved adoption of the order. The presiding officer shall sign the certified agenda required pursuant to §551.104 of the Open Meetings Act. The presiding officer shall serve as the official spokesman of the Executive Committee and shall have such other responsibilities as assigned and such other authority as conferred by the Executive Committee.

§256.4. Assistant Presiding Officer.

Members of the Executive Committee shall annually elect an assistant presiding officer from members of the Executive Committee. The assistant presiding officer, in the absence of the presiding officer, shall perform the duties of the presiding officer as specified in §256.3 of this title (relating to Presiding Officer), and shall perform such other duties, as the Executive Committee shall designate.

§256.5. Secretary/Treasurer.

(a) Members of the Executive Committee shall annually elect a secretary/treasurer from among the members of the Executive Committee.

(b) The secretary, in the absence of the presiding officer and assistant presiding officer, shall perform the duties of the presiding officer as specified in §256.3 of this title (relating to Presiding Officer) and shall perform such other duties, as the Executive Committee shall designate.

(c) The secretary shall work with the Executive Director to assure the proper recording of minutes of the Executive Committee meetings and to assure that a copy of the minutes is transmitted to each Executive Committee member before each ensuing meeting and have charge of all records, proceedings and documents of the Executive Committee and maintain documentation of the legally required notices of each Executive Committee meeting.

§256.6. Vacancies in the Executive Committee.

If for any reason a vacancy shall occur in the Executive Committee, the presiding officer shall provide a notice to the appointing authority for the position and ask for the appointment of a new member to fill the unexpired term. If the vacancy occurs in any of the officers of the Executive Committee, the Executive Committee shall elect from its own membership at the first regular or special meeting following the vacancy a new officer to serve for the balance of the unexpired term.

§256.7. Executive Committee Meetings.

(a) Executive Committee meetings shall be open to the public. The presiding officer shall assure that proper notice of Executive Committee meetings is provided as required by law.

(b) Executive Committee meetings shall take place at the headquarters of the office or, if convenience of the public or the parties to a hearing will be better served, at such place as the Executive Committee may designate.

(c) Executive Committee meetings shall be held at least quarterly and written notice of at least 7 days shall be given to each member of the time and place of such meeting.

(d) Special meetings may be held upon the call of the presiding officer or upon call of a majority of the members of the Executive Committee after legally adequate notice.

(e) The Executive Director shall prepare and submit to each member of the Executive Committee prior to each meeting a copy of the proposed agenda, outlining the matters to be considered by the Executive Committee. Attached to the agenda may be documents supplementing the matters to be discussed. The presiding officer shall approve the agenda prior to its distribution to the Executive Committee members and it's posting pursuant to the Open Meetings Act.

(f) Five members of the Executive Committee shall constitute a quorum.

(g) An individual member may not represent the Executive Committee by any statement or action except pursuant to the authority delegated to the individual member by the Executive Committee and recorded in the minutes of the Executive Committee.

(h) Drafts of the minutes of each Executive Committee meeting will be forwarded to each Executive Committee member for their review prior to their consideration for adoption at an Executive Committee meeting.

(i) The minutes of the Executive Committee shall be kept in the office of the Executive Director and available to the public to examine or to copy upon reimbursing the office for the cost to reproduce.

(j) No proxies, members authorized to act on behalf of another, at any Executive Committee meeting is permitted.

(k) All documents submitted to and created by the Executive Committee are subject to the provisions of the Public Information Act, Chapter 552 of the Government Code.

§256.8. Order of Business.

(a) The Executive Director, working with the presiding officer, shall prepare a written agenda for each Executive Committee meeting and arrange to have a copy of the agenda distributed to each Executive Committee member.

(b) Any Executive Committee member may place an item on the Executive Committee's agenda by written request to the presiding officer at least 10 days before the next Executive Committee meeting.

(c) Conduct of Executive Committee meetings shall be guided by Robert's Rules of Order, except that no Executive Committee action shall be invalidated by reason of failure to comply with those rules.

(d) Any person may request an appearance before the Executive Committee for the purpose of making a presentation on a matter

on the agenda as posted in the *Texas Register*, provided that at least 3 days' prior to the posted meeting a written request to appear is made to the Executive Director who shall forward the request to the presiding officer; however, the presiding officer may waive the 3-day notice requirement if such action would best serve the public interest. The presiding officer may deny a request to appear based on time constraints or other reasons, which, in the presiding officer's opinion, warrant such denial. When practicable, the presiding officer shall set a specific date and time to appear, and a time limit may be imposed. The person requesting the appearance should state in writing in reasonable detail the request to be made of the Executive Committee.

(e) The Executive Committee will set aside a time on its agenda for the receipt of public comment on any matter within the jurisdiction of the agency. The Presiding Officer may limit the time for each commenter to speak and exclude repetitious comments and comments not within the jurisdiction of the agency.

§256.9. Committees.

(a) Appointments to subcommittees shall be considered annually by the Executive Committee's presiding officer to assist in carrying out the functions of the office under the provisions of the office's enabling legislation. Subcommittee appointments shall be made by the presiding officer for a term of one year but may be terminated at any point by the presiding officer. Subcommittee members may be re-appointed at the discretion of the presiding officer. The office's presiding officer shall be an ex officio member of each subcommittee. All committees shall comply with the requirements of the Open Meetings Act, Chapter 551 of the Government Code.

(b) The actions of the subcommittees are recommendations only and are not binding until consideration and action by the Executive Committee at a regularly scheduled meeting.

(c) Subcommittee meetings shall be held at the call of the subcommittee chair, and another member serving on the subcommittee shall make, in the absence of the chair, a report to the Executive Committee at its next regularly scheduled meeting.

(d) If for any reason a vacancy occurs on a subcommittee, the Executive Committee's presiding officer may appoint a replacement in accordance with subsection (a) of this section.

(e) An internal audit standing subcommittees shall be created.

(1) The office's internal audit subcommittee shall be comprised of at least two Executive Committee members, one of whom shall serve as chair.

(2) The subcommittee shall make recommendations to the Executive Committee regarding the hiring or appointment of the agency's internal auditor and the subject matter of the agency audit.

(3) The subcommittee shall make recommendations to the Executive Committee on how best to address any findings of the internal auditor.

(f) All advisory committees shall be created and function pursuant to the requirements of Chapter 2110 of the Government Code.

(g) All subcommittee members performing any duties utilizing office facilities and/or who have access to office records, shall conform and adhere to the office's personnel policies as described in its personnel manual, the Public Information Act, Chapter 552 of the Government Code and all other applicable laws of the State of Texas governing state employees.

§256.10. Independent Contractors.

The Executive Director may, from time to time, employ independent contractors, including investigators and auditors to perform services prescribed by the Executive Committee. The basis for compensation of independent contractors shall be stated in the contract of employment.

§256.11. Confidentiality.

Members of the Executive Committee, the Executive Director, members of the office staff, and independent contractors retained by the Executive Committee shall not disclose any confidential information, which comes to their attention, except as may be required by law.

§256.12. Duties of the Executive Director.

(a) The Executive Director serves at the will of the Executive Committee.

(b) The Executive Director may hire staff within the guidelines established by the Executive Committee.

(c) The Executive Director will report to the Executive Committee and keep it advised of the activities and responsibilities of the agency.

(d) The Executive Director will be responsible for the day-to-day operations of the agency.

§256.13. Invalid Portions.

If any subcategory, section, subsection, sentence, clause, or phrase of these of these sections is for any reason held invalid, such decision shall not affect the validity of the remaining portions of these sections. The Executive Committee hereby declares that it would have adopted these subcategories, sections, subsections, sentences, clauses or phrases thereof irrespective of the fact that any one of more subcategories, sections, subsections, sentences, clauses or phrases be declared invalid.

§256.14. Actions Requiring Executive Committee Approval.

(a) The following reports are subject to approval, adoption or ratification by the Executive Committee during a meeting of the Executive Committee conducted pursuant to applicable state law:

(1) The Strategic Plan required by Chapter 2056 of the Government Code;

(2) Pursuant to §106.026 of the Health and Safety Code, the biennial: report to the legislature regarding the activities of the office;

(3) Pursuant to §106.025 of the Health and Safety Code, the status of the permanent endowment fund for the rural communities health care investment program;

(4) Pursuant to §487.057 of the Government Code, the Rural Health Work Plan;

(5) The legislative appropriation request to the Governor's Office of Budget and Planning and the Legislative Budget Board;

(6) Pursuant to §18 of HB 7, 77th Regular Legislative Session, proposed legislative changes;

(7) The annual Biennial Operating Plan, Budget and Financial Report; and

(8) The Consolidated State Plan and One-Year Action Plan pursuant to 24 Code of Federal Regulations §570.485.

(b) Pursuant to §487.052 of the Government Code the Executive Committee has the exclusive authority to adopt rules for the implementation of the statutory responsibilities of the office.

(c) The appointment or removal of the office's internal auditor is subject to the approval of the Executive Committee.

§256.15. Public Hearings.

(a) Public hearings may be conducted by the Executive Committee or by the Executive Director and office staff.

(b) At least one public hearing will be conducted annually to receive public comments from interested persons on the Consolidated Plan or One-Year Action Plan pursuant to 24 Code of Federal Regulations §580.085 and each odd numbered year on the Rural Health Work Plan pursuant to §487.057 of the Government Code.

(c) Notice of the public hearings will be published in the *Texas Register* at least, seven days prior to the scheduled hearing date and mailed written notice will be provided to all interested persons providing a written request to the office to be: on a mailing list to receive notice of office public hearings and to any other persons the office believes to have an interest in the subject matter of the public, hearing.

(d) Persons intending to offer comments at the public hearing must register by providing their name, mailing address and the person or organization they are representing.

(e) In order to accommodate all persons intending to comment the presiding officer may restrict the comments to a reasonable time limitation.

(f) Persons with disabilities who plan to attend and/or comment and require reasonable accommodations to observe, access or participate in the proceeding shall make a request for a reasonable accommodation at least two working days prior to the meeting.

(g) A record will be made of the proceedings and therefore all persons presenting comments will be recognized by the presiding officer and must offer their comments from a podium with electronic amplification where available.

(h) The Executive Committee will provide interested persons the opportunity to provide comments during a public comment period in accordance with the Executive Committee's agenda and the provisions of §§256.1 - 256.15 of this Chapter.

(i) Persons registered to comment will be recognized in an order to be determined by the presiding officer. The presiding officer may recognize the commenter's time limitations in assigning the order of appearance.

(j) Written statements in lieu of verbal comments may be submitted. It is preferred that written statements be included with verbal statements.

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

Filed with the Office of the Secretary of State on June 21, 2005.

TRD-200502557
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Earliest possible date of adoption: July 31, 2005
For further information, please call: (512) 936-6710

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

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

22 TAC §153.24

The Texas Appraiser Licensing and Certification Board proposes a new rule §153.24, concerning Processing a Complaint. Rather, than having to wait for a Board or Enforcement Committee meeting to close a complaint, the new rule §153.24 authorizes the Commissioner to dismiss a complaint received by the Texas Appraiser Licensing and Certification Board that is not within the Board's jurisdiction or a complaint without merit. The new rule also streamlines the complaint process by reducing the number of days it takes to close a complaint.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule.

Mr. Thorburn also has determined that for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of these changes is the ability to close a complaint in a more timely manner. There will be no effect on small or micro-businesses. There is no effect on individuals who are required to comply with the new rule as proposed.

Comments on the proposal may be submitted Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The new rule is proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

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

§153.24. Processing a Complaint.

(a) Upon receipt of a complaint the Board's staff shall assign the complaint a complaint number.

(b) The Board's staff shall review the complaint including supporting documentation. If the complaint does not contain sufficient information to determine whether the Board has jurisdiction or is considered to be outside the Board's authority, the Board's staff may interview the complainant to develop additional information.

(c) If the Board's staff concludes, after completion of the written investigative report provided for in §1103.455, Occupations Code, that the complaint is outside the jurisdiction of the board or is without merit, the Board's staff may recommend to the commissioner that the investigation be closed and that the complaint be dismissed. If the commissioner concurs with the recommendation, the complainant will be so notified and the investigation will be closed. The Board's staff shall write a dismissal explanation for the dismissed complaint and close the file.

(d) If the Board's staff determines that a possible violation exists, the Board's staff shall proceed with the investigation.

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

Filed with the Office of the Secretary of State on June 16, 2005.

TRD-200502502
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: July 31, 2005
For further information, please call: (512) 465-3950

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 539. PROVISIONS OF THE RESIDENTIAL SERVICE COMPANY ACT

SUBCHAPTER D. DEFINITIONS

22 TAC §539.31

The Texas Real Estate Commission (TREC) proposes amendments to §539.31 concerning Residential Service Contract. The amendments change the cites to the relevant statutory provisions in Chapter 1303, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1303, a nonsubstantive codification of The Residential Service Company Act, and repealed Article 6573b, Texas Civil Statutes effective June 1, 2003. The amendments are also proposed in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning definitions.

Loretta R. DeHay, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state as a result of enforcing or administering the section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the underlying statutory authority for the rule. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.31. Residential Service Contract.

A contract or agreement whereby a person, for a fee, undertakes to indemnify against or reimburse the costs of maintenance, repair, or replacement of the structural components, appliances, or electrical, plumbing, heating, cooling, or air conditioning systems of residential property is not a "residential service contract" within the meaning of Texas Occupations Code, Chapter 1303, §1303.002(5) [~~§4(a)~~].

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

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502429
Loretta DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: July 31, 2005
For further information, please call: (512) 465-3900

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SUBCHAPTER F. AUTHORIZED PERSONNEL

22 TAC §539.51

The Texas Real Estate Commission (TREC) proposes amendments to §539.51, concerning Employee Defined. The amendments change the cites to the relevant statutory provisions in Chapter 1303, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1303, a nonsubstantive codification of The Residential Service Company Act, and repealed Article 6573b, Texas Civil Statutes effective June 1, 2003. The amendments are also proposed in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning definitions.

Loretta R. DeHay, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state as a result of enforcing or administering the section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the underlying statutory authority for the rule. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.51. Employee Defined.

For the purposes of Texas Occupations Code, Chapter 1303, §1303.004 [~~Civil Statutes, Article 6573b, §6(b)~~], "employee" means any person other than a licensed real estate salesperson, real estate broker, mobile home dealer, or insurance agent authorized by a licensed service company to sell, offer to sell, arrange or solicit the sale of, or receive applications for residential service contracts subject to the following conditions.

(1) The residential service company must have the right to direct and control the employee's performance.

(2) The residential service company must accept responsibility for representations made by the employee within the scope of the employee's employment.

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

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TRD-200502430
Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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SUBCHAPTER I. FUNDED RESERVES

22 TAC §539.81

The Texas Real Estate Commission (TREC) proposes amendments to §539.81 concerning Funded Reserves. The amendments change the cites to the relevant statutory provisions in Chapter 1303, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1303, a nonsubstantive codification of The Residential Service Company Act, and repealed Article 6573b, Texas Civil Statutes effective June 1, 2003. The amendments are also proposed in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning definitions.

Loretta R. DeHay, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state as a result of enforcing or administering the section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the underlying statutory authority for the rule. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.81. Funded Reserves.

(a) Each residential service company licensed by the commission shall maintain funded reserves in the amount required by the Residential Service Company Act (Act), Texas Occupations Code, Chapter 1303, Subchapter D [, ~~§9~~]. Accounts containing funded reserves must be identified as such and may not be encumbered or commingled with funds which are not reserves. Separate funded reserves are required for service contracts written in Texas unless the company's combined funded reserves meet the minimum reserve requirements of the Act, Subchapter D [~~§9~~], calculated on the basis of all outstanding contracts. Each company shall maintain a level of liquidity equal to or greater than the amount of its funded reserve. Funded reserves may be maintained in the following liquid assets only:

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

(b) (No change.)

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

Filed with the Office of the Secretary of State on June 14, 2005.

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Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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SUBCHAPTER M. EXAMINATIONS

22 TAC §539.121

The Texas Real Estate Commission (TREC) proposes amendments to §539.121 concerning Examinations. The amendments change the cites to the relevant statutory provisions in Chapter 1303, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1303, a nonsubstantive codification of The Residential Service Company Act, and repealed Article 6573b, Texas Civil Statutes effective June 1, 2003. The amendments are also proposed in connection with TREC's on-going review of its rules and are generally intended to update and to clarify the rules concerning definitions.

Loretta R. DeHay, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state as a result of enforcing or administering the section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Ms. DeHay also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the underlying statutory authority for the rule. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

§539.121. Examinations.

The commission shall examine the affairs of each licensed residential service company as the commission deems necessary, but no less than once every three years. A company's failure to provide access to the commission to the books and records of the company is a violation of Texas Occupations Code, Chapter 1303, §1303.053, [~~Texas Civil~~

~~Statutes, Article 6573b,~~ §13(b) ~~(the Act)~~] and may subject the company to the penalties provided in Chapter 1303 [~~the Act~~].

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

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Loretta DeHay
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465-3900

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. EXAMINATION

22 TAC §571.3

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §571.3, concerning Eligibility for Examination and Licensure. This section contains the Board's requirements for persons seeking a veterinary license in Texas. The Board's recently adopted sunset bill, Senate Bill 407, requires the Board to refund license examination fees under certain circumstances and adopt a rule defining an "emergency" that would warrant a refund. The amended section satisfies the legislative requirement that the Boards examination fee be refunded if the applicant provides notice to the Board of not less than 14 days before the date of the examination that the applicant is unable to take the examination, or if the applicant is unable to take the examination because of an emergency. The term "emergency" is defined as any immediate, unforseen event that would render a person unable or unfit to take the examination, and may include a death in the family or an injury or other event that could reasonably be considered to be an emergency.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be to introduce fairness into the licensing process by allowing certain individuals to have fee refunds for circumstances beyond their control. There will be no effect on small or micro businesses. There will be no economic cost to persons required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Julie Barker, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 305-7555, fax (512) 305-7556, and must be received by September 1, 2005.

The amendments are 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.

The amendments affect the Veterinary Licensing Act, Occupations Code, Chapter 801, Subchapter F, pertaining to Licensing.

§571.3. Eligibility for Examination and Licensure.

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

(d) Licensing Examination

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

(7) Appearance for Examinations

(A) An applicant for the SBE must submit a new application and the current fees prior to admission for examination if the applicant:

(i) does not appear for the scheduled examination; or

(ii) fails to attain a passing score on the scheduled examination.

(B) The Board shall refund the examination fee for the SBE if the applicant:

(i) provides notice of not less than fourteen (14) days before the date of the examination, that the applicant is unable to take the examination; or

(ii) is unable to take the examination because of an emergency.

(C) For purposes of subparagraph (B)(ii) of this paragraph, an "emergency" shall be defined as any immediate, unforseen event that would render a person unable or unfit to take an examination, and may include a death in the family or an injury or other event that could be reasonably considered to be an emergency. Matters of inconvenience or failure to satisfy an examination prerequisite, shall not be considered an emergency.

(D) [~~(B)~~] A candidate for the NAVLE must take the examination within the testing window in which the candidate is authorized for testing.

(i) A candidate who fails to take the examination within the appropriate testing window shall forfeit the candidate's fees.

(ii) A candidate who fails to take the examination within the appropriate testing window and desires to take the examination during a subsequent testing window must have the candidate's eligibility reconfirmed by the Board and the candidate must pay new fees.

(iii) If a candidate fails to attain a passing score on the NAVLE, the candidate must submit a new application and the current fees in accordance with this section, except that, if a candidate fails to pass the fall NAVLE, the Board will consider the candidate approved to retake the NAVLE during the following spring testing window. In that case, the candidate must submit a new NAVLE application to the NBVME and pay the NBVME's examination fee.

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

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502402

Julie A. Barker
Executive Assistant
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 12, 2005
For further information, please call: (512) 305-7555

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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.27

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §575.27, concerning Complaints--Receipt, Investigation and Disposition. This section sets out the process used by the Board in receiving and processing complaints. The Board's recently adopted sunset bill, Senate Bill 407, directs the Board to adopt a formal policy to focus enforcement efforts toward investigating complaints. The Sunset Advisory Commission also recommended that the Board update rules to prioritize complaints by emphasizing those that allege the most serious violations.

The Board proposes that §575.27 be amended to reflect adoption of the formal policy required by Senate Bill 407. The amendment states that the policy of the Board is that the investigation of complaints shall be the primary concern of the Board's enforcement program, and shall take precedence over all other elements of the enforcement program, including compliance inspections. Complaint priorities are also established in the following order: acts (or omissions) that may constitute a continuing threat to the public welfare; acts that resulted in the death of an animal; acts that contributed to or did not correct the illness, injury or suffering of an animal; and all other acts that do not fall in the preceding categories. These amendments satisfy the intent of the legislature as reflected in Senate Bill 407. One additional change is to reflect current practice of sending notices to licensees of informal conferences by regular mail instead of certified mail.

Ron Allen, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen has also determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be to emphasize complaint investigations and thus encourage agency efficiency by settling complaints more quickly. Public understanding of the Board's complaint process will be enhanced by the knowledge that a priority system for complaints has been established. There will be no effect on small or micro businesses. There will be no economic cost to persons required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted in writing to Julie Barker, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 305-7555, fax (512) 305-7556, and must be received by September 1, 2005.

The amendments are 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.

The amendments affect the Veterinary Licensing Act, Texas Occupations Code, Chapter 801, Subchapter E, which requires the Board to develop and implement a complaint procedure.

§575.27. Complaints--Receipt, Investigation and Disposition.

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

(c) Investigation of complaints.

(1) The policy of the board is that the investigation of complaints shall be the primary concern of the board's enforcement program, and shall take precedence over all other elements of the enforcement program, including compliance inspections. [~~The board shall investigate complaints against licensees in the order received unless the allegations contained in a complaint are deemed to constitute a continuing or imminent threat to the public welfare, in which case the complaint will be investigated immediately.~~]

(2) The board shall investigate complaints based on the following allegations, in order of priority:

(A) acts or omissions, including those related to substance abuse, that may constitute a continuing and imminent threat to the public welfare;

(B) acts or omissions of a licensee that resulted in the death of an animal;

(C) acts or omissions of a licensee that contributed to or did not correct the illness, injury or suffering of an animal; and

(D) all other act and omissions that do not fall within subparagraphs (A) - (C) of this paragraph.

(3) [~~(2)~~] Upon receipt of a complaint, a letter of acknowledgment will be promptly mailed to the complainant.

(4) [~~(3)~~] Complaints [~~Complaint files~~] will be reviewed every thirty (30) days to determine the status of the complaint. Parties to a complaint will be informed on the status of a complaint [~~on~~] at least on a quarterly basis.

(5) [~~(4)~~] Upon receipt of a complaint, a board investigator shall review it and may interview the complainant to develop additional information. If the investigator concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the board, or is without merit, the investigator shall recommend through the director of enforcement to the executive director that the investigation be closed. If the executive director concurs with the recommendation, the complainant will be so notified, the investigation will be closed, and the complaint file will be maintained in a secure file in the board office. If the executive director does not concur with the recommendation, the investigation will proceed.

(6) [~~(5)~~] If the executive director returns the complaint to the investigator with a notation of non-concurrence under paragraph (5) [~~(4)~~] of this subsection, or if the executive director concurs with the investigator's determination that a potential violation exists, the licensee is furnished with a copy of the complaint, unless the executive director determines that an undercover investigation is required. If no undercover investigation is required, the investigator shall contact the licensee in writing, and request any patient records or other pertinent documents deemed necessary for the investigation. The investigator may schedule an interview with the licensee. The investigator may request a written narrative statement from the licensee.

(7) [~~(6)~~] After the licensee's response to the complaint is received, further investigation may be necessary to corroborate the information provided by the complainant and the licensee. The investigator may request additional medical opinions, supporting documents, and interviews with other witnesses.

(8) [~~(7)~~] Upon the completion of an investigation, the director of enforcement shall present to the executive director a report of investigation (ROI) and a conclusion as to the probability that a violation(s) exists. If the executive director determines from the ROI that the probability of a violation involving medical judgement or practice exists, the director of enforcement shall forward a copy of the complaint file to the board secretary, who will determine whether or not the complaint should be closed, further investigation is warranted, or if the licensee should be invited to respond to the complaint at an informal conference at the board offices. If the probable violation does not involve medical judgement or practice, the executive director shall not forward the complaint file to the board secretary, and the executive director shall determine whether or not the complaint should be closed, further investigation is warranted, or if the licensee should be invited to respond to the complaint at an informal conference at the board offices. If the board secretary or executive director determines that a violation has not occurred, the executive director or director of enforcement shall notify the complainant and licensee in writing of the conclusion and that the complaint is dismissed.

(9) [~~(8)~~] If the board secretary or executive director concludes that a probable violation(s) does exist, the executive director shall invite the licensee in writing to an informal conference to discuss the complaint made against the licensee. The letter invitation to the licensee [~~shall be mailed by certified mail, return receipt requested, and~~] must include a list of the specific allegations of the complaint.

(d) - (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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TRD-200502403
Julie A. Barker
Executive Assistant
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 12, 2005
For further information, please call: (512) 305-7555

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF AND MISCELLANEOUS

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners ("Board") proposes amendments to §577.15, concerning Fee Schedule. The amendments increase by $4.00 the Board's required fees for current license renewals, inactive renewals, and special licenses. The rates of delinquent renewal fees are reduced based on legislation passed during the 79th Legislature. These fee changes are required to cover the costs of the Board's legislative appropriation for FY 2006. Examination fees for the State Board Examination and Special License Examination are decreased by $5.00 due to elimination of another agency by the Legislature.

Ron Allen, Executive Director, has determined that for the first five-year period the amended section is in effect there will be fiscal implications for state or local government as a result of enforcing or administering the section. The fee increases will result in a gain to the state's general revenue of $25,394 in FY 2006; $25,978 in FY 2007; $25,978 in FY 2008; $25,978 in FY 2009; and $25,978 in FY 2010.

Mr. Allen has also determined that for the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the section will be to accurately match the revenues of the agency with expenditures so as not to charge excessive fees for license renewals. There will be no effect on small or micro businesses. Overall impact on licensees will be mixed: examination fees will decrease slightly, regular license renewals will increase by $4, and delinquent renewal fees will decrease.

Comments on the proposed amendments may be submitted in writing to Julie Barker, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 305-7555, fax (512) 305-7556, and must be received by August 29, 2005.

The amendments are 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.

The amendments affect the Veterinary Licensing Act, Texas Occupations Code, §801.303 which pertains to renewal license fees.

§577.15. Fee Schedule.

The following fees are adopted 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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Julie A. Barker
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7555

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER P. SURVEILLANCE AND CONTROL OF BIRTH DEFECTS

25 TAC §§37.301 - 37.306

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§37.301 - 37.306, concerning the surveillance and control of birth defects.

BACKGROUND AND PURPOSE

The amended sections correlate with current state law on birth defect monitoring (Health and Safety Code, Chapter 87, Birth Defects) and allow for passive data collection and reporting of Fetal Alcohol Syndrome (FAS) cases identified at any age.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.301 - 37.306 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Amendments to §§37.301 - 37.306 provide for revisions to clarify text and delete references to legacy agency names and redundant language. Amendment to §37.303 adds a new definition for "surveillance" and provides clarification to other definitions. The new §37.305(b)(4) adds new language to provide guidance for passive data collection and reporting of Fetal Alcohol Syndrome. Amendment to §37.305(d)(2) adds new language to clarify passive data collection.

FISCAL NOTE

Mark Canfield, Ph.D., Manager, Birth Defects Epidemiology and Surveillance Branch, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed, because there is no cost impact to state or local government.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Canfield has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Dr. Canfield has also determined that for each year of the first five years the sections are in effect, the public will benefit by an enhanced ability for the department to collect data on FAS and implement early intervention strategies.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Mark Canfield, Ph.D., Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7232, fax (512) 458-7330. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under Health and Safety Code, §87.021, which requires the department to adopt rules on the operation of the birth defects program; §87.022 which requires the department to adopt rules on how information will be collected and made available; Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect Health and Safety Code, Chapters 87 and 1001; and Government Code, Chapter 531. Review of the rules implements Government Code, §2001.039.

§37.301. Purpose.

These sections implement the provisions of [~~Chapter 602, §1, 73rd Legislature, adding~~] Chapter 87 to the Health and Safety Code. Chapter 87 provides the Texas Board of Health with the authority to adopt rules relating to the surveillance and control of birth defects. The legislation directs the Texas Department of Health [~~(department)~~] to develop a statewide surveillance program. The Texas Department of Health and the Texas Board of Health were abolished by Chapter 198, §§1.18 and 1.26, 78th Legislature, Regular Session, 2003. Health and Safety Code, Chapter 1001, establishes the Department of State Health Services (department), which now administers these programs. Government Code, §531.0055, provides authority to the Executive Commissioner of the Health and Human Services Commission to adopt rules for the department.

§37.302. Policy.

(a) (No change.)

(b) It is the policy of the program [~~Texas Birth Defects Monitoring Division~~] to limit medical researcher contact with individuals and families identified by the central registry to only those studies with high scientific merit with no feasible alternate means of conducting the study.

(c) It is also the policy of the program [~~Texas Birth Defects Monitoring Division~~] to protect patient information from disclosure through the legal process and Government Code, Chapter 552.

§37.303. Definitions.

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

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

(3) Case finding--The process used to identify potential cases for inclusion in the central registry of the program [~~Texas Department of Health's Texas Birth Defects Monitoring Division~~]. Potential cases are obtained through review of medical and health records, logs, indices, appointment rosters and other records.

(4) Central registry--Cases of birth defects obtained through the surveillance activity of the program [~~Texas Birth Defects Monitoring Division~~].

(5) Commissioner--The Department of State Health Services Commissioner [~~of the Texas Department of Health~~].

(6) (No change.)

(7) Department--The Department of State Health Services [~~Texas Department of Health~~].

(8) - (9) (No change.)

(10) Health facility--Any of the following types of facility:

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

(D) a state hospital [~~or state school~~] maintained and managed by the Department of State Health Services and a state mental retardation facility maintained and managed by the Department of Aging and Disability Services; [~~Texas Department of Mental Health and Mental Retardation~~]

(E) - (H) (No change.)

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

(14) Surveillance--The systematic collection, analysis interpretation, and dissemination of health data on an ongoing basis.

(A) Active surveillance--program staff regularly contact or visit data sources to find and collect data on cases.

(B) Passive surveillance--program receives case reports from data sources.

(15) [~~(14)~~] Toxic substance--A substance that has or may have toxic, carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and includes a product that contains a toxic substance that poses or may pose a substantial hazard to human health.

§37.304. Confidentiality of Information Provided to the Department.

(a) Reports, records, and other information collected by, or provided to the department [~~Texas Department of Health (department)~~] relating to persons known to have, or suspected of having a birth defect are confidential records and not public information and may not be released except as described in subsection (b) of this section. The confidential records include medical and other information obtained as part of epidemiologic or other investigations and the records and information gathered as part of the operation of the central registry.

(b) (No change.)

§37.305. Surveillance of Birth Defects: Central Registry.

(a) (No change.)

(b) In order for information related to a child to be included in the central registry, the following conditions must be met.

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

(4) In addition, reports of Fetal Alcohol Syndrome Disorders (FASD), regardless of the affected person's age, will be collected under Health and Safety Code, §87.021(f), of the statute providing for passive data collection.

(c) (No change.)

(d) Interaction between department staff and staff at facilities is detailed below:

(1) (No change.)

(2) Potential cases are obtained by department staff through review of medical and health records, logs, indices, appointment rosters, and other records. Cases may also be obtained through passive reporting from health facilities and health professionals.

(3) (No change.)

(e) (No change.)

§37.306. Access to Information in the Central Registry.

(a) An application for access to any confidential data elements for individual patients identified as part of the operation of the central registry must contain a protocol and be submitted to the program manager [~~Texas Department of Health's (department) director of the Texas Birth Defects Monitoring Division~~]. The protocol shall explain the applicant's "valid scientific interest" by describing, at length:

(1) - (12) (No change.)

(b) After the program manager [~~director of the Texas Birth Defects Monitoring Division~~] receives the completed request for information, the protocol will be reviewed by a program [~~divisional~~] review panel. The panel shall consist of the program manager [~~director of the Texas Birth Defects Monitoring Program~~], the unit manager [~~chief of the Bureau of Epidemiology~~], and a departmental epidemiologist. Upon approval by the program [~~divisional~~] panel, the protocol shall be evaluated and judged by the department's institutional review board. Final approval of the protocol shall require the approval of both the program [~~divisional~~] panel and the institutional review board and shall be based on an evaluation of the criteria listed in subsection (c) of this section.

(c) The evaluation criteria for approval by the program [~~divisional~~] review panel shall include the following.

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

(d) (No change.)

(e) If the applicant intends to contact individuals whose names were provided by the program [~~Texas Birth Defects Monitoring Division~~], the protocol must contain strong methodologic support for the need for such contact.

(f) If the protocol is approved by both the program [~~divisional~~] panel and the institutional review board, then the researcher shall be considered to have established a valid scientific interest as required. The program manager [~~Director of the Texas Birth Defects Monitoring Division~~] shall so advise the Commissioner. The researcher will be required to comply with the conditions of subsections (g) and (h) of this section before any data will be released.

(g) If permission is granted, the applicant shall be responsible for costs incurred by the program [~~Texas Birth Defects Division~~] in making the data available in compliance with established procedures for handling requests for public information. [~~§1.251 of this title (relating to Procedures for Handling Requests for Public Information) and Texas Department of Health Operating Procedure OP 1355.~~] The applicant shall incur the cost of the program [~~Texas Birth Defects Monitoring Division~~] to monitor all contact with human subjects. The date of delivery of data shall be determined by the program manager [~~Director of the Texas Birth Defects Monitoring Division~~] based on workload and the nature of the request.

(h) Prior to release of any data, the program manager [~~director of the Texas Birth Defects Monitoring Division~~] shall receive from all applicants, including the principal investigators, staff, and consultants who will receive access to any confidential central registry data, a signed written statement guaranteeing that:

(1) the applicant shall not allow any person other than those identified in the protocol, to access, use, or otherwise review the data supplied by the program [~~Texas Birth Defects Monitoring Division~~];

(2) there shall be no deviation from the protocol without explicit advance review and approval by the program [~~Texas Birth Defects Monitoring Division~~] panel, the department's institutional review board, and the Commissioner;

(3) information obtained in the course of activities undertaken or supported using the data from the program [~~Texas Birth Defects Monitoring Program~~] shall not be used for any purpose other than the exact purpose for which it was supplied;

(4) all data, data tapes and disks, hard copy output, interview questionnaires or other materials provided by the program [~~Texas Birth Defects Monitoring Division~~] are considered the property of the department [~~Texas Department of Health~~] and shall be returned to the department at the completion of the study. Any confidential information which is copied or otherwise transferred, electronically or through other means, shall be destroyed at the completion of the research unless otherwise stated in the research protocol;

(5) the program [~~Texas Birth Defects Monitoring Division, Texas Department of Health~~] shall be acknowledged as a source of birth defects or other data in all written reports, data tabulations or publications that are produced by use of these data;

(6) the applicant agrees to notify the program manager [~~director of the Texas Birth Defects Monitoring Division~~] immediately upon receiving any request for access to data in the applicant's possession;

(7) the applicant shall notify the program manager [~~director of the Texas Birth Defects Monitoring Division~~] on receiving notice of any legal action that might affect disclosure of the data, either by subpoena, discovery, or other means; and

(8) the applicant must agree to reimburse the program [~~Texas Birth Defects Monitoring Division~~] for reasonable costs it incurs in protecting patient information from legal disclosure.

(i) While the program [~~Texas Birth Defects Monitoring Division~~] utilizes some vital records information, that information is the responsibility and property of the department's Vital Statistics Unit (unit) [~~Bureau of Vital Statistics (bureau)~~]. Investigators who request vital records information from the unit [~~bureau~~] must obtain approval according to the policies of the unit [~~bureau~~].

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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Cathy Campbell
Director, Legal Services
Department of State Health Services
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For further information, please call: (512) 458-7236

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CHAPTER 97. COMMUNICABLE DISEASES

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§97.101 and 97.102, concerning the statewide immunization of children and immunizations required upon admission of a child to the Texas Department of Criminal Justice, Department of Aging and Disability Services, Department of State Health Services, or the Texas Youth Commission and new §97.221, concerning the Department of State Health Services Immunization Schedule.

BACKGROUND AND PURPOSE

During the 78th Legislative session, the Texas Legislature passed House Bill 2292, implemented by Health and Safety Code, §161.004, which allows an additional exemption from immunizations for Texas children and students for reasons of conscience, including a religious belief. The implementation of this legislative mandate required minor revisions to §§97.101 and 97.102. The proposed amendments to §§97.101 and 97.102 update section numbers for accurate reference of the previous rules updates and also update numerous subsections to accurately reflect changes to the immunization requirements, which were approved in 2004, for Texas child-care facilities, public or private primary and secondary schools, and students enrolled in health-related and veterinary courses in institutions of higher education. The proposed §97.221, for the adoption of a Department of State Health Services Immunization Schedule, also requires revisions to §§97.101 and 97.102. The new §97.221, Department of State Health Services Immunization Schedule, will serve as an immunization reference to directors and school nurses at child-care facilities, public or private primary and secondary schools, and institutions of higher education. Physicians and hospitals will also benefit from the adoption of the Department of State Health Services Immunization Schedule as a reference for determining age-appropriate vaccination of their patients. The Department of State Health Services will make the schedule available on the Immunization Branch's website at www.ImmunizeTexas.com. The department consulted with the Texas Department of Criminal Justice, Texas Youth Commission, Department of Aging and Disability Services, Department of Family Protective Services, and Texas Education Agency in developing these rules.

SECTION-BY-SECTION SUMMARY

Amendments to §§97.101 and 97.102 provide clarifications to the rules and corrections to section numbers within the rule language. Section 97.101 provides a new definition of the immunization record information that providers may be required to furnish on children that have been immunized or referred for immunizations. Section 97.102 adds new language that allows the periodic review of facilities immunization records and provides a new definition of the immunization record information that facilities are required to maintain. Section 97.221 is a schedule that indicates the recommended ages for routine administration of currently licensed childhood vaccines for children through age 18 years.

FISCAL NOTE

Casey S. Blass, Section Director, Disease Prevention and Intervention Section, has determined that for each year of the first five years that the sections will be in effect there will be no fiscal implications to state or local government as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Blass has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs

to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Blass has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering §§97.101 and 97.102 is to increase the clarity and accuracy of the sections involved in this proposal. The public benefit anticipated as a result of enforcing and administering §97.221 as proposed will be to increase the availability of an immunization schedule.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments and new rule do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Victoria Brice, Disease Prevention and Intervention Section, Department of State Health Services, 1100 West 49 th Street, Austin, Texas 78756, (512) 458-7111, extension 6658, or (800) 252-9152. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

SUBCHAPTER D. STATEWIDE IMMUNIZATION OF CHILDREN BY HOSPITALS, PHYSICIANS, AND OTHER HEALTH CARE PROVIDERS

25 TAC §97.101, §97.102

STATUTORY AUTHORITY

The amendments are proposed under Health and Safety Code, §81.023, which requires the State Health Services to develop immunization requirements for children; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The amendments affect Health and Safety Code, §81.023, and Chapter 1001; Government Code, Chapter 531; Texas Education Code, §§38.001 and 51.933; and Human Resource Code, §42.043.

§97.101. Statewide Immunization of Children.

(a) Every person less than 18 years old shall be immunized against vaccine-preventable diseases in accordance with the immunization schedule adopted by the Executive Commissioner of the Health and Human Services Commission as referenced in §97.221 of this title (relating to the Department of State Health Services Immunization Schedule) [~~Board of Health~~]. The immunization requirements are also adopted as a statewide "control measure" for communicable diseases as that term is used in the Health and Safety Code, §§81.081 and 81.082 [~~§81.081 and §81.082~~], and as an "instruction of the department" as that term is used in the Health and Safety Code, §81.007.

(b) The vaccine requirements shall be those required for children and students under §§97.61 - 97.72 [~~97.77~~] of this title (relating to Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education). Additional copies of Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education may be obtained from the Department of State Health Services, [~~Texas Department of Health,~~] 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7284.

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

(f) If requested by the local health unit, local health department, public health district, or the department, the provider shall furnish identifying information on those children who have been immunized or referred for immunizations. The information must include at least the name and date of birth of the child, the child's address, the name and telephone number of a parent or guardian, the month, day, and year of vaccine administration, the name or type of vaccines administered, the name and address of the provider that administered the vaccines; or other evidence of immunity to a vaccine-preventable disease. [~~The information must include at least the child's name, child's date of birth, child's address, a parent's name, a parent's telephone number, and if applicable, the name or type of vaccine administered, and the month, day, and year that the vaccine was administered.~~]

(g) Children are exempt from immunizations as referenced in §97.62 of this title (relating to Exclusions from Compliance). [~~if:~~]

[~~(1) immunization conflicts with the tenets of an organized religion to which parent, managing conservator or guardian belongs; or~~]

[~~(2) the immunization is medically contraindicated based on an examination of the child by a physician licensed to practice by any state in the United States.~~]

§97.102. Immunizations Required upon Admission of a Child to the Texas Department of Criminal Justice, [~~Texas Department of Mental Health and Mental Retardation~~] Department of Aging and Disability Services, Department of State Health Services, or the Texas Youth Commission.

(a) On admission of a child to a facility of the Department of Aging and Disability Services, Department of State Health Services [~~Texas Department of Mental Health and Mental Retardation~~], the Texas Department of Criminal Justice, or the Texas Youth Commission, the facility physician shall review the immunization history of the child and administer any needed immunization(s) or refer the child for immunization(s) to another health care provider. Required immunizations are those set out in §97.63 of this title (relating to Required Immunizations). Copies of Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education may be obtained from the Department of State Health Services [~~Texas Department of Health~~], 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7284.

(b) The provisions of §97.62 of this title (relating to Exclusions of Compliance) and §§97.66 - 97.69 [~~§97.71~~] of this title (relating to Provisional Enrollment) apply to this section.

(c) The facility covered by this section shall keep an individual's immunization record during the child's period of admission, detention, or commitment in the facility. Representatives of the department and local health authorities may advise and assist these agencies in meeting these requirements. The department may conduct periodic review of these agencies' identified immunization records in order to allow public health officials to obtain information required for public health purposes. The information must include at least the name and date of birth of the child, the child's address, the name and telephone number of a parent or guardian, the month, day, and year of vaccine administration, the name or type of vaccines administered, the name and address of the provider that administered the vaccines; or other evidence of immunity to a vaccine-preventable disease. [~~The records shall be open to inspection at all reasonable times by a representative of the local health unit, local health department, public health district or the department. The immunization record will record the name or type of vaccine administered; and the month, day and year that the vaccine was administered.~~]

[~~(d) This section does not affect the requirements of the Education Code, §2.09 and §2.091, or the Human Resources Code, §42.043, or sections of this chapter written under their authority.~~]

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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Cathy Campbell
Director, Legal Services
Department of State Health Services
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SUBCHAPTER J. DEPARTMENT OF STATE HEALTH SERVICES IMMUNIZATION SCHEDULE PROVIDERS

25 TAC §97.221

The new rule is proposed under Health and Safety Code, §81.023, which requires the State Health Services to develop immunization requirements for children; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The new rule affects Health and Safety Code, §81.023, and Chapter 1001; Government Code, Chapter 531; Texas Education Code, §§38.001 and 51.933; and Human Resource Code, §42.043.

§97.221. Department of State Health Services Immunization Schedule.

This schedule indicates the recommended ages for routine administration of childhood vaccines.

Figure: 25 TAC §97.221

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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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (commission) proposes amendments to §§114.2, 114.50, 114.51, and 114.53; and corresponding revisions to the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP).

The commission proposes these revisions to Chapter 114, Control of Air Pollution from Motor Vehicles, and to the SIP in order to control ground-level ozone in the El Paso ozone nonattainment area. The amendments and associated El Paso Motor Vehicle Emissions I/M SIP will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The federal I/M regulations for ozone nonattainment areas classified as "serious" require that on- board diagnostic (OBD) testing be implemented beginning January 1, 2002. Those regulations also provide an option for an extension of up to 12 months, if a state could show good cause. In a prior I/M rulemaking effective November 20, 2001, the commission submitted a request for a one-year extension to delay the implementation of OBD testing requirements in the El Paso ozone nonattainment area. This action was taken based on the El Paso area having experienced five years with no monitored violations of the ozone standard. At the time, the commission revised the I/M rules to delay implementation of the OBD testing requirement in the El Paso program area until January 1, 2003, to allow the commission time to explore viable options and to take into consideration any changes in El Paso's attainment status.

At the request of community leaders and elected officials in El Paso, the commission adopted rules (December 2002) revising the I/M rules and exempting El Paso from OBD testing since El Paso had experienced five years with no monitored violations of the ozone standard. This was achieved through the implementation of volatile organic compounds (VOC) control strategies including the two-speed idle (TSI) vehicle emissions testing program for all two- to 24-year old gasoline-powered vehicles. Because El Paso reached attainment prior to the EPA's deadline for OBD-I/M startup (January 1, 2002) and OBD had not already been implemented, the commission removed the requirement in

the rules for OBD implementation to begin in El Paso as of January 1, 2003. The OBD requirement was converted to a contingency measure. The contingency measure would be invoked by the commission with a notice in the *Texas Register* that OBD testing was required for the El Paso area to maintain attainment of the ozone national ambient air quality standard (NAAQS). The El Paso I/M program area would be required to initiate OBD testing 12 months after publication of the notice.

The current rules require El Paso to continue TSI testing of all subject vehicles. The current rules also require OBD testing contingent upon the commission publishing a *Texas Register* notice that OBD testing is required for the El Paso area to maintain attainment of the ozone NAAQS. The El Paso I/M program area is required to initiate OBD testing 12 months after publication of the notice.

Since the adoption of OBD as a contingency measure, the commission has become aware that many of the current TSI analyzers in place have become outdated and can no longer be effectively serviced. These analyzers will be unlikely to continue to operate properly due to lack of internal replacement components, and may not meet the state's minimum specifications required to provide critical vehicle inspection information to the Texas Information Management System (TIMS). Manufacturers have raised concerns about the feasibility of servicing these old analyzers and about the expense and availability of parts. Additionally, station owners are faced with expensive repairs that are required much more frequently because of the age of the analyzers.

In El Paso County, 37 of the 219 stations with analyzers can be updated with the proper equipment and software to meet current specifications. These analyzers can be updated with OBD testing equipment for an affordable cost of $1,200 to $2,500 per analyzer. All new TSI-OBD analyzers now being sold meet current specifications and operate on the current software that meets TIMS requirements.

Additionally, the commission has recognized that the vehicle fleet age in El Paso County is increasingly becoming OBD-compliant beginning with model year 1996 vehicles. Over half of the registered vehicles in El Paso County are model year 1996 and newer. The combination of the necessity of upgrading the testing network and a vehicle fleet becoming more OBD compliant has precipitated the proposed changes to the I/M program for El Paso County.

The amendments proposed in this rulemaking would require TSI and OBD testing in the El Paso I/M program area beginning May 1, 2006. The proposed amendments would revise rules related to the implementation of the state's I/M program in El Paso. The proposed rulemaking would require all gasoline-powered 1996 and newer model year motor vehicles equipped with OBD systems registered and primarily operated in El Paso County to be tested using EPA-approved OBD test procedures. All pre-1996 model year gasoline-powered motor vehicles registered and primarily operated in El Paso County would be tested using the EPA-approved TSI test. Emissions test stations in the El Paso program area would be required to offer both TSI testing and OBD testing to the public. Additionally, the proposal will reference updated vehicle emissions testing equipment specifications, which now include new EPA OBD communications components, known as controller area network (CAN).

This I/M program for El Paso is an important on-road mobile source control strategy that would support an El Paso eight-hour ozone maintenance plan and El Paso carbon monoxide redesignation maintenance plan.

SECTION BY SECTION DISCUSSION

Throughout this rulemaking package, minor administrative changes are proposed to be consistent with *Texas Register* requirements and other agency rules, for clarity, and for better readability.

Subchapter A, Definitions

The proposed amendment to §114.2, Inspection and Maintenance Definitions, adds a new definition "Controller area network (CAN)" and renumbers the remaining definitions accordingly. The new definition defines a term that is specific to the state I/M program. Also, the title of Chapter 114, Subchapter C is proposed to be updated in the introductory text of this section.

Subchapter C, Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties

Division 1, Vehicle Inspection and Maintenance

The proposed amendment to §114.50, Vehicle Emissions Inspection Requirements, establishes revised program requirements for the state I/M program for vehicle emissions testing and inspection. Section 114.50(a)(1) is proposed to be amended by deleting the requirement that all vehicles registered and primarily operated in Dallas, Tarrant, and Harris Counties shall be tested using a TSI test through April 30, 2002, because TSI testing is no longer required in Dallas, Tarrant, and Harris Counties. The currently existing paragraphs (2) - (5) are proposed to be renumbered as paragraphs (1) - (4).

Proposed changes to §114.50(a)(4) delete subparagraphs (A) and (B), which require all subject vehicles in El Paso to be tested using TSI, and which converted to OBD testing as a contingency measure. New subparagraphs (A) - (D) are proposed. Proposed new subparagraph (A) specifies the continuation of TSI testing through April 30, 2006. Proposed new subparagraph (B) defines model year vehicles to be tested using OBD in El Paso County beginning May 1, 2006. Proposed new subparagraph (C) defines model year vehicles to continue to be tested using TSI. Proposed new subparagraph (D) requires that all vehicle emissions inspection stations in the El Paso program area offer both TSI and OBD tests to the public beginning May 1, 2006.

References made to complying with requirements contained in the Texas I/M SIP are proposed to be deleted to clarify program requirements in §114.50(a)(1)(B), (2)(B), (3)(B) and (E); (b)(2), (6)(B), and (8); and (d)(1) and (2). Section 114.50(b)(6)(B) is further modified by adding "specified in 37 TAC §23.93 (relating to Vehicle Emissions Inspection Requirements)." Section 114.50(d)(2) is modified by adding "and to commit an offense specified in Texas Transportation Code, §548.603 (relating to Fictitious or Counterfeit Inspection Certificate or Insurance Document)."

The proposed amendment to §114.51, Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers, updates the requirements for vehicle emissions testing equipment. This section currently specifies application, certification, maintenance, and service requirements for manufacturers or distributors of vehicle emissions testing equipment seeking approval of an exhaust gas analyzer or analyzer system for use in the Texas I/M program. Section 114.51(a) currently specifies a date of October 15, 2001, for the exhaust analyzer technical specifications known as

"Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program," and for "Specifications for On-Board Diagnostics II for Use in the Texas Vehicle Emissions Testing Program." The proposed amendment will update the reference to both vehicle emissions testing equipment specifications with their new version date of May 1, 2005. The revised specifications include a new EPA communications component requirement, known as CAN.

Section 114.53, Inspection and Maintenance Fees, currently establishes a fee schedule for the different counties, which must be paid for the vehicle emissions inspection at an inspection station. Section 114.53(a)(1) is proposed to be amended by deleting the TSI fee requirement associated with the proposed deleted §114.50(a)(1), because TSI is no longer the required test in Dallas, Tarrant, and Harris Counties. The currently existing paragraphs (2) - (4) are proposed to be renumbered as paragraphs (1) - (3). There are no changes proposed to the current annual emissions test fee of $14. Section 114.53(a)(1) provides that if a resolution is passed by the El Paso County Commissioners Court to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), there will be an additional fee of $3.00, making the test fee in El Paso County $17 with the administrative fee being $5.50 ($2.50 state administrative fee plus $3.00 to fund the LIRAP) from each TSI test fee. Proposed revisions to subsection (a) specify that if a resolution is passed by the El Paso County Commissioners Court to participate in LIRAP, the test fee in El Paso County would be $16 and the administrative fee would be $4.50 ($2.50 state administrative fee plus $2.00 to fund the LIRAP) from each TSI or OBD test fee. These administrative fees will be remitted to the Texas Department of Public Safety (DPS) by the inspection station owners at the time inspection station owners purchase inspection stickers. Also, proposed renumbered paragraphs (1) - (3) are modified to reflect the renumbering of references, as discussed earlier in this preamble, and the acronyms ASM-2 and OBD are added to improve clarity.

In addition to the proposed rule amendments, the proposed revisions to the SIP narrative clarify the new program elements, such as applicability changes; performance standards; emissions testing network type; adequate tools and resources; emissions testing; affected vehicle populations; test procedures, standards, and test equipment; motorist compliance enforcement; and the implementation schedule.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Grants Management Section, has determined that for the first five-year period the proposed rules requiring OBD testing are in effect, fiscal implications are anticipated for units of state or local government in El Paso County that conduct their own vehicle inspections. If the El Paso County Commissioners Court decides to join the LIRAP, additional revenue would be generated for the agency and deposited into Fund 151. Fiscal implications would then be anticipated for other units of state or local governments in El Paso County that utilize vehicle fleets that would be subject to the LIRAP fee.

The proposed rulemaking would amend sections of Chapter 114 that deal with vehicle emissions, inspection, and maintenance. The revisions to Chapter 114 and to the SIP are proposed in order to control ground-level ozone in the El Paso ozone nonattainment area. The proposed rules clarify language and amend requirements for El Paso County with regard to emission testing for vehicles by requiring OBD testing beginning May 1, 2006, in addition to TSI testing that currently occurs. The proposed rulemaking would also lower the per vehicle fee that would be assessed in support of the LIRAP in El Paso County to encourage that county to participate in the program. If the El Paso County Commissioners Court decides to participate in the program, additional fee revenue for the agency is expected. If the County Commissioners Court decides not to participate, there would be no fiscal impact to the state. The amendments and associated El Paso Motor Vehicle Emissions I/M SIP will be submitted to the EPA. The proposed rules for OBD testing are not expected to result in fiscal implications for units of state and local government unless they decide to conduct their own vehicle inspections, which would require the purchase of additional or new equipment.

Cost Implications to State Agencies

The proposed rules for OBD testing may have fiscal implications for any state agency that conducts its own vehicle inspections. The proposed rulemaking would require any facility that conducts emissions testing to upgrade or replace its equipment to comply with the OBD testing requirement. The anticipated cost to upgrade the equipment is projected to be between $1,200 and $2,500 per analyzer. The cost to purchase new equipment is projected to be $15,000 per analyzer. Currently, the DPS and the Texas Department of Transportation (TxDOT) are the only state entities that own emissions testing analyzers in El Paso County. DPS does not test its own vehicles, but uses its analyzer for waiver/challenge requests by vehicle owners. DPS has indicated that the agency will likely replace its current analyzer at a cost of $15,000. TxDOT uses its analyzer to test its vehicles and has indicated that the agency's analyzer is upgradeable to handle OBD testing requirements. The cost for the upgrade is expected to be as high as $2,500. The cost implications to the state, related to emissions test analyzers meeting the proposed requirements, is expected to be $17,500.

If the El Paso County Commissioners Court decides to participate in the LIRAP, state agencies that own vehicles in El Paso County would incur increased costs for each vehicle that is subject to emissions testing. The costs for emissions testing would increase by $2.00 per vehicle. According to TxDOT vehicle registration records, 1,055 vehicles are registered in El Paso County to local and state governments and other exempt entities such as school districts. According to records from the Texas Building and Procurement Commission, DPS, and TxDOT, there are 388 state vehicles that are two to 24 years old, gasoline-powered, and registered or primarily operated in El Paso County. DPS operates up to 70 subject vehicles in El Paso County, while TxDOT operates 102 subject vehicles in the county. If the El Paso County Commissioners Court decides to participate in LIRAP, the cost to the state would be $776 annually.

Revenue Implications

If the El Paso County Commissioners Court decides to participate in the LIRAP, funding may increase by as much as $838,644 per year. There are an estimated 419,322 registered vehicles in El Paso County that may be subject to vehicle emissions testing. The proposed rulemaking would decrease the fee assessed to $2.00 per vehicle. The funding from the program would return to the county in the form of pass-through grants and would help county residents who may have difficulty financing needed repairs to their vehicles.

Cost Implications to Local Governments

Proposed changes for §114.50 and §114.51 would have a fiscal impact for units of local government. There are currently nine local government/school district facilities that perform vehicle emissions testing. Dependent upon the type of analyzer currently being used, the cost for upgrade may be between $1,200 and $2,500 if the analyzer can be upgraded or $15,000 if a new analyzer must be purchased. If all nine facilities are required to purchase new analyzers, the total cost to local governments would be $135,000. If the El Paso County Commissioners Court votes to participate in the LIRAP, there would be an additional fee of $2.00 for each vehicle that receives an emissions test. There are currently 1,055 vehicles owned by local government entities that would be subject to the additional fee. Local government costs would increase by $2,110 if the County Commissioners Court elected to participate.

PUBLIC BENEFITS AND COSTS

Mr. Perry also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a reduction in pollutants that contribute to the formation of ozone. Dependent upon the decision of the El Paso County Commissioners Court to participate in the LIRAP, there would be a benefit to county residents who may have difficulty financing needed repairs to their vehicles.

The proposed rule changes would require facilities that conduct emissions testing to purchase new equipment or, where possible, upgrade existing equipment to continue participating in the inspection program once OBD testing begins May 1, 2006. Currently, there are 219 facilities that perform safety inspections in El Paso County. One facility is a privately owned fleet station that provides inspections for privately owned fleet vehicles. Nine of the facilities are government or school stations that perform inspections on government-owned or school-owned vehicles. The remaining 209 facilities are privately owned stations that perform inspections for the general public. The total cost for the facilities to upgrade and replace the necessary equipment for conducting inspections is projected to be $2,791,300. Under the current rules, if El Paso County participated in the LIRAP, residents would be charged an additional $3.00 for inspection fees. The proposed rule changes would reduce the additional fee to $2.00.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Fiscal implications, which could be adverse, are anticipated for small or micro-businesses as a result of the proposed rulemaking. The amendments would require facilities that conduct emissions testing to purchase new equipment or, where possible, upgrade existing equipment to continue participating in the inspection program once OBD testing begins May 1, 2006. It is not known how many of the facilities conducting emissions testing are small or micro businesses. However, a small or micro-business is expected to incur the same costs as a large business. Equipment upgrades or replacements are estimated to cost between $1,200 and $15,000. The cost for a small business is estimated to range from approximately $12 to $150 per employee. For a micro-business, the cost is estimated to range from approximately $60 to $750 per employee.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

While the I/M program taken as a whole is intended to protect the environment and reduce risks to human health from environmental exposure, the intent of the proposed rules is to continue the program already in place while upgrading the test options that are offered. Therefore, these amendments to Chapter 114 are not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. The rules will not have an adverse material impact on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the continuation of the existing program will not impose new burdens on the public. If El Paso County chooses to participate in LIRAP, the emissions test fee would increase by $2.00 per vehicle. The impact of an increase of this amount would not be material. In addition, the benefits of the LIRAP, including improved air quality, would accrue to the public in the affected area. Operators of testing stations, as the regulated community, will choose whether to upgrade or replace their test equipment, but will expect to recoup the expense through the continuation of the I/M program. Operators may elect not to participate in the vehicle emissions inspection and I/M program.

Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet any of the four applicability requirements. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking action. The I/M program was created specifically in response to the requirements of the Federal Clean Air Act (FCAA) in 42 USC and the state law implementing the program. Under 42 USC, §7410, states are required to adopt a SIP that provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. The continuation of the I/M program with adjustments for improved technology, as a strategy to maintain the ozone NAAQS, is in accord with existing law. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed amendments and performed an assessment of whether Texas Government Code,

Chapter 2007, is applicable. The commissions's assessment indicates that Chapter 2007 does not apply to the proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The primary purpose of this rulemaking action is to upgrade and continue the existing emissions testing program in place in El Paso County as a SIP strategy for the control of ground-level ozone in the El Paso ozone nonattainment area. The proposed amendments require station operators to upgrade or replace emissions testing equipment in order to continue to participate in the I/M program, which was implemented under the FCAA and Texas Health and Safety Code (THSC), §§382.201 - 382.216. The requirement to upgrade emissions analyzers will assure the continued availability of emissions testing to the public and will support the availability of parts and service for the equipment. The proposed amendments are not a government action that affects private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed amendments do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking action and found that the proposal is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in §505.11, and therefore will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission determined that under 31 TAC §505.22, the proposed rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of the proposed rulemaking. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal area (31 TAC §501.32). This rulemaking proposal will not have a detrimental effect on SIP emission reduction obligations relating to maintenance of the ozone NAAQS by continuing the existing TSI testing portion of the I/M program and implementing new OBD testing requirements. This rulemaking action complies with 40 CFR. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Interested persons may submit comments regarding the consistency of the proposed rulemaking with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in El Paso on July 19, 2005, at 6:30 p.m. at the City of El Paso Council Chambers, 2 Civic Center Plaza, 2nd Floor. The hearing is structured for the receipt of oral or written comments by interested persons. Open discussion will not be permitted during the hearing; however, commission staff members will be available to the discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communications or other accommodation needs who are planning to attend the hearing should contact Lola Brown at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments must be received by 5:00 p.m. on August 2, 2005. All comments should reference Rule Project Number 2005-026-114-EN. For further information or questions concerning this proposal, please contact Bob Wierzowiecki, Air Quality Planning and Implementation Division, at (512) 239-1769.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.2

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.013, which states the commission's authority over various statutory programs. The amendment is also proposed under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act (TCAA)), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendment is also proposed under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to administer the TCAA and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules that specify the method to be used to control and reduce emissions from engines used to propel land vehicles; §382.202, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities; and §382.205, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment.

The proposed amendment implements TWC, §§5.013, 5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, 382.202, and 382.205.

§114.2. Inspection and Maintenance Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms <u>that</u> [~~which~~] are defined by the TCAA, the following words and terms, when used in Subchapter C of this chapter (relating to Vehicle Inspection and Maintenance<u>;</u> [~~and~~] Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program<u>; and Early Action Compact Counties</u>), have the following meanings, unless the context clearly indicates otherwise.

(1) Acceleration simulation mode (ASM-2) test - An emissions test using a dynamometer (a set of rollers on which a test vehicle's tires rest) that [~~which~~] applies an increasing load or resistance to the drive train of a vehicle, thereby simulating actual tailpipe emissions of a vehicle as it is moving and accelerating. The ASM-2 vehicle emissions test is comprised of two phases:

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

(2) (No change.)

(3) Controller area network (CAN)--A vehicle manufacturer's communications protocol that connects to the various electronic modules in a vehicle. CAN provides one protocol that collects information from the vehicle's electronic systems including the on-board diagnostics (OBD) emissions testing system. The United States Environmental Protection Agency requires the CAN protocol to be installed in OBD-compliant vehicles beginning with some model year 2003 vehicles and phasing in to all OBD-compliant vehicles by the 2008 model year.

(4) [~~(3)~~] Low volume emissions inspection station--A vehicle emissions inspection station that performs on-board diagnostics (OBD) testing only and does not exceed 1,200 OBD tests per calendar year.

(5) [~~(4)~~] Motorist--A person or other entity responsible for the inspection, repair, and maintenance of a motor vehicle, which may include, but is not limited to, owners and lessees.

(6) [~~(5)~~] On-board diagnostic (OBD) system--The computer system installed in a vehicle by the manufacturer that [~~which~~] monitors the performance of the vehicle emissions control equipment, fuel metering system, and ignition system for the purpose of detecting malfunction or deterioration in performance that would be expected to cause the vehicle not to meet emissions standards. All references to OBD should be interpreted to mean the second generation of this equipment, sometimes referred to as OBD II.

(7) [~~(6)~~] On-road test--Utilization of remote sensing technology to identify vehicles operating within the inspection and maintenance program areas that have a high probability of being high-emitters.

(8) [~~(7)~~] Out-of-cycle test--Required emissions test not associated with vehicle safety inspection testing cycle.

(9) [~~(8)~~] Primarily operated--Use of a motor vehicle greater than 60 calendar days per testing cycle in an affected county. Motorists shall comply with emissions requirements for such counties. It is presumed that a vehicle is primarily operated in the county in which it is registered.

(10) [~~(9)~~] Program area--County or counties in which the Texas Department of Public Safety, in coordination with the commission, administers the vehicle emissions inspection and maintenance program contained in the Texas Inspection and Maintenance State Implementation Plan. These program areas include:

(A) the Dallas-Fort Worth [~~Dallas/Fort Worth~~] program area, consisting of the following counties: Dallas, Denton, Collin, and Tarrant;

(B) the El Paso program area, consisting of El Paso County;

(C) the Houston-Galveston-Brazoria [~~Houston/Galveston~~] program area, consisting of Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties; and

(D) the extended Dallas-Fort Worth [~~Dallas/Fort Worth~~] program area, consisting of Ellis, Johnson, Kaufman, Parker, and Rockwall Counties. These counties became [~~will become~~] part of the program area as of May 1, 2003.

(11) [~~(10)~~] Retests--Successive vehicle emissions inspections following the failing of an initial test by a vehicle during a single testing cycle.

(12) [~~(11)~~] Testing cycle--Annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

(13) [~~(12)~~] Two-speed idle (TSI) inspection and maintenance test--A measurement of the tailpipe exhaust emissions of a vehicle while the vehicle idles, first at a lower speed and then again at a higher speed.

(14) [~~(13)~~] Uncommon part--A part that takes more than 30 days for expected delivery and installation, where a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers will exceed the remaining time prior to expiration of the vehicle safety inspection certificate or the 30-day period following an out-of-cycle inspection.

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

Filed with the Office of the Secretary of State on June 17, 2005.

TRD-200502509
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 31, 2005
For further information, please call: (512) 239-0348

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SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

DIVISION 1. VEHICLE INSPECTION AND MAINTENANCE

30 TAC §§114.50, 114.51, 114.53

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.013, which states the commission's authority over various statutory programs. The amendments are also proposed under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the TCAA), and to adopt rules that differentiate among particular conditions, particular sources,

and particular areas of the state. The amendments are also proposed under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and THSC, Subchapter G, §§382.201 - 382.216, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of FCAA, §§7401 *et seq*., to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of the NAAQS, and to fund the establishment of the LIRAP.

The proposed amendments implement TWC, §§5.013, 5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, and 382.201 - 382.216.

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) shall be applied to all gasoline-powered motor vehicles two - 24 years old and subject to an annual emissions inspection, beginning with the first safety inspection. Military [~~Currently, military~~] tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that [~~which~~] cannot operate using gasoline, and antique vehicles registered with the Texas Department of Transportation are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) shall inspect all subject vehicles, in the following program areas, as defined in §114.2 of this title (relating to Inspection and Maintenance [~~(I/M)~~] Definitions), in accordance with the following schedule.

[~~(1) All vehicles registered and primarily operated in Dallas, Tarrant, and Harris Counties shall be tested using a two-speed idle (TSI) test through April 30, 2002.~~]

(1) [~~(2)~~] This paragraph applies to all vehicles registered and primarily operated in the Dallas-Fort Worth [~~Dallas/Fort Worth~~] (DFW) program area.

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties equipped with on-board diagnostic (OBD) systems shall be tested using United States Environmental Protection Agency (EPA)-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties shall be tested using an acceleration simulation mode (ASM-2) test, or a vehicle emissions test [~~that meets SIP emissions reduction requirements and is~~] approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test, except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator must petition the DPS in accordance with the rules and procedures established by DPS.

(2) [~~(3)~~] This paragraph applies to all vehicles registered and primarily operated in the extended DFW (EDFW) program area.

(A) Beginning May 1, 2003, all 1996 and newer model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties equipped with OBD systems shall be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall be tested using an ASM-2 test, or a vehicle emissions test [~~that meets SIP emissions reduction requirements and is~~] approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test, except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator must petition the DPS in accordance with the rules and procedures established by DPS.

(3) [~~(4)~~] This paragraph applies to all vehicles registered and primarily operated in the Houston-Galveston-Brazoria (HGB) [~~Houston/Galveston (HGA)~~] program area.

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Harris County equipped with OBD systems shall be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Harris County shall be tested using an ASM-2 test, or a vehicle emissions test [~~that meets SIP emissions reduction requirements and is~~] approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test, except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator must petition the DPS in accordance with the rules and procedures established by DPS.

(D) Beginning May 1, 2003, all 1996 and newer model year vehicles equipped with OBD systems and registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties shall be tested using EPA-approved OBD test procedures.

(E) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties shall be tested using the ASM-2 test procedures, or a vehicle emissions test [~~that meets SIP emissions reduction requirements and is~~] approved by the EPA.

(4) [~~(5)~~] This paragraph applies to all vehicles registered and primarily operated in the El Paso program area.

(A) All vehicles shall be tested using a two-speed idle (TSI) test through April 30, 2006.

(B) Beginning May 1, 2006, all 1996 and newer model year vehicles equipped with OBD systems shall be tested using EPA-approved OBD test procedures.

(C) Beginning May 1, 2006, all pre-1996 model year vehicles shall be tested using a TSI test.

(D) Beginning May 1, 2006, all vehicle emissions inspection stations in the El Paso program area shall offer both the TSI test and OBD test.

[(A) All vehicles shall be tested using a TSI test, except as provided by subparagraph (B) of this paragraph.]

[(B) In the event that the commission publishes notification in the *Texas Register* of a determination that contingency measures are necessary in order to maintain attainment of the national ambient air quality standards in the El Paso area, the following contingency measures will become effective 12 months after the notice is published.]

[(i) All 1996 and newer model year vehicles equipped with OBD systems shall be tested using EPA- approved OBD test procedures.]

[(ii) All pre-1996 model year vehicles shall be tested using a TSI test.]

[(iii) All vehicle emissions inspection stations in the El Paso program area shall offer both the TSI test and the OBD test.]

(b) Control requirements.

(1) No person or entity may operate, or allow the operation of, a motor vehicle registered in the DFW, EDFW, HGB [HGA], and El Paso program areas that [which] does not comply with:

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

(2) All federal government agencies shall require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the federal government agency and located in a program area to comply with all vehicle emissions I/M requirements specified in Texas Health and Safety Code, Subchapter G, §§382.201 - 382.216 (relating to Vehicle Emissions) [contained in the Texas I/M SIP]. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 *et seq*.). This requirement shall not apply to visiting federal government agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(3) Any motorist in the DFW, EDFW, HGB [HGA], or El Paso program areas who has received a notice from an emissions inspection station that there are recall items unresolved on his or her motor vehicle, should furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection. The motorist may present a written statement from the dealership or leasing agency indicating that emissions repairs have been completed as proof of compliance.

(4) (No change.)

(5) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or whose vehicle has failed a challenge retest must have emissions-related repairs performed and must submit a properly completed vehicle repair form (VRF) in order to receive a retest. In order to receive a waiver or time extension, the motorist must submit a VRF or applicable documentation as deemed necessary by DPS.

(6) A motorist whose vehicle is registered in the DFW, EDFW, HGB [HGA], or El Paso program areas, or in any county adjacent to a program area and whose vehicle has failed an on-road test administered by the DPS shall:

(A) (No change.)

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program specified in 37 TAC §23.93 (relating to Vehicle Emission Inspection Requirements) [contained in the Texas I/M SIP].

(7) A subject vehicle registered in a county without an I/M program that [which] meets the applicability criteria of subsection (a) of this section and the ownership of which has changed through a retail sale as defined by Texas Occupations Code, §2301.002, is not eligible for title receipt or registration in a county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report (VIR) or another proof of the program compliance as authorized by DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this paragraph.

(8) State, governmental, and quasi-governmental agencies that [which] fall outside the normal registration or inspection process shall comply with all vehicle emissions I/M requirements [contained in the Texas I/M SIP] for vehicles primarily operated in I/M program areas.

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in 37 TAC §23.93 [(relating to Vehicle Emissions Inspection Requirements)], which defer the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(d) Prohibitions.

(1) No person may issue or allow the issuance of a VIR, as authorized by DPS, unless all applicable air pollution emissions control related requirements of the annual vehicle safety inspection and the vehicle emissions I/M requirements [and procedures contained in the Texas I/M SIP] are completely and properly performed in accordance with the rules and regulations adopted by DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission shall consult with DPS.

(2) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents that [which] may be used to circumvent applicable [the] vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (relating to Fictitious or Counterfeit Inspection Certificate or Insurance Document) [procedures contained in the Texas I/M SIP].

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

§114.51. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.

(a) Any manufacturer or distributor of vehicle testing equipment may apply to the executive director of the commission or his appointee, for approval of an exhaust gas analyzer or analyzer system for use in the Texas Inspection and Maintenance (I/M) program administered by the Texas Department of Public Safety. Each manufacturer shall submit a formal certificate to the commission stating that any analyzer model sold or leased by the manufacturer or its authorized representative and any model currently in use in the I/M program will satisfy all design and performance criteria set forth in "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program," dated May 1, 2005, [October 15, 2001] or in "Specifications for On- Board Diagnostics II for Use [use] in the Texas Vehicle Emissions Testing Program," dated May 1, 2005 [October 15, 2001]. Copies of these documents are available at the commission's Central Office, located at 12100 Park 35 Circle, Austin,

Texas 78753. The manufacturer shall also provide sufficient documentation to demonstrate conformance with these criteria including a complete description of all hardware components, the results of appropriate performance testing, and a point-by-point response to each specific requirement.

(b) (No change.)

(c) If a review of the demonstration of conformance and all related support material indicates compliance with the criteria listed in subsections (a) and (b) of this section, the executive director or his appointee may issue a notice of approval to the analyzer manufacturer that [which] endorses the use of the specified analyzer or analyzer system in the Texas I/M program.

(d) (No change.)

(e) Any manufacturer or distributor that [which] receives a notice of approval from the executive director or his appointee for a vehicle emissions test equipment for use in the Texas I/M program may be subject to appropriate enforcement action and penalties prescribed in the Texas Clean Air Act [TCAA] or the rules and regulations promulgated thereunder if:

(1) any information included in the conformance demonstration as required in subsection (b) of this section is misrepresented resulting in the purchase or operation of equipment in the Texas I/M program that [which] does not meet the specifications referenced in subsection (a) of this section; or

(2) - (5) (No change.)

§114.53. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee shall include one free retest should the vehicle fail the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.

[(1) Through April 30, 2002, any emissions inspection station required to conduct a two-speed idle test in accordance with §114.50(a)(1) of this title (relating to Vehicle Emissions Inspection Requirements) shall collect a fee of $13 and shall remit $1.75 to the Texas Department of Public Safety (DPS).]

(1) [(2)] In El Paso County beginning May 1, 2002, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) [§114.50(a)(1) or (5)(A), or (B)] of this title (relating to Vehicle Emissions Inspection Requirements) shall collect a fee of $14 and shall remit $2.50 to the Texas Department of Public Safety (DPS) [DPS]. If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the ["]Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program,["] the emissions inspection station shall collect a fee of $16 [$17] and shall remit to DPS $4.50 [$5.50] beginning upon the date specified by the commission upon approval of the resolution.

(2) [(3)] In the Dallas-Fort Worth [Dallas/Fort Worth] program area beginning May 1, 2002, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) [§114.50(a)(2)(A) or (B)] of this title, and in the extended Dallas-Fort Worth [Dallas/Fort Worth] program area beginning May 1, 2003, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) [§114.50(a)(3)(A) or (B)] of this title shall collect a fee not to exceed $27. The emissions inspection station shall remit to the DPS $2.50 for each acceleration simulation mode (ASM-2) test and $8.50 for each on-board diagnostics (OBD) test.

(3) [(4)] In the Houston-Galveston-Brazoria [Houston/Galveston] program area beginning May 1, 2002, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) [§114.50(a)(4)(A) or (B)] of this title; and beginning May 1, 2003, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(3)(D) or (E) [§114.50(a)(4)(D) or (E)] of this title; shall collect a fee not to exceed $27. The emissions inspection station shall remit to the DPS $2.50 for each ASM-2 [acceleration simulation mode] test and $8.50 for each OBD [on-board diagnostics] test.

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

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

Filed with the Office of the Secretary of State on June 17, 2005.

TRD-200502510
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 31, 2005
For further information, please call: (512) 239-0348

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

The Texas Workforce Commission (Commission) proposes the repeal of Chapter 819 in its entirety and proposes new Chapter 819 as follows:

Subchapter A General Provisions

Subchapter B Equal Employment Opportunity Provisions

Subchapter C Equal Employment Opportunity Reports, Training, and Reviews

Subchapter D Equal Employment Opportunity Complaints and Appeals Process

Subchapter E Equal Employment Opportunity Deferrals

Subchapter F Equal Employment Opportunity Records and Recordkeeping

Subchapter G Texas Fair Housing Act Provisions

Subchapter H Discriminatory Housing Practices

Subchapter I Texas Fair Housing Act Complaints and Appeals Process

Subchapter J Fair Housing Deferral to Municipalities

Subchapter K Fair Housing Administrative Hearings and Judicial Review

Subchapter L Fair Housing Fund

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

Purpose

The purpose of the proposed repeal of Chapter 819 and proposed new Chapter 819 is, in part, to:

(1) align the rules with House Bill (HB) 2933, enacted by the 78th Texas Legislature, Regular Session, effective March 1, 2004, that directed the abolition of the Texas Commission on Human Rights, the creation of the Texas Workforce Commission Civil Rights Division (CRD), and the reinstitution of the Commission on Human Rights with authority different from that of the abolished Texas Commission on Human Rights; and

(2) remove duplicative and obsolete administrative processes, procedures, references, and terminology.

Other issues addressed through this proposed repeal and proposed new rules include:

(1) clarifying the procedures for processing employment and housing discrimination complaints;

(2) improving the procedures for review of state agency personnel policies and firefighter tests;

(3) distinguishing between the nature and content of standard and compliance employment discrimination training for state agency employees;

(4) defining the term "complaint with merit" for purposes of compliance employment discrimination training;

(5) providing standards for evaluating employment discrimination training programs for state agency employees, as required by statute; and

(6) clarifying Agency personnel policy as it applies to the CRD director.

The Commission proposes new Chapter 819 to retain only the provisions required by Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Labor Code, Chapter 301, Subchapter I, concerning the Civil Rights Division; Texas Property Code, Chapter 301, concerning housing discrimination; and Texas Government Code, Chapter 419, §§419.102-419.105, concerning firefighter test review.

Background and Authority

In 2003, the 78th Texas Legislature passed HB 2933, abolishing the Texas Commission on Human Rights, transferring the powers and duties of the abolished Texas Commission on Human Rights to the newly created CRD, and reinstituting a Commission on Human Rights with authority different from that of the abolished Texas Commission on Human Rights. The current Chapter 819 rules set forth the procedures and policies of the now-abolished Texas Commission on Human Rights, and therefore do not accurately reflect the changes of HB 2933. Thus, the Commission has designed the proposed new Chapter 819 rules to incorporate the legislative direction of HB 2933.

The Commission reviewed Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; Civil Rights Act of 1991; Americans with Disabilities Act of 1990, as amended; and 29 U.S.C. Chapter 14, regarding Age Discrimination in Employment, to effectuate the changes directed in HB 2933. Additionally, the Commission reviewed Texas Labor Code, Chapters 21 and 301; Texas Property Code, Chapter 301; and Texas Government Code, Chapter 419. Language that is not necessary to the understanding of the rule or duplicates language found in statute or other rules is eliminated. Therefore, the following topics are not proposed in the new rules:

Employment General Construction

Employment Authority

Employment Severability

Employment Availability

General Description

Term of Office

Meetings

Reimbursements

General Powers

Employee Training and Education

Historically Underutilized Business Program

Confidentiality

Temporary Injunctive Relief

Policy

Office of Alternative Dispute Resolution

Referral of Pending Complaints for Alternative Dispute Resolution

Notification and Objection

Appointment of Mediators

Standards and Duties of Mediators

Compensation of Mediators

Conduct and Decorum

Confidentiality of Communications during Alternative Dispute Resolution Procedures Conformity

Housing General Construction

Housing Authority

Housing Severability

Housing Availability

Powers of Commission

Referral Authority

Sale or Rental of a Single Family House by an Owner

Sale, Rental or Occupancy of Dwellings by a Religious Organization, Association, or Society, or a Not-for-Profit Institute

Housing Owned or Operated by a Private Club

Local or State Restrictions on Maximum Number of Occupants of a Dwelling

Appraisals of Real Property

Illegal Manufacture or Distribution of a Controlled Substance

Health or Safety of Individuals or Damage to Property

Real Estate Practices Prohibited

Unlawful Refusal to Sell or Rent or to Negotiate for the Sale or Rental

Prohibited Interference, Coercion, Intimidation, or Retaliation

Persons against Whom Complaints May Be Filed

Cooperation with Federal Agencies

Relief Sought for Aggrieved Persons during Conciliation

Conciliation Provisions Relating to Public Interest

Prohibitions and Requirements for Disclosure of Information Obtained during Conciliation

Issuance of Charge

Election of Civil Action or Provision of Administrative Hearing Procedure

Administrative Penalties

Effect of Commission Order

Filings of Exceptions and Replies

Form of Exceptions and Replies

Emergency Orders

Show Cause Orders and Complaints

Temporary and Preliminary Relief

Enforcement by Attorney General

Subpoena Enforcement Power

Civil Action

Court Appointed Attorney

Relief Granted

Effect of Relief Granted

Intervention by Attorney General

Licensed or Regulated Businesses

Order in Preceding Five Years

Prevailing Party

Statutory Authority

Effective Date

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

§819.1. Purpose

The Commission proposes new §819.1 to implement the following statutory provisions: Texas Labor Code, Chapter 21 (relating to Employment Discrimination) and Chapter 301, Subchapter I (relating to Civil Rights Division); Texas Property Code, Chapter 301, (relating to Texas Fair Housing Act); and Texas Government Code, Chapter 419, Subchapter F (relating to Review of Fire Department Tests).

§819.2. Definitions

The Commission proposes new §819.2 to clarify terminology used in both the employment and housing portions of the rules. The changes better align with the terminology and direction of HB 2933. The rules also include definitions that are applicable only to employment discrimination in §819.11 and to housing discrimination in §819.112. Furthermore, the following definitions found in current rule are not included in the proposed new Chapter 819 because they are defined in the Texas Labor Code: act, age, alternative dispute resolution, chairman, commission, commissioner, court, deferral or referral, demonstrates, designee, employee, employment agency, executive director, federal government, Government Code, labor organization, local ordinance, national origin, political subdivision, religion, and sex.

§819.3. Roles and Responsibilities of Commission on Human Rights, CRD, and CRD Director

The Commission proposes new §819.3 to delineate the responsibilities of the new Commission on Human Rights and the newly created CRD. In addition, the rule clarifies the relationship between the CRD director, the Commission on Human Rights, and the Agency.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

§819.10. Purpose

The Commission proposes new §819.10, which states the purpose of Subchapters B - F is to set forth the procedures for CRD to execute its responsibilities in the administration and enforcement of Texas Labor Code, Chapter 21.

§819.11. Definitions

The Commission proposes new §819.11 to provide definitions that pertain exclusively to employment issues addressed in Subchapter B, Equal Employment Opportunity Provisions; Subchapter C, Equal Employment Opportunity Reports, Training, and Reviews; Subchapter D, Equal Employment Opportunity Complaints and Appeals Process; Subchapter E, Equal Employment Opportunity Deferrals; and Subchapter F, Equal Employment Opportunity Records and Recordkeeping. The terms defined include bona fide occupational qualification, Civil Rights Act, complaint, conciliation, disability, employer, local commission, mediation, and perfected complaint. In particular, complaint and perfected complaint are defined to distinguish between a complaint that is filed with CRD, and a perfected complaint that triggers an investigation by CRD. In addition, mediation and conciliation are defined to distinguish between efforts by a complainant and respondent to resolve the perfected complaint. Mediation is offered during an investigation prior to a determination of cause, while conciliation is used after a determination of cause is rendered.

§819.12. Unlawful Employment Practices

The Commission proposes new §819.12 to delineate and explain the types of employment discrimination, which include (1) discrimination by an employer; (2) discrimination by an employment agency; (3) discrimination by a labor organization; (4) discrimination during admission or participation in a training program; (5) discrimination through retaliation; (6) discrimination by aiding and abetting in discriminatory practices; (7) discrimination through interference with the Commission on Human Rights

and CRD; (8) discrimination by obstructing or preventing persons from complying with the Texas Labor Code; and (9) discrimination through notice or advertisement;

SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

§819.21. Civilian Workforce Composition Report

The Commission proposes new §819.21, relating to the quality of data to be utilized for preparation of the civilian workforce composition report pursuant to Texas Labor Code §21.035.

§819.22. Review of Firefighter Tests

The Commission proposes new §819.22 to describe the procedures to be used to review the administration of firefighter tests by local fire departments to determine compliance with Texas Labor Code, Chapter 21. Current rule does not provide for the timely review of firefighter exams. As stated in current rule, no less than three percent of fire departments are to be reviewed each year on a random basis. As a consequence, a fire department may not be reviewed for 30 years. Furthermore, the current rule's review mechanism lacks the ability to identify and prioritize departments most in need of review. The proposed new rule provides fire departments with a list of preapproved tests for firefighter positions that have already been determined to be nondiscriminatory. For those fire departments choosing to use a test not on the preapproved list, provisions are made for obtaining CRD approval. Additionally, the proposed new rule establishes an efficient system for reviewing all fire departments using a desk audit, and then provides for an expanded review for select departments based on a risk-assessment analysis.

§819.23. Review of State Agency Policies and Procedures

The Commission proposes new §819.23 to describe the process to be used to review the personnel policies and procedures employed by state agencies for compliance with Texas Labor Code, Chapter 21.

§819.24. Standard Employment Discrimination Training

The Commission proposes §819.24 to set forth the requirements for standard employment discrimination training for all state employees, including minimum standards for the content of such training.

§819.25. Compliance Employment Discrimination Training

The Commission proposes new §819.25, as directed by the Texas Labor Code §21.556, to specify the conditions necessitating compliance training. The proposed rule defines the term complaint with merit as a complaint that is resolved by either a cause finding or a withdrawal of the complaint with a remedy favorable to the complainant. This definition is consistent with terminology used by U.S. Equal Employment Opportunity Commission and avoids both the issue of cost inefficiency and prejudice. According to statute, a state agency that receives three or more "complaints of employment discrimination in a fiscal year, other than complaints determined to be without merit" shall provide comprehensive equal employment opportunity training, referred to as compliance training. In the absence of a statutory definition of complaint without merit, the current rule established an administrative processing test that determines merit based on meeting the initial burden of a prima facie case such that the complaint appears to be a potential case worthy of further investigation. This definition has presented several difficulties. First, it is not cost-efficient, necessitating that CRD use additional time and staff to perform the analysis required in the rule in order to ascertain if it is a complaint with merit. Second, employers argue that labeling a complaint with merit before the investigation is complete and a cause decision rendered is prejudicial to the outcome of the cause determination.

§819.26. Standard and Compliance Employment Discrimination Training Delivery

The Commission proposes new §819.26 to set forth the minimum standards for delivering standard and compliance employment discrimination training.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

§819.41. Filing a Complaint

The Commission proposes new §819.41 to specify the steps to be taken and the requirements to be met to file an employment discrimination complaint.

§819.42. Legal Representation

The Commission proposes new §819.42 to notify complainants and respondents of their right to be represented by an attorney or designated agent during the course of a complaint process.

§819.43. Investigation of a Perfected Complaint

The Commission proposes new §819.43 to set forth the procedures to be followed by the complainant, respondent, and CRD in the investigation of a perfected complaint.

§819.44. Mediation

The Commission proposes new §819.44 to set forth the procedures involved in voluntary mediation, an option available to complainants and respondents who prefer to resolve the perfected complaint jointly prior to CRD completing the investigation and rendering a decision.

§819.45. Subpoena

The Commission proposes new §819.45 to establish CRD's authority to issue a subpoena to compel attendance or secure evidence relevant to the investigation of a perfected complaint and the rights and responsibilities of all parties involved in such an action.

§819.46. Dismissal of Complaint

The Commission proposes new §819.46 to set forth the conditions under which CRD may dismiss a complaint and CRD's responsibilities should such action be taken.

§819.47. Cause Determination

The Commission proposes new §819.47 to set forth the conditions under which CRD determines if there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice and CRD's responsibilities should such action be taken.

§819.48. No Cause Determination

The Commission proposes new §819.48 to set forth the conditions under which CRD determines if there is no reasonable cause to believe that the respondent has engaged in an unlawful employment practice and CRD's responsibilities should such action be taken.

§819.49. Conciliation

The Commission proposes new §819.49 to set forth CRD's intent to achieve a just resolution once a reasonable cause determination is made. Alternative courses of action are presented depending on whether CRD is successful in securing an agreement between the complainant and respondent to eliminate the unlawful practices and provide appropriate relief for the complainant.

§819.50. Right to File a Civil Action

The Commission proposes new §819.50 to specify the conditions under which CRD shall issue a notice of right to file a civil action permitting the complainant to sue in court.

§819.51. Failure to Issue Notice of Right to File a Civil Action

The Commission proposes new §819.51 to cite that CRD's failure to issue a notice of right to file a civil action within the specified time limit does not affect the complainant's right to file a civil action under the Texas Labor Code, Chapter 21.

§819.52. Judicial Enforcement

The Commission proposes new §819.52 to establish CRD's authority to file a civil action against a respondent or intervene in a civil action.

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

§819.71. Equal Employment Opportunity Deferrals among Federal, State, and Local Agencies

The Commission proposes new §819.71 to set forth the ways in which complaints may be deferred from one level of government to another and to establish at what point the measure for timeliness is triggered.

§819.72. Requirements for a Local Commission

The Commission proposes new §819.72 to identify the procedures to be followed and the conditions to be met for a local commission, recognized by EEOC as a Fair Employment Practices Agency, to be eligible to receive and process complaints.

§819.73. Deferral to Local Commission

The Commission proposes new §819.73 to identify the authority under which a local commission exercises the exclusive right to act upon an employment discrimination complaint and the conditions under which CRD may assume jurisdiction over a complaint deferred to a local commission.

§819.74. Deferral Procedures

The Commission proposes new §819.74 to set forth the responsibilities of the local commission as well as CRD and the procedures involved in deferring an employment discrimination complaint to a local commission.

§819.75. Final Determination of a Local Commission

The Commission proposes new §819.75 to set forth the actions to be taken by a local commission based on the type of decision made regarding an employment discrimination complaint under its jurisdiction.

§819.76. Workshare Agreements

The Commission proposes new §819.76 to specify the means by which the Agency and a local commission shall officially coordinate efforts to process employment discrimination complaints.

SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

§819.91. Preservation and Use

The Commission proposes new §819.91 to establish the requirement that any person under investigation shall retain records pursuant to the Texas Labor Code, Chapter 21.

§819.92. Access to CRD Records

The Commission proposes new §819.92 to specify the conditions under which the party to a perfected complaint may have access to CRD's records.

§819.93. Disposal of Files and Related Documents

The Commission proposes new §819.93 to set forth the conditions for the retention and disposal of CRD files.

SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

§819.111. Purpose

The Commission proposes new §819.111, which states that the purpose of Subchapters G-L is to establish procedures for CRD to execute its responsibilities in the administration and enforcement of the Texas Fair Housing Act.

§819.112. Definitions

The Commission proposes new §819.112 to define terms that pertain exclusively to those subchapters addressing fair housing practices including Subchapter G, Texas Fair Housing Act Provisions; Subchapter H, Discriminatory Housing Practices; Subchapter I, Texas Fair Housing Act Complaints and Appeals Process; Subchapter J, Fair Housing Deferral to Municipalities; Subchapter K, Fair Housing Administrative Hearings and Judicial Review; and Subchapter L, Fair Housing Fund. Terms defined include accessible or readily accessible to and usable by; accessible building entrance; accessible route; building; common use areas; complaint; controlled substance; disability discriminatory housing practice; entrance; exterior; ground floor; interior; modification; premises; public use areas; site; Texas Fair Housing Act; and United States Fair Housing Act.

SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

§819.121. Discrimination Based on Familial Status

The Commission proposes new §819.121, which provides that it is an unlawful housing practice to discriminate based on familial status.

§819.122. Exemptions Based on Familial Status

The Commission proposes new §819.122 to set forth those conditions under which housing designated for the use of elderly residents may be exempted from the provisions of the Texas Fair Housing Act.

§819.123. Discrimination in Sale, Rental, Terms, Conditions, Privileges, Services, and Facilities

The Commission proposes new §819.123 to identify the types of discriminatory actions prohibited with regard to the terms, conditions, or privileges offered with the sale or rental of a dwelling.

§819.124. Other Prohibited Sale and Rental Conduct

The Commission proposes new §819.124 to identify the types of discriminatory actions prohibited that involve steering persons toward or away from property, as well as employing discriminatory practices that involve the sale or rental of property.

§819.125. Discriminatory Advertisements, Statements, and Notices

The Commission proposes new §819.125 to explain how print materials and statements are considered discriminatory if used to express a preference for or limitation on a potential buyer or renter.

§819.126. Discriminatory Representations on the Availability of Dwellings

The Commission proposes new §819.126 to identify the types of prohibited discriminatory actions that provide inaccurate or untrue information about the availability of dwellings.

§819.127. Discriminatory Practices Regarding Entry into a Neighborhood

The Commission proposes new §819.127 to define as unlawful the practice, motivated by profit, of inducing or attempting to induce, or persuading individuals to sell or rent their dwelling by representing that people of a certain race, color, disability, religion, sex, national origin, or familial status are entering the neighborhood.

§819.128. Discrimination in the Selling, Brokering, or Appraising of Residential Real Property

The Commission proposes new §819.128 to define as unlawful any attempt to deny access to or membership in any organization or service related to the selling or renting of dwellings based on race, color, disability, religion, sex, national origin, or familial status.

§819.129. Discrimination in Residential Real Estate Transactions

The Commission proposes new §819.129 to define as unlawful any effort to base the availability, terms, or conditions of a residential real estate transaction on race, color, disability, religion, sex, national origin, or familial status.

§819.130. Discrimination in Making Loans and in the Provision of Other Financial Assistance

The Commission proposes new §819.130 to define as unlawful any failure or refusal to make loans, provide financial assistance, or make information available regarding such assistance based on race, color, disability, religion, sex, national origin, or familial status.

§819.131. Discrimination in Purchasing Loans

The Commission proposes new §819.131 to define as unlawful the refusal to purchase or the imposition of different terms on the purchase of loans, debts, or securities related to residential real estate dealings based on race, color, disability, religion, sex, national origin, or familial status.

§819.132. Discrimination Based on Disability

The Commission proposes new §819.132 to define as unlawful any attempt to deny or make unavailable the rental or sale of a dwelling based on the disability of the potential buyer or renter or someone associated with either. The rule further prohibits an inquiry as to the nature or severity of a disability excepted under certain stated conditions.

§819.133. Discrimination in Refusing Reasonable Modifications of Existing Premises

The Commission proposes new §819.133 to define as unlawful the denial of permission for an individual with a disability to make reasonable modifications to a dwelling and the rights and obligations of both parties in undertaking modifications.

§819.134. Discrimination in Refusing Reasonable Accommodations

The Commission proposes new §819.134 to define as unlawful the refusal to make reasonable accommodations in rules, policies, practices, or services for individuals with disabilities.

§819.135. Discrimination in Design and Construction Requirements

The Commission proposes new §819.135 to set forth the type of physical accommodations for individuals with disabilities that shall be made to a multifamily dwelling after a certain date.

SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

§819.151. Filing a Complaint

The Commission proposes new §819.151 to specify that a person or the CRD director may file a complaint within a year from the occurrence or termination of an alleged unlawful housing discrimination practice, whichever is later. The new rule also identifies both the steps to be taken and the requirements to be met to file a housing discrimination complaint.

§819.152. Legal Representation

The Commission proposes new §819.152 to notify respondents and complainants of their right to be represented by an attorney or a designated agent during the course of processing a complaint.

§819.153. Investigation of a Complaint

The Commission proposes new §819.153 to set forth the procedures to be followed by the complainant, respondent, and CRD in the investigation of a complaint.

§819.154. Pattern and Practice Complaints

The Commission proposes new §819.154 to identify the conditions under which a complaint shall be designated as a "patterns and practices complaint" signifying the presence of pervasive or institutional discriminatory practices or complex issues or the involvement of a large number of people.

§819.155. Conciliation

The Commission proposes new §819.155 to explain the role and purpose of conciliation in the housing complaint process. The conciliation process for housing complaints differs from employment complaints in the timing of the conciliation. As a term used in processing a housing complaint, conciliation refers to settlement of a dispute by mutual agreement occurring any time beginning with the filing of a complaint and ending with the filing of a charge or the dismissal of the complaint. In an employment complaint, the term conciliation refers to such efforts occurring after a determination of cause has been made.

§819.156. Reasonable Cause Determination and Issuance of a Charge

The Commission proposes new §819.156 to specify the actions to be taken by the CRD director if a conciliation agreement is not reached and the CRD director shall determine whether or not reasonable cause exists to believe that a discriminatory housing practice has occurred. The new rule sets forth actions to be taken based on whether the determination made is a cause or no cause decision or whether the complaint involves the legality of local zoning or land use ordinances.

SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

§819.171. Deferral

The Commission proposes new §819.171 to set forth the requirements for a HUD-certified municipality to meet in order to receive and process complaints referred by CRD.

§819.172. Memoranda of Understanding

The Commission proposes new §819.172 to specify the means by which the Agency and a municipality shall officially arrange to coordinate efforts to process housing discrimination complaints.

SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

§819.191. Administrative Hearings

The Commission proposes new §819.191 to provide that administrative hearings shall be conducted by the Agency's Special Hearings Department.

§819.192. Ex Parte Communications

The Commission proposes new §819.192 to set forth the conditions under which a commissioner for the Commission on Human Rights or CRD employee may communicate information involving any issue of fact or law in a case covered by this subchapter.

§819.193. Proposal for Decision and Hearing Officer's Report

The Commission proposes new §819.193 to set forth the different requirements for a proposed decision to the Commission on Human Rights depending on whether the proposed decision is adverse to any party or not. The proposed new rule also specifies the content for the hearing officer's report.

§819.194. Countersignature by the CRD Director

The Commission proposes new §819.194 to require the CRD director to countersign every hearing officer's report and proposal for decision.

§819.195. Oral Argument before the Commission on Human Rights

The Commission proposes new §819.195 to authorize any party to a complaint to present an oral argument before the Commission on Human Rights before final determination.

§819.196. Pleading Before Order

The Commission proposes new §819.196 to authorize the CRD director to permit or request parties to submit briefs and proposed findings of fact after the hearing and before the final decision by the Commission on Human Rights.

§819.197. Form and Content of the Order

The Commission proposes new §819.197 to authorize the Commission on Human Rights to adopt, amend, or reject the hearing officer's proposal for decision and conditions under which the Commission on Human Rights shall vacate, modify, or change a finding of a proposed order.

§819.198. Final Order

The Commission proposes new §819.198 to specify the form that a final order shall take if it is adverse to any party, and the requirements for including findings of fact and conclusions of law.

§819.199. Rehearing

The Commission proposes new §819.199 to provide for a rehearing once a final order has been issued. The new rule details the deadlines to be met by all parties involved.

§819.200. Judicial Review

The Commission proposes new §819.200 to authorize a party involved in a complaint to file a petition for judicial review under the substantial evidence rule.

§819.201. Prohibited Interference, Coercion, Intimidation, or Retaliation

The Commission proposes new §819.201 to define what actions constitute unlawful conduct with regard to interfering with, coercing, intimidating, or retaliating against individuals involved with a housing discrimination issue.

SUBCHAPTER L. FAIR HOUSING FUND

§819.221. Fair Housing Fund

The Commission proposes new §819.221 to provide for the creation of a fund to receive gifts, grants, and assessments of financial penalties that may be used for the administration of the Texas Fair Housing Act.

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.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Robert Gomez, Director of the Civil Rights 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 rules will be streamlined and clearly identified procedures for the processing of employment and housing discrimination complaints, reviewing state agencies' personnel policies and procedures and fire departments' test administration, and providing civil rights training to state agencies.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of the chair of the Commission on Human Rights and the CRD director.

Comments on the proposed rules may be submitted to TWC Policy Comments, Policy and Development, 101 East 15th Street, Room 440T, Austin, Texas 78778; fax 512-475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§819.1 - 819.6

(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.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.1. Definitions.
§819.2. Purpose.
§819.3. General Construction.
§819.4. Authority.
§819.5. Severability.
§819.6. Availability.

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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Reagan Miller
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SUBCHAPTER B. COMMISSION

40 TAC §§819.11 - 819.21

(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.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.11. General Description.
§819.12. Term of Office.
§819.13. Meetings.
§819.14. Reimbursements.
§819.15. General Powers.
§819.16. Civilian Workforce Composition.
§819.17. Review.
§819.18. Merit Assessment.
§819.19. Compliance Training for State Agencies.
§819.20. Employee Training and Education.
§819.21. Historically Underutilized Business Program.

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

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SUBCHAPTER C. LOCAL COMMISSIONS

40 TAC §§819.51 - 819.55

(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.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.51. Deferral Authority.
§819.52. Deferral Procedures.
§819.53. Final Determination of a Local Commission.
§819.54. Cooperative Agreements.
§819.55. Eligibility.

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. ADMINISTRATIVE REVIEW

40 TAC §§819.71 - 819.94

(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.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.71. Filing a Complaint.
§819.72. Investigation of a Complaint.
§819.73. Subpoena.
§819.74. Dismissal of Complaint.
§819.75. Reasonable Cause Determination.
§819.76. Conciliation.
§819.77. Notice to Complainant.
§819.78. Failure to Issue Notice.
§819.79. Access to Commission Records.
§819.80. Confidentiality.
§819.81. Disposal of Files and Related Documents.
§819.82. Temporary Injunctive Relief.
§819.83. Legal Representation.
§819.84. Policy.
§819.85. Office of Alternative Dispute Resolution.
§819.86. Voluntary Settlement through Alternative Dispute Resolution.
§819.87. Referral of Pending Complaints for Alternative Dispute Resolution.
§819.88. Notification and Objection.
§819.89. Appointment of Mediators.
§819.90. Standards and Duties of Mediators.
§819.91. Compensation of Mediators.
§819.92. Conduct and Decorum.
§819.93. Effect of Written Settlement Agreement.
§819.94. Confidentiality of Communications during Alternative Dispute Resolution Procedures.

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

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SUBCHAPTER E. JUDICIAL ACTION

40 TAC §819.101

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.101. Enforcement.

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. REPORTS AND RECORDKEEPING

40 TAC §819.111

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.111. Preservation and Use.

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 G. CONFORMITY

40 TAC §819.121

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.121. Conformity.

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 H. REVIEW OF FIRE FIGHTER TESTS

40 TAC §819.131

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.131. Review of Fire Department Tests.

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 I. GENERAL PROVISIONS

40 TAC §§819.151 - 819.157

(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.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.151. Definitions.

§819.152. Purpose.

§819.153. General Construction.

§819.154. Authority.

§819.155. Severability.

§819.156. Availability.

§819.157. Scope.

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 J. COMMISSION

40 TAC §819.161

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.161. Powers of the Commission.

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

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SUBCHAPTER K. REFERRAL TO MUNICIPALITIES

40 TAC §§819.171 - 819.173

(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.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.171. Referral Authority.

§819.172. Eligibility.

§819.173. Cooperative Agreements.

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

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SUBCHAPTER L. EXEMPTED RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS

40 TAC §§819.181 - 819.188

(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.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.181. Sale or Rental of a Single-Family House by an Owner.
§819.182. Sale, Rental, or Occupancy of Dwellings by a Religious Organization, Association, or Society, or a Not for Profit Institution.
§819.183. Housing Owned or Operated by a Private Club.
§819.184. Local or State Restrictions on Maximum Number of Occupants of a Dwelling.
§819.185. Appraisals of Real Property.
§819.186. Familial Status.
§819.187. Illegal Manufacture or Distribution of a Controlled Substance.
§819.188. Health or Safety of Individuals or Damage to Property.
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 M. DISCRIMINATORY HOUSING PRACTICES

40 TAC §§819.191 - 819.199, 819.210 - 819.218

(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.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.191. Real Estate Practices Prohibited.
§819.192. Unlawful Refusal to Sell or Rent or to Negotiate for the Sale or Rental.

§819.193. Discrimination in Terms, Conditions, and Privileges and in Services and Facilities.

§819.194. Other Prohibited Sale and Rental Conduct.

§819.195. Discriminatory Advertisements, Statements, and Notices.

§819.196. Discriminatory Representations on the Availability of Dwellings.

§819.197. Blockbusting.

§819.198. Discrimination in the Provision of Brokerage Services.

§819.199. Discriminatory Practices in Residential Real-Estate Transactions.

§819.210. Discrimination in the Making of Loans and in the Provision of other Financial Assistance.

§819.211. Discrimination in the Purchasing of Loans.

§819.212. Discrimination in the Terms and Conditions for Making Available Loans or Other Financial Assistance.

§819.213. Unlawful Practices in the Selling, Brokering, or Appraising of Residential Real Property.

§819.214. General Prohibitions Against Discrimination Because of Disability.

§819.215. Reasonable Modifications of Existing Premises.

§819.216. Reasonable Accommodations.

§819.217. Design and Construction Requirements.

§819.218. Prohibited Interference, Coercion, Intimidation, or Retaliation.

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 N. ADMINISTRATIVE ENFORCEMENT

40 TAC §§819.301 - 819.328

(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.)

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The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.301. Submission of Information to File a Complaint.

§819.302. Who May File Complaints.

§819.303. Persons against Whom Complaints May Be Filed.

§819.304. Where To File Complaints.

§819.305. Form and Content of a Complaint.

§819.306. The Date of Filing of a Complaint.

§819.307. Amendment of Complaint.

§819.308. Service of Notice on Aggrieved Person.

§819.309. Notification of Respondent and Joinder of Additional or Substitute Respondents.

§819.310. Answer to Complaint.

§819.311. Investigations.

§819.312. Systemic Processing.

§819.313. Conduct of Investigation.

§819.314. Cooperation with Federal Agencies.

§819.315. Completion of Investigation.

§819.316. Final Investigative Report.

§819.317. Conciliation Process.

§819.318. Conciliation Agreement.

§819.319. Relief Sought for Aggrieved Persons during Conciliation.

§819.320. Conciliation Provisions Relating to Public Interest.

§819.321. Termination of Conciliation Process.

§819.322. Prohibitions and Requirements for Disclosure of Information Obtained during Conciliation.

§819.323. Review of Compliance with Conciliation Agreements.

§819.324. Reasonable Cause Determination.

§819.325. Issuance of Charge.

§819.326. Election of Civil Action or Provision of Administrative Hearing Procedure.

§819.327. Administrative Penalties.

§819.328. Effect of Commission 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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SUBCHAPTER O. ADMINISTRATIVE HEARING PROCEEDINGS

40 TAC §§819.401 - 819.416

(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.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.401. State Office of Administrative Hearings.
§819.402. Proposal for Decision and Hearing Officer's Report.
§819.403. Countersignature by Executive Director or His or Her Designee.
§819.404. Filing of Exceptions and Replies.
§819.405. Form of Exceptions and Replies.
§819.406. Oral Argument before the Commission.
§819.407. Pleading before Final Decision.
§819.408. Final Decision or Order.
§819.409. Form, Content, and Service.
§819.410. Effective Date of Decision or Order.
§819.411. Administrative Finality.
§819.412. Rehearing.
§819.413. Emergency Orders.
§819.414. Show Cause Orders and Complaints.
§819.415. Ex Parte Communications.
§819.416. Appeals.

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 P. PROMPT JUDICIAL ACTION

40 TAC §§819.421 - 819.423

(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.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.421. Temporary and Preliminary Relief.
§819.422. Enforcement by Attorney General.
§819.423. Subpoena Enforcement Power.

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 Q. ENFORCEMENT BY PRIVATE PERSON

40 TAC §§819.431 - 819.435

(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.)

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The repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.431. Civil Action.
§819.432. Court Appointed Attorney.
§819.433. Relief Granted.
§819.434. Effect of Relief Granted.
§819.435. Intervention by Attorney General.

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 R. OTHER ACTION BY THE COMMISSION

40 TAC §§819.441 - 819.443

(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.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.441. Licensed or Regulated Businesses.

§819.442. Order in Preceding Five Years.

§819.443. Criminal Penalties.

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 S. PREVAILING PARTY

40 TAC §819.451

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.451. Prevailing 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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SUBCHAPTER T. FAIR HOUSING FUND

40 TAC §819.461

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.461. Fair Housing Fund.

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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Reagan Miller
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SUBCHAPTER U. STATUTORY AUTHORITY

40 TAC §819.471

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.471. Statutory Authority.

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 V. EFFECTIVE DATE

40 TAC §819.481

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The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

§819.481. Effective Date.

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

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SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§819.1 - 819.3

The new 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 new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.1. Purpose.

The purpose of this chapter is to implement the following statutory provisions: Texas Labor Code, Chapter 21 (relating to Employment Discrimination) and Chapter 301, Subchapter I (relating to Civil Rights Division); Texas Property Code, Chapter 301, (relating to Texas Fair Housing Act); and Texas Government Code, Chapter 419, Subchapter F (relating to Review of Fire Department Tests).

§819.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission on Human Rights--The body of governance of the Texas Workforce Commission Civil Rights Division composed of seven members appointed by the Governor, as established under Texas Labor Code §301.153.

(2) Complainant--A person claiming to be aggrieved by a violation of Texas Labor Code, Chapter 21, or Texas Property Code, Chapter 301, and who files a complaint under one of these chapters.

(3) CRD--Texas Workforce Commission Civil Rights Division

(4) CRD director--The director, or authorized designee, of the Texas Workforce Commission Civil Rights Division, as established under Texas Labor Code §301.154.

(5) Fair Employment Practices Agency--A state or local government agency designated by the U.S. Equal Employment Opportunity Commission (EEOC) to investigate perfected employment discrimination complaints in the state or local government agency's jurisdiction.

(6) Fair Housing Assistance Program Agency--A state or local government agency designated by the U.S. Department of Housing and Urban Development (HUD) to investigate Fair Housing Act complaints in the state or local government agency's jurisdiction.

(7) Party--A person who, having a justiciable interest in a matter before CRD, is admitted to full participation in a proceeding concerning that matter.

(8) Person--One or more individuals or an association, corporation, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, the state, or a political subdivision or agency of the state.

(9) Respondent--A person against whom a complaint has been filed in accordance with Texas Labor Code, Chapter 21, or Texas Property Code, Chapter 301.

§819.3. Roles and Responsibilities of Commission on Human Rights, CRD, and CRD Director.

(a) Responsibilities of Commission on Human Rights:

(1) Establish policies for CRD;

(2) Appoint CRD director;

(3) Supervise CRD director in administering the activities of CRD;

(4) Serve as the state Fair Employment Practices Agency that is authorized, with respect to unlawful employment practices, to:

(A) seek relief;

(B) grant relief; and

(C) institute criminal proceedings; and

(5) Serve as the state Fair Housing Assistance Program Agency, with respect to unlawful housing practices, to:

(A) seek relief;

(B) grant relief; and

(C) institute criminal proceedings.

(b) Responsibilities of CRD:

(1) Administer Texas Labor Code, Chapter 21; Texas Property Code, Chapter 301; and Texas Government Code, Chapter 419, Subchapter F; and

(2) Collect, analyze, and report statewide information regarding employment and housing discrimination complaints filed with

CRD, EEOC, HUD, local commissions, and municipalities in Texas to be included in CRD's annual report to the Governor and the Texas Legislature.

(c) Agency Personnel Policies Applicable to CRD Director:

(1) The CRD director is an appointee of the Commission on Human Rights and an employee of the Agency, and therefore accountable to both.

(2) The Agency executive director and the chair of the Commission on Human Rights shall consult on all personnel matters impacting the employment status of the CRD director.

(3) The Commission on Human Rights has the authority to appoint, supervise, and terminate the CRD director.

(4) The Agency executive director, in consultation with the chair of the Commission on Human Rights, has the authority to take any personnel action pursuant to Agency personnel policy, excluding termination.

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 B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

40 TAC §§819.10 - 819.12

The new 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 new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.10. Purpose.

The purpose of Subchapters B - F of this chapter is to set forth the procedures for CRD to execute its responsibilities in the administration and enforcement of Texas Labor Code, Chapter 21. Texas provides, within constitutional limits, equal employment opportunities and provides rights and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory employment practices based on race, color, disability, religion, sex, national origin, or age.

§819.11. Definitions.

The following words and terms, when used in Subchapter B, Equal Employment Opportunity Provisions; Subchapter C, Equal Employment Opportunity Reports, Training, and Reviews; Subchapter D, Equal Employment Opportunity Complaints and Appeals Process; Subchapter E, Equal Employment Opportunity Deferrals; and Subchapter F, Equal Employment Opportunity Records and Recordkeeping shall have the following meanings, unless the context clearly indicates otherwise.

(1) Bona fide occupational qualification--A qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a factual basis for believing that no members of the excluded group would be able to satisfactorily perform the duties of the job with safety and efficiency.

(2) Civil Rights Act--The Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972 and the Civil Rights Act of 1991; the Age Discrimination in Employment Act, as amended; the Rehabilitation Act of 1973, as amended; and the Americans with Disabilities Act of 1990, as amended.

(3) Complaint--A written statement made under oath stating that an unlawful employment practice has been committed, setting forth the facts on which the complaint is based, and received within 180 days of the alleged unlawful employment practice.

(4) Conciliation--The settlement of a dispute by mutual written agreement in order to avoid litigation where a determination has been made that there is reasonable cause to believe an unlawful employment practice has occurred.

(5) Disability--A mental or physical impairment that substantially limits at least one major life activity of an individual, a record of such mental or physical impairment, or being regarded as having such an impairment as set forth in §3(2) of the Americans with Disabilities Act of 1990, as amended, and the Texas Labor Code §21.002(6).

(6) Employer--A person who is engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person. The term includes an individual elected to public office in Texas or a political subdivision of Texas, or a political subdivision and any state agency or instrumentality, including public institutions of higher education, regardless of the number of individuals employed.

(7) Local commission--Created by one or more political subdivisions acting jointly, pursuant to Texas Labor Code §21.152, and recognized as a Fair Employment Practices Agency by EEOC pursuant to the U.S. Civil Rights Act, Title VII, §717(c), as amended by the Equal Employment Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans With Disabilities Act, as amended.

(8) Mediation--A process to settle a dispute by mutual written agreement among the complainant, respondent, and CRD prior to reasonable cause determination or dismissal of a perfected complaint.

(9) Perfected complaint--An employment discrimination complaint that CRD has determined meets all of the requirements of the Texas Labor Code, Chapter 21, and for which CRD will initiate an investigation.

§819.12. Unlawful Employment Practices.

(a) Discrimination by Employer. An employer commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that deprives or tends to deprive an

individual of an employment opportunity or adversely affects in any other manner the status of an employee.

(b) Discrimination by Employment Agency. An employment agency commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) fails or refuses to refer for employment or discriminates in any other manner against an individual; or

(2) classifies or refers an individual for employment on that basis.

(c) Discrimination by Labor Organization. A labor organization commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) excludes or expels from membership or discriminates in any other manner against an individual; or

(2) limits, segregates, or classifies a member or an applicant for membership, or classifies or fails or refuses to refer for employment an individual in an manner that:

(A) deprives or tends to deprive an individual of any employment opportunity;

(B) limits an employment opportunity or adversely affects in any other manner the status of an employee or of an applicant for employment; or

(C) causes or attempts to cause an employer to violate this subchapter.

(d) Admission or Participation in Training Program. An employer, labor organization, or joint labor management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice based on race, color, disability, religion, sex, national origin, or age in admission to or participation in the program, unless a training or retraining opportunity or program is provided under an affirmative action plan approved by federal or state law, rule, or court order. The prohibition against discrimination based on age applies only to individuals who are at least 40 years of age but younger than 56 years of age.

(e) Retaliation. An employer, employment agency, or labor organization, commits an unlawful employment practice based on race, color, disability, religion, sex, national origin, or age if the employer, employment agency, or labor organization, or retaliates or discriminates against a person who:

(1) opposes a discriminatory practice;

(2) makes or files a charge;

(3) files a complaint; or

(4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

(f) Aiding or Abetting Discrimination. An employer, employment agency, or labor organization commits an unlawful practice if it aids, abets, incites, or coerces a person to engage in an unlawful discriminatory practice based on race, color, disability, religion, sex, national origin, or age.

(g) Interference with the Commission on Human Rights and CRD. An employer, employment agency, or labor organization commits an unlawful practice if it willfully interferes with the performance of a duty or the exercise of a power by the Commission on Human Rights or CRD.

(h) Prevention of Compliance. An employer, employment agency, or labor organization, commits an unlawful employment practice if it willfully obstructs or prevents a person from complying with Texas Labor Code, Chapter 21, or a rule adopted or order issued under Texas Labor Code, Chapter 21.

(i) Discriminatory Notice or Advertisement

(1) An employer, employment agency, labor organization or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if it prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

(A) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and

(B) concerns an employee's status, employment, or admission to or membership or participation in a labor organization or training or retraining program.

(2) A bona fide occupational qualification is an affirmative defense to discrimination.

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. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

40 TAC §§819.21 - 819.26

The new 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 new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.21. Civilian Workforce Composition Report.

CRD shall prepare a civilian workforce composition report pursuant to Texas Labor Code §21.0035 using the best available data from all appropriate sources.

§819.22. Review of Firefighter Tests.

(a) CRD shall review the initial tests administered by a fire department, as provided in Texas Government Code, Chapter 419. The

initial tests defined as written tests, physical tests, and assessment center tests for firefighter positions, are used to measure the ability of a person to perform the essential functions of the position.

(b) CRD shall use the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. 1607, to conduct the review of the administration of initial tests by fire departments.

(c) CRD shall develop a list of preapproved tests for firefighter positions that it has reviewed, certified, and deemed to be nondiscriminatory. The tests will be available on the Agency's Web site.

(d) Fire departments that use tests from CRD's list of preapproved tests are presumed to be in compliance with the law against unlawful discrimination. However, if CRD perceives the need to review a fire department that is using such preapproved tests, nothing shall prevent such review.

(e) Fire departments that use a test not included on the preapproved list shall submit, upon request by CRD, documentation regarding the reliability and validity of the chosen test.

(f) Each fire department shall submit documentation concerning the administration of its initial tests, as required in this section. CRD shall perform a desk audit by reviewing these documents using risk-assessment criteria. Fire departments selected for a desk audit shall receive notice by mail. Documents to be submitted for a desk audit include, but are not limited to:

(1) a copy of the initial test used. If it is not from CRD's preapproved list of tests, then documentation regarding the reliability and validity of the test used;

(2) a description of how such test is administered and a copy of applicable policies and procedures governing the administration of such test; and

(3) information and documentation of prior complaints lodged against the fire department concerning discrimination in selection of personnel for a firefighter position.

(g) CRD shall evaluate the requested information set forth in subsection (f) of this section as part of its risk-assessment analysis. Based on the analysis, fire departments may be selected for expanded review, including on-site investigation. CRD shall notify a fire department selected for expanded review by mail.

§819.23. Review of State Agency Policies and Procedures.

(a) CRD shall review the personnel policies and procedures of each state agency once every six years on a staggered schedule to determine compliance with the Texas Labor Code, Chapter 21.

(b) CRD shall notify a state agency of its review of the agency's personnel policies and procedures by mail at the beginning of the fiscal year in which CRD is to conduct the review. The review of each state agency shall be completed and recommendations issued on or before the one-year anniversary date on which CRD issued its notification letter to the agency head.

§819.24. Standard Employment Discrimination Training.

(a) Each state agency shall provide its employees with standard employment discrimination training no later than the 30th day after the date the employee is hired by the agency, with supplemental training every two years thereafter. Each state agency shall provide the standard training using a training program from CRD's preapproved list of training programs that have been reviewed and certified by CRD as compliant with its training standards, including the standards set forth in this subchapter.

(b) The minimum standards for the content of standard employment discrimination training shall include, but not be limited to, requiring participants to:

(1) define an unlawful employment practice according to the Civil Rights Act;

(2) apply knowledge of the applicable laws by correctly identifying whether individual case studies would be considered violations;

(3) identify the protected classes under federal and state law;

(4) list a complainant's rights and remedies;

(5) identify the agency personnel to whom a complaint shall be addressed; and

(6) describe the general stages involved in processing a complaint.

§819.25. Compliance Employment Discrimination Training.

(a) For purposes of this section, the term "complaint with merit" shall mean a complaint that is resolved, either by a cause finding or through withdrawal of the complaint with a remedy favorable to the complainant, such as a negotiated settlement, withdrawal with benefits, or conciliation.

(b) State agencies receiving three or more complaints with merit within a fiscal year shall provide compliance employment discrimination training. The compliance training may be provided using a training program from CRD's preapproved list of training programs. If a state agency chooses to provide compliance training using a person or state agency not included on CRD's list of preapproved training programs, the training provider and the training program to be used by the person or state agency shall be reviewed and approved for compliance with CRD standards.

(c) CRD's minimum standards for the content of compliance employment discrimination training shall include, but not be limited to, requiring participants to:

(1) distinguish between disparate treatment and disparate impact;

(2) identify the elements of a complaint involving disparate treatment and disparate impact;

(3) explain the defenses available to an employer resulting from both statute and case law involving disparate treatment and disparate impact;

(4) explain the burden of proof requirements for disparate treatment and disparate impact;

(5) identify criteria for accurately measuring compliance with applicable laws;

(6) define the different types of employment discrimination;

(7) identify the appropriate action to be taken in a situation involving a potential case of employment discrimination; and

(8) describe strategies for prevention of employment discrimination.

§819.26. Standard and Compliance Employment Discrimination Training Delivery.

(a) The minimum standards for the delivery of standard and compliance employment discrimination training shall include, but not be limited to:

(1) a determination of the effectiveness of the training;

(2) the use of training that takes advantage of technological advances, such as videos, CDs, and Web-based delivery systems; and

(3) the documentation of training that shall be provided to CRD, including the date the training was provided, description of the training program used, names of participants, and the agency contact person. Web-based training records may be retained electronically.

(b) In addition to the minimum standards set forth in subsection (a) of this section, the delivery of compliance employment discrimination training shall be highly interactive to ensure the engagement of the trainee.

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SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

40 TAC §§819.41 - 819.52

The new 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 new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.41. Filing a Complaint.

(a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD or a local commission office recognized by EEOC as a Fair Employment Practices Agency to obtain information on filing a complaint with CRD.

(b) At the complainant's request, CRD:

(1) shall counsel with the complainant about the facts and circumstances that constitute the alleged unlawful employment practice;

(2) shall assist the complainant in perfecting the complaint if the facts and circumstances appear to constitute an alleged unlawful employment practice; or

(3) may advise the complainant if the facts and circumstances presented to CRD do not appear to constitute an unlawful employment practice.

(c) The complaint shall be filed in writing and under oath, and may be filed with CRD by mail, fax, or in person with:

(1) the CRD office on a CRD-provided form;

(2) an EEOC office; or

(3) a local commission office recognized by EEOC as a Fair Employment Practices Agency.

(d) The complaint shall set forth the following information:

(1) Harm experienced by the complainant as a result of the alleged unlawful employment practice;

(2) Explanation, if any, given by the employer to the complainant for the alleged unlawful employment practice;

(3) A declaration of unlawful discrimination under federal or state law;

(4) Facts upon which the complaint is based, including the date, place, and circumstances of the alleged unlawful employment practice; and

(5) Sufficient information to enable CRD to identify the employer, e.g., employer ID, business address, and business phone.

(e) A complaint shall be filed within 180 days after the date on which the alleged unlawful employment practice occurred.

(f) A complaint may be withdrawn by a complainant only with the consent of the CRD director.

(g) A perfected complaint may be amended by the complainant to cure technical defects or omissions, or to clarify and amplify allegations made therein. Such amendment or amendments alleging additional acts that constitute unlawful employment practices related to or growing out of the subject matter of the original complaint shall relate back to the date the complaint was first filed. CRD shall provide a copy of the perfected complaint to the respondent. An amended perfected complaint shall be subject to the procedures set forth in applicable law.

(h) A respondent shall be mailed a copy of the perfected complaint within 10 days after CRD receives the perfected complaint. If CRD receives a complaint that is not perfected within 180 days of the alleged unlawful employment practice, CRD shall notify the respondent that a complaint has been filed and the process of perfecting the complaint is in progress.

(i) The complainant and respondent shall be notified periodically by CRD of the status of their perfected complaint, unless the notice would jeopardize an undercover investigation by another state, federal, or local government.

§819.42. Legal Representation.

The complainant and respondent may be represented by an attorney or designated agent.

§819.43. Investigation of a Perfected Complaint.

(a) The CRD director shall determine the nature and scope of the investigation within the context of the allegations set forth in the perfected complaint.

(b) CRD may, as part of a perfected complaint investigation, require a fact-finding conference with the complainant and the respondent prior to a determination on a perfected complaint. A fact-finding conference primarily is an investigative forum intended to define the issues, determine which elements are undisputed, and solicit information regarding the allegations.

(c) At all reasonable times in the perfected complaint investigation, the CRD director shall have access to:

(1) necessary witnesses for examination under oath or affirmation; and

(2) records, documents, and other information relevant to the investigation of alleged violations of Texas Labor Code, Chapter 21, for inspection and copying.

(d) As part of the perfected complaint investigation, CRD may request information relevant to the alleged violations of Texas Labor Code, Chapter 21. In obtaining this information, CRD may use, but is not limited to using, any of the following:

(1) oral and video interviews and depositions;

(2) written interrogatories;

(3) production of documents and records;

(4) requests for admissions;

(5) on-site inspection of respondent's facilities;

(6) written statements or affidavits; or

(7) other forms of discovery authorized by the Administrative Procedure Act, Texas Government Code §§2001.081 - 2001.103, or the Texas Rules of Civil Procedure.

(e) CRD may establish time requirements regarding responses to requests for information relevant to an investigation of alleged violations of Texas Labor Code, Chapter 21. The CRD director may extend such time requirements for good cause shown.

(f) As part of a perfected complaint investigation, CRD may accept from the complainant or respondent a statement of position or information regarding the allegations in the perfected complaint. CRD shall accept only a sworn or affirmed written statement of position submitted by the respondent setting forth the facts and circumstances relevant to an investigation of alleged violations of Texas Labor Code, Chapter 21.

§819.44. Mediation.

(a) Between filing of a complaint and prior to the cause determination, CRD may invite both the complainant and the respondent to attempt to resolve their dispute through mediation. Either party to the perfected complaint may also request mediation to resolve the complaint during this period.

(b) For mediation to occur, both the complainant and the respondent shall agree to the mediation. If there is no agreement, CRD shall continue with the investigation of the perfected complaint.

(c) If the complainant and respondent reach a settlement and execute a written agreement disposing of the perfected complaint, the agreement is binding and enforceable in the same manner as any other written contract.

(d) If mediation between the complainant and the respondent does not result in an agreement, CRD shall continue to investigate the perfected complaint.

§819.45. Subpoena.

(a) The CRD director shall have the authority to sign and issue a subpoena to compel the attendance of necessary witnesses for examination or testimony under oath or affirmation, and to compel the production of records, documents, and other evidence relevant to the investigation of alleged violations of Texas Labor Code, Chapter 21, for inspection and copying. Neither the complainant nor the respondent shall have the right to demand that a subpoena be issued.

(b) A person served with a subpoena issued by the CRD director who does not intend to comply may petition CRD in writing to revoke or modify the subpoena within five working days after receipt of the subpoena. Such petition shall identify separately each portion of the subpoena with which the petitioner does not intend to comply, and for each portion shall state the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition. The CRD director shall review the petition and make a final determination on revoking or modifying the subpoena. CRD shall mail a copy of the final determination on the petition to the petitioner.

(c) If a person fails to comply with a subpoena, CRD may apply to the district court of the county in which the person is found, resides, or transacts business for an order directing compliance pursuant to Texas Labor Code §21.306(b).

§819.46. Dismissal of Complaint.

(a) The CRD director may dismiss a complaint if:

(1) it is not filed timely;

(2) it fails to state a claim under Texas Labor Code, Chapter 21;

(3) a complainant fails to perfect a complaint within 10 days of the receipt of the complaint; or

(4) a complainant fails to cooperate, fails or refuses to appear or to be available for interviews or conferences, or fails or refuses to provide requested information. Prior to dismissing the complaint, the complainant shall be notified and given a reasonable time to respond.

(b) CRD shall notify the complainant and the respondent, and any agencies, as required by law, by mail of its dismissal of a complaint.

(c) CRD shall notify the complainant, by mail, of the complainant's right to file a civil action against the respondent named in the perfected complaint pursuant to the Texas Labor Code §21.208 and §21.252, and §819.50 of this subchapter.

§819.47. Cause Determination.

(a) The CRD director shall review the investigation report and record of evidence to determine if there is reasonable cause to believe the respondent has engaged in an unlawful employment practice.

(b) If after the review, the CRD director determines that reasonable cause exists, the CRD director shall confer with a panel of three commissioners of the Commission on Human Rights, as identified by the chair of the Commission on Human Rights. If at least two of the three commissioners concur with the CRD director's determination that the respondent has engaged in an unlawful employment practice, the CRD director shall issue a letter of cause determination. The cause determination letter shall be mailed to the complainant, respondent, and any agency as required by law and shall contain the CRD director's finding that the evidence supports the perfected complaint and include an invitation to participate in conciliation.

§819.48. Conciliation.

(a) When a letter of cause determination has been issued, CRD shall attempt to eliminate such unlawful employment practice by conciliation, and to secure a just resolution through a conciliation agreement signed by the complainant, respondent and the CRD director.

(b) CRD shall obtain proof of the respondent's compliance with a conciliation agreement before the case is closed.

(c) CRD shall notify the complainant and respondent by mail of an unsuccessful conciliation agreement. CRD shall then inform the complainant by mail of the complainant's right to file a civil action against the respondent named in the perfected complaint, pursuant to Texas Labor Code §§21.208 - 21.252.

§819.49. No Cause Determination.

A completed investigation may result in a determination that there is no reasonable cause to believe that the respondent has engaged in an unlawful employment practice as alleged in the perfected complaint. If after the review, the CRD director determines that no reasonable cause exists, the CRD director shall issue a letter of no cause determination. The no cause determination letter shall be mailed to the complainant, respondent, and any agency as required by law and shall contain the CRD director's finding that the evidence does not support the perfected complaint.

§819.50. Right to File a Civil Action.

(a) CRD shall inform the complainant by mail of:

(1) the dismissal of a complaint filed with CRD; or

(2) the expiration of 180 days after the date of filing of an unresolved complaint and the complainant's right to request from CRD a notice of right to file a civil action. Upon receipt of a written request, CRD shall issue a notice of right to file a civil action.

(b) Before the expiration of 180 days after filing the complaint and upon a written request from a complainant, CRD shall issue a notice of right to file a civil action if:

(1) written confirmation by a physician licensed to practice medicine in Texas states that the complainant has a life threatening illness; or

(2) certification by the CRD director states that the administrative processing of the perfected complaint cannot be completed before the expiration of the 180th day after the complaint was filed. The certification shall take into account the exigent circumstances of the complainant.

(c) The complainant's written request shall include the respondent's name, CRD complaint number, and EEOC complaint number if the complaint has been deferred by EEOC. CRD shall issue notice by mail no later than the fifth business day after receipt of the complainant's request.

§819.51. Failure to Issue Notice of Right to File a Civil Action.

CRD's failure to issue a notice of right to file a civil action after 180 days from the date the complaint is received by CRD does not affect the complainant's right to bring a civil action against the respondent under Texas Labor Code §21.252(d).

§819.52. Judicial Enforcement.

(a) CRD may bring a civil action against a respondent named in a perfected complaint pursuant to the requirements of Texas Labor Code §21.251.

(b) Upon a determination by CRD to bring a civil action, it shall notify the complainant by certified mail.

(c) On a majority vote of the Commission on Human Rights, CRD may pursue intervention in a civil action pursuant to the requirements of Texas Labor Code §21.255.

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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Reagan Miller
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SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

40 TAC §§819.71 - 819.76

The new 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 new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.71. Equal Employment Opportunity Deferrals among Federal, State, and Local Agencies.

For the purpose of satisfying the filing requirements of the Texas Labor Code §21.201, the following shall apply:

(1) For a complaint filed with CRD over which EEOC has deferred jurisdiction, timeliness of the complaint shall be determined by the date the complaint is received by CRD.

(2) For a complaint filed with EEOC and deferred to CRD, timeliness of the complaint shall be determined by the date on which the complaint is received by EEOC.

(3) For a complaint filed with a local commission and deferred to CRD, timeliness of the complaint shall be determined by the date on which the complaint is received by the local commission.

§819.72. Requirements for a Local Commission.

(a) To be a local commission eligible to receive deferrals from CRD, pursuant to Texas Labor Code §§21.151 - 21.156, and this chapter, the following materials and information shall be submitted to CRD:

(1) A letter from EEOC verifying the local commission's designation as a Fair Employment Practices Agency;

(2) A copy of the local ordinance that prohibits practices designated as unlawful under Texas Labor Code, Chapter 21;

(3) A copy of rules, policies, and procedures governing the operations of the local commission;

(4) A copy of an organizational chart of the internal structure of the local commission and its relationship to the governing authorities of the political subdivision or subdivisions of which it is a part; and

(5) A copy of the local commission's budget and resources.

(b) Upon examination of the materials and information provided by a local commission, the CRD director shall provide written notification to the local commission of its eligibility to receive deferrals.

(c) If CRD determines that the local commission is not eligible to receive deferrals, it shall identify in writing the reasons and provide the local commission the necessary assistance to comply with the requirements established by Texas Labor Code §§21.151 - 21.156, and this chapter.

§819.73. Deferral to Local Commission.

(a) Texas Labor Code §21.155, grants to a local commission the exclusive right to take appropriate action within the scope of its

power and jurisdiction to process a complaint deferred by CRD pursuant to the requirements of Texas Labor Code §21.155, and this chapter.

(b) CRD shall not assume jurisdiction over a complaint deferred to a local commission, pursuant to Texas Labor Code §21.155, except:

(1) where the local commission defers a complaint under its jurisdiction to CRD;

(2) where the complaint is received by CRD within 180 days of the alleged violation but beyond the period of limitation of the appropriate local commission; and

(3) where the local commission has not acted on the complaint pursuant to the requirements of Texas Labor Code §21.155(c), and this chapter.

§819.74. Deferral Procedures.

(a) CRD shall defer a complaint subject to Texas Labor Code §21.155(a) to a local commission within five working days of the date the complaint is received.

(b) A local commission may waive its right to the period of exclusive processing of a complaint with respect to any complaint or category of complaint by deferring a matter under its jurisdiction to CRD, pursuant to Texas Labor Code §21.156.

(c) All complaints received by CRD subject to deferral to a local commission shall be dated and time stamped upon receipt.

(d) CRD shall transmit a copy of a complaint it receives that is subject to deferral to a local commission by certified mail to the appropriate local commission. Proceedings by the local commission are deemed to have commenced on the date such complaint is mailed.

(e) A local commission shall transmit to CRD by certified mail, a copy of a complaint deferred to it by EEOC and over which CRD has deferral jurisdiction.

(f) CRD shall notify the complainant and respondent in writing that it has forwarded the complaint to the local commission.

§819.75. Final Determination of a Local Commission.

(a) A local commission shall submit to CRD by mail, a copy of the document from the local commission stating the final determination as to the merits of a deferred complaint, or a copy of the document stating the appropriate action taken by the local commission to resolve the practice alleged as discriminatory in a deferred complaint.

(b) For purposes of satisfying Texas Labor Code §21.208 and §§21.251 - 21.256, a local commission shall submit to CRD by mail notification of the dismissal of a deferred complaint, or shall submit, within 120 days of the date the complaint is deferred by CRD, written notification if the local commission has not filed a civil action or has not successfully negotiated a conciliation agreement between the complainant and respondent. A local commission shall notify CRD within five working days if the local commission does not intend to act on a complaint deferred by CRD.

§819.76. Workshare Agreements.

The Agency shall enter into workshare agreements with EEOC and local commissions to ensure an effective and integrated administrative review procedure, share information, and provide technical assistance and 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 F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

40 TAC §§819.91 - 819.93

The new 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 new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.91. Preservation and Use.

CRD shall require a person under investigation to make and keep records pursuant to the requirements of Texas Labor Code §§21.301 - 21.303.

§819.92. Access to CRD Records.

Pursuant to Texas Labor Code §21.304 and §21.305, CRD shall, on written request of a party to a perfected complaint filed under Texas Labor Code §21.201, allow the party access to CRD's records, unless the perfected complaint has been resolved through a voluntary settlement or conciliation agreement, if:

(1) following the final action of CRD, a party to the perfected complaint or the party's attorney certifies in writing that a civil action is to be filed under Texas Labor Code, Chapter 21, within 60 days from the date of receipt of CRD's notice of right to file a civil action, or a civil action under Texas Labor Code, Chapter 21, is pending in state court; or

(2) a party to the perfected complaint or the party's attorney certifies in writing that a civil action relating to the perfected complaint is pending in federal court alleging a violation of federal law.

§819.93. Disposal of Files and Related Documents.

Pursuant to a certified records retention schedule, CRD shall retain case files and related documents that have not been forwarded to EEOC for two years after the administrative review procedures have been completed, except when a civil action has been filed in state court under Texas Labor Code, Chapter 21. When a civil action has been filed in state court, case files and related documents shall be retained until the final disposition of the lawsuit. At the end of the two-year period, CRD may dispose of the case files and related documents.

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 G. TEXAS FAIR HOUSING ACT PROVISIONS

40 TAC §819.111, §819.112

The new 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 new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.111. Purpose.

The purpose of Subchapters G - L of this chapter is to establish procedures for CRD to execute its responsibilities in the administration and enforcement of the Texas Fair Housing Act. Texas provides, within constitutional limitations, for fair housing throughout the state and provides rights and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory housing practices based on race, color, disability, religion, sex, national origin, or familial status in the sale, rental, advertising of dwellings, inspection of dwellings, entry into a neighborhood, or in the provision of brokerage services or in the availability of residential real estate-related transactions.

§819.112. Definitions.

The following words and terms, when used in Subchapter G, Texas Fair Housing Act Provisions; Subchapter H, Discriminatory Housing Practices; Subchapter I, Texas Fair Housing Act Complaints and Appeals Process; Subchapter J, Fair Housing Deferral to Municipalities; Subchapter K, Fair Housing Administrative Hearings and Judicial Review; and Subchapter L, Fair Housing Fund, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accessible or readily accessible to and usable by--A public or common use area that is accessible by individuals with disabilities, as set forth in Texas Property Code, §301.025(c). Compliance with the appropriate requirements of the American National Standards Institute (ANSI) for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(2) Accessible building entrance--A building entrance that is accessible by individuals with disabilities, as set forth in Texas Property Code, §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(3) Accessible route--A route that is accessible by individuals with disabilities, as set forth in Texas Property Code, §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(4) Building--A structure, facility, or the portion thereof that contains or serves one or more dwelling units.

(5) Common use areas--Rooms, spaces, or elements inside or outside of a building that are made available for the use of residents or the guests of a building. These areas include, but are not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas, and passageways among and between buildings.

(6) Complaint--A written statement made under oath stating that an unlawful housing practice has been committed, setting forth the facts on which the complaint is based, and received within one year of the date the alleged unlawful housing practice occurred or terminated, whichever is later, and for which CRD shall initiate an investigation.

(7) Controlled substance--Any drug or other substance or immediate precursor as defined in the Controlled Substances Act, §102, 21 U.S.C. §802.

(8) Disability--A mental or physical impairment that substantially limits at least one major life activity, a record of such an impairment, or being regarded as having such an impairment. The term does not include current illegal use of or addiction to any drug or illegal or federally controlled substance; and reference to "an individual with a disability" or perceived as "disabled" does not apply to an individual based on that individual's sexual orientation or because that individual is a transvestite. As used in this definition, physical or mental impairment includes:

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance);

(C) any major life activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(D) having a record of such an impairment such as a history of, or misclassification as having, a mental or physical impairment that substantially limits one or more major life activity; and

(E) being regarded as having a physical or mental impairment that does not substantially limit one or more major life activity but that is treated by another person as constituting such a limitation; having a physical or mental impairment that substantially limits one or more major life activity only as a result of the attitudes of others toward such impairment; or having no physical or mental impairment but is treated by another person as having such an impairment.

(9) Discriminatory housing practice--An action prohibited by Texas Fair Housing Act, Subchapter B, or conduct that is an offense under Texas Fair Housing Act, Subchapter I.

(10) Entrance--Any access point to a building or portion of a building used by residents for the purpose of entering the building.

(11) Exterior--All areas of the premises outside of an individual dwelling unit.

(12) Ground floor--Within a building, any floor with an entrance on an accessible route. A building may have more than one ground floor.

(13) Interior--The spaces, parts, components, or elements of an individual dwelling unit.

(14) Modification--Any change to the public or common use areas of a building or any change to a dwelling unit.

(15) Premises--The interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(16) Public use areas--Interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

(17) Site--A parcel of land bounded by a property line or a designated portion of a public right of way.

(18) Texas Fair Housing Act--Texas Property Code, Chapter 301.

(19) United States Fair Housing Act--Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

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 H. DISCRIMINATORY HOUSING PRACTICES

40 TAC §§819.121 - 819.135

The new 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 new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.121. Discrimination Based on Familial Status.

It is an unlawful housing practice to discriminate based on familial status. Familial status includes:

(1) pregnancy;

(2) being domiciled with an individual younger than 18 years of age in regard to whom the person is the parent or legal custodian or has the written permission of the parent or legal custodian for domicile with that person; or

(3) being in the process of obtaining legal custody of an individual younger than 18 years of age.

§819.122. Exemptions Based on Familial Status.

(a) The Texas Fair Housing Act regarding discrimination based on familial status does not apply to housing designed and operated specifically to assist elderly individuals.

(b) The Texas Fair Housing Act does not apply to housing intended for and solely occupied by individuals 62 years of age or older. This exemption shall apply regardless of the fact that:

(1) there were individuals residing in such housing on September 13, 1988, who were under 62 years of age, provided that all new occupants are 62 years of age or older;

(2) there are unoccupied units, provided that such units are reserved for occupancy for individuals 62 years of age or older; or

(3) there are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(c) The Texas Fair Housing Act does not apply to housing intended and operated for occupancy by individuals 55 years of age or older if:

(1) at least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older. However:

(A) a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this 80% occupancy requirement until 25% of the units in the facility are occupied; and

(B) a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children in order to achieve occupancy of at least 80% of the occupied units by at least one person 55 years of age or older;

(2) the owner or manager of a housing facility publishes and adheres to policies and procedures that demonstrate an intent by the owner or manager to provide housing for individuals 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph:

(A) The manner in which the housing facility is described to prospective residents;

(B) The nature of any advertising designed to attract prospective residents;

(C) Age verification procedures;

(D) Lease provisions;

(E) Written rules and regulations;

(F) Actual practices of the housing facility or community; and

(G) Public posting in common areas of statements describing the facility or community as housing for individuals 55 years of age or older; and

(3) the housing facility satisfies the requirements of this section regardless of the fact that:

(A) as of September 13, 1988, under 80% of the occupied units in the housing facility were occupied by at least one person 55 years of age or older, provided that at least 80% of the units that were occupied by new occupants after September 13, 1988, were occupied by at least one person 55 years of age or older;

(B) there are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or older; and

(C) there are units occupied by employees of the housing facility (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

§819.123. Discrimination in Sale, Rental, Terms, Conditions, Privileges, Services, and Facilities.

(a) It is unlawful to discriminate based on race, color, disability, religion, sex, national origin, or familial status by imposing different terms, conditions, or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

(b) Prohibited actions under this section include, but are not limited to:

(1) using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits, and the terms of a lease and those relating to down payment and closing requirements based on race, color, disability, religion, sex, national origin, or familial status;

(2) failing to maintain or repair or delaying maintenance or repairs of sale or rental dwellings based on race, color, disability, religion, sex, national origin, or familial status;

(3) failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately based on race, color, disability, religion, sex, national origin, or familial status;

(4) limiting the use of privileges, services, or facilities associated with a dwelling based on race, color, disability, religion, sex, national origin, or familial status; and

(5) denying or limiting services or facilities in connection with the sale or rental of a dwelling because a person failed or refused to provide sexual favors.

§819.124. Other Prohibited Sale and Rental Conduct.

(a) It is unlawful to discriminate based on race, color, disability, religion, sex, national origin, or familial status by restricting or attempting to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying, or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood, or development. Prohibited practices under this section generally refer to unlawful steering practices that include, but are not limited to, discrimination by:

(1) discouraging any person from inspecting, purchasing, or renting a dwelling based on race, color, disability, religion, sex, national origin, or familial status in a community, neighborhood, or development;

(2) discouraging the purchase or rental of a dwelling based on race, color, disability, religion, sex, national origin, or familial status by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development;

(3) communicating to a potential buyer or renter that he or she would not be comfortable or compatible with existing residents of a community, neighborhood, or development based on race, color, disability, religion, sex, national origin, or familial status; and

(4) assigning any person to a particular section of a community, neighborhood, or development or to a particular floor of a building based on race, color, disability, religion, sex, national origin, or familial status.

(b) It is unlawful to discriminate based on race, color, disability, religion, sex, national origin, or familial status by engaging in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to individuals. Prohibited sales and rental practices under this section include, but are not limited to, discrimination by:

(1) discharging or taking other adverse action against an employee, broker, or agent because he or she refused to participate in a discriminatory housing practice;

(2) employing codes or other devices to segregate or reject potential buyers or renters; refusing to take or to show listings of dwellings in certain areas based on race, color, disability, religion, sex, national origin, or familial status; or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, disability, religion, sex, national origin, or familial status;

(3) denying or delaying the processing of an application made by a potential buyer or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling based on race, color, disability, religion, sex, national origin, or familial status; and

(4) refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently based on race, color, disability, religion, sex, national origin, or familial status.

§819.125. Discriminatory Advertisements, Statements, and Notices.

(a) It is unlawful to discriminate based on race, color, disability, religion, sex, national origin, or familial status by making, printing, or publishing, or causing to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination, or an intention to make any such preference, limitation, or discrimination.

(b) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, electronic communications, or any documents used with respect to the sale or rental of a dwelling.

(c) Discriminatory notices, statements, and advertisements include, but are not limited to:

(1) using words, phrases, photographs, illustrations, symbols, or forms that convey that dwellings are available or not available to a particular group of individuals based on race, color, disability, religion, sex, national origin, or familial status;

(2) expressing to agents, brokers, employees, prospective sellers or renters, or any other individuals a preference for or limitation on any potential buyer or renter based on race, color, disability, religion, sex, national origin, or familial status;

(3) selecting media or locations for advertising the sale or rental of dwellings that deny particular segments of the housing market

information about housing opportunities based on race, color, disability, religion, sex, national origin, or familial status; and

(4) refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising based on race, color, disability, religion, sex, national origin, or familial status.

§819.126. Discriminatory Representations on the Availability of Dwellings.

(a) It is unlawful to discriminate, based on race, color, disability, religion, sex, national origin, or familial status, by providing inaccurate or untrue information about the availability of dwellings for sale or rent.

(b) Prohibited actions under this section include, but are not limited to:

(1) indicating through words or conduct that a dwelling that is available for inspection, sale, or rent has been sold or rented based on race, color, disability, religion, sex, national origin, or familial status;

(2) representing that covenants or other deed, trust, or lease provisions that purport to restrict the sale or rental of dwellings based on race, color, disability, religion, sex, national origin, or familial status preclude the sale or rental of a dwelling to a person;

(3) enforcing covenants or other deed, trust, or lease provisions that preclude the sale or rental of a dwelling to any person based on race, color, disability, religion, sex, national origin, or familial status;

(4) limiting information, through words or conduct, regarding suitably priced dwellings available for inspection, sale, or rent based on race, color, disability, religion, sex, national origin, or familial status; and

(5) providing false or inaccurate information regarding the availability of a dwelling for sale or rent to any person, including testers, regardless of whether such person is actually seeking housing based on race, color, disability, religion, sex, national origin, or familial status.

§819.127. Discriminatory Practices Regarding Entry into a Neighborhood.

(a) It is unlawful to discriminate based on race, color, disability, religion, sex, national origin, or familial status by inducing or attempting to induce for profit a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of an individual or group of individuals.

(b) Prohibited actions under this section include, but are not limited to:

(1) engaging in conduct (including uninvited solicitations for listings) that conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, disability, religion, sex, national origin, or familial status of individuals residing in it or in order to encourage the person to offer a dwelling for sale or rent; and

(2) encouraging a person to sell or rent a dwelling through assertions that the entry or prospective entry of individuals of a particular race, color, disability, religion, sex, national origin, or familial status can or will result in undesirable consequences for the project, neighborhood, or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

§819.128. Discrimination in the Selling, Brokering, or Appraising of Residential Real Property.

(a) It is unlawful for a person whose business includes engaging in selling, brokering, or appraising of residential real property to discriminate based on race, color, disability, religion, sex, national origin, or familial status.

(b) It is unlawful to discriminate based on race, color, disability, religion, sex, national origin, or familial status by denying any person access to or membership or participation in any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership, or participation.

(c) Prohibited actions under this section include, but are not limited to:

(1) setting different fees for access to or membership in a multiple listing service;

(2) denying or limiting benefits accruing to members in a real estate brokers' organization;

(3) imposing different standards or criteria for membership in a real estate sales or rental organization; and

(4) establishing geographic boundaries or office location or residence requirements for access to, or membership or participation in, any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings.

(d) For the purposes of this section, the term "appraisal" shall mean an estimate or opinion of the value of a residential real property made in a business context in connection with the sale, rental, financing, or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(e) Practices that are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, disability, religion, sex, national origin, or familial status.

§819.129. Discrimination in Residential Real Estate Transactions.

It is unlawful for a person whose business includes engaging in residential real estate-related transactions to discriminate based on race, color, disability, religion, sex, national origin, or familial status in making such a transaction available or in the terms or conditions of such a transaction.

§819.130. Discrimination in Making Loans and in the Provision of Other Financial Assistance.

(a) It is unlawful for a person whose business includes engaging in residential real estate-related transactions to discriminate based on race, color, disability, religion, sex, national origin, or familial status in making loans or other financial assistance available for a dwelling, or which is or is to be secured by a dwelling.

(b) It is unlawful for a person engaged in making loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair, or maintenance of dwellings or that are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance based on race, color, disability, religion, sex, national origin, or familial status.

(c) Prohibited practices under this section include, but are not limited to:

(1) failing or refusing to provide to a person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures, or standards for the review and approval of loans or financial assistance, or providing information that is inaccurate or different from that provided to others based on race, color, disability, religion, sex, national origin, or familial status;

(2) using different policies, practices, or procedures in evaluating or determining creditworthiness of any person in connection with the provision of a loan or other financial assistance for a dwelling or for a loan or other financial assistance that is secured by residential real estate based on race, color, disability, religion, sex, national origin, or familial status; and

(3) determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration, or other terms of a loan or other financial assistance for a dwelling or for a loan or other financial assistance that is secured by residential real estate based on race, color, disability, religion, sex, national origin, or familial status.

§819.131. Discrimination in Purchasing Loans.

(a) It is unlawful for a person engaged in the purchasing of loans or other debts or securities that support the purchase, construction, improvement, repair, or maintenance of a dwelling, or that are secured by residential real estate, to discriminate based on race, color, disability, religion, sex, national origin, or familial status by refusing to purchase such loans, debts, or securities, or by imposing different terms or conditions for such purchases.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) purchasing loans or other debts or securities that relate to or are secured by dwellings in certain communities or neighborhoods but not in others based on race, color, disability, religion, sex, national origin, or familial status;

(2) pooling or packaging loans or other debts or securities differently that relate to or are secured by dwellings based on race, color, disability, religion, sex, national origin, or familial status; and

(3) imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities that relate to or are secured by dwellings based on race, color, disability, religion, sex, national origin, or familial status.

(c) This section does not prevent consideration of factors justified by business necessity in the purchasing of loans, including requirements of state or federal law relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision does not preclude considerations employed in normal and prudent transactions provided that no such factor may in any way relate to race, color, disability, religion, sex, national origin, or familial status.

§819.132. Discrimination Based on Disability.

(a) It is unlawful to discriminate in the sale, rental, terms, conditions, or privileges of the sale or rental, or to otherwise make unavailable or deny, a dwelling to a potential buyer or renter based on a disability of:

(1) the potential buyer or renter;

(2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) any person associated with that person.

(b) It is unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

(1) that buyer or renter;

(2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(3) any person associated with that person.

(c) It is unlawful to make an inquiry to determine whether a potential buyer or renter of a dwelling, a person intending to reside in that dwelling after it is sold, rented, or made available, or any person associated with that potential buyer or renter has a disability. However, this section does not prohibit the following inquiries, provided they are made of each potential buyer or renter, whether or not the person has a disability:

(1) Whether the potential buyer or renter is able to meet the requirements of ownership or tenancy;

(2) Whether the potential buyer or renter qualifies for a dwelling available only to individuals with disabilities or to people with a particular type of disability;

(3) Whether the potential buyer or renter qualifies for a priority available to individuals with disabilities or to people with a particular type of disability;

(4) Whether the potential buyer or renter is a current illegal abuser or addict of a controlled substance; or

(5) Whether the potential buyer or renter has been convicted of the illegal manufacture or distribution of a controlled substance.

§819.133. Discrimination in Refusing Reasonable Modifications of Existing Premises.

(a) It is unlawful for a person to refuse to allow, at the expense of an individual with a disability, reasonable modifications of existing premises, occupied or to be occupied by an individual with a disability, if the proposed modifications may be necessary to afford the individual with a disability full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase a customarily required security deposit for individuals with disabilities. However, where it is necessary to ensure with reasonable certainty that funds are available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest-bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

(b) As a condition for granting a renter permission for a modification, a landlord may require a reasonable description of the proposed modifications, reasonable assurances that the work will be done in a workmanlike manner, and assurances that required building permits will be obtained.

§819.134. Discrimination in Refusing Reasonable Accommodations.

It is unlawful for a person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford an individual with a disability equal

opportunity to use and enjoy a dwelling unit, including public and common use areas.

§819.135. Discrimination in Design and Construction Requirements.

(a) It is unlawful to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, that do not have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if they are occupied by that date or if the last building permit or renewal for the covered multifamily dwellings is issued by a state, county, or local government on or before January 13, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person who designed or constructed the housing facility.

(b) It is unlawful to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, with a building entrance on an accessible route that do not provide:

(1) public and common use areas readily accessible to and usable by individuals with disabilities;

(2) doors that are sufficiently wide to allow passage into and within the entire premises by individuals in wheelchairs; or

(3) interior premises with the following features of adaptable design:

(A) accessible routes into and through the covered dwelling unit;

(B) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(C) reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall, and shower seat, where such facilities are provided; and

(D) usable kitchens and bathrooms to allow an individual in a wheelchair to maneuver.

(c) Compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of subsection (b)(3) of this section.

(d) Compliance with a duly enacted law of a state or unit of general local government that includes the requirements of subsections (a) and (b) of this section satisfies the requirements of subsections (a) and (b) of this section.

(e) This section does not invalidate or limit the laws of a state or political subdivision of a state that require dwellings to be designed and constructed in a manner that affords individuals with disabilities greater access than is required by 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.

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SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

40 TAC §§819.151 - 819.156

The new 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 new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.151. Filing a Complaint.

(a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD to obtain information on filing a complaint with CRD.

(b) At the complainant's request, CRD:

(1) shall counsel with the complainant about the facts and circumstances that constitute the alleged unlawful housing practice; and

(2) shall assist the complainant with preparation of the complaint if the facts and circumstances constitute an alleged unlawful housing practice; or

(3) may advise the complainant if the facts and circumstances presented to CRD do not appear to constitute an unlawful housing practice.

(c) The complaint shall be filed in writing and under oath with CRD by mail, fax, or in person with:

(1) the CRD office on a CRD-provided form;

(2) a HUD office; or

(3) a local municipality certified by HUD.

(d) The CRD director may require complaints to be made in writing, under oath, on a prescribed form. The complaint shall include the following information:

(1) the name and address of the complainant;

(2) the name and address of the respondent;

(3) a description and address of the dwelling that is involved, if appropriate;

(4) the basis for the alleged discriminatory housing practices, which may include any of the following: race, color, disability, religion, sex, national origin, or familial status;

(5) a concise statement of the facts and circumstances that constitute alleged discriminatory housing practices under the Texas Fair Housing Act, including identification of personal harm, reason given to complainant by respondent for the action taken; and

(6) a declaration of unlawful discrimination under federal or state law.

(e) A complaint shall be filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later.

(f) The date of the filing of the complaint is the date when it is received by CRD or dual-filed with HUD, except when the CRD director determines that a complaint is timely filed for the purposes of the one-year period for filing of complaints upon submission of written information (including information provided by telephone by the claimant and documented by CRD) that is substantially equivalent to the information identified in subsection (d) of this section. When a complaint alleges discriminatory housing practices that are continuing, as manifested in a number of incidents of such conduct, the complaint shall be timely when filed within one year of the last alleged occurrence.

(g) A complaint may be amended to cure technical defects or omissions, or to clarify and amplify allegations made therein. Such amendment or amendments alleging additional acts that constitute unlawful housing practices related to or growing out of the subject matter of the original complaint shall relate back to the date the complaint was first filed. CRD shall provide a copy of the complaint to the respondent. An amended complaint shall be subject to the procedures set forth in applicable law.

(h) The CRD director may file a complaint when the CRD director receives information from a credible source that one or more individuals may have violated the rights of one or more individuals protected by the Texas Fair Housing Act. A complaint filed by the CRD director shall be considered for approval by the Commission on Human Rights at its first regularly scheduled meeting following the filing of the complaint. Upon a majority vote of the Commission on Human Rights, the complaint is approved and any investigation of the complaint shall continue. If the Commission on Human Rights does not approve the complaint, such complaint shall be withdrawn by CRD.

(i) The complainant and respondent shall be notified periodically by CRD of the status of their complaint, unless the notice would jeopardize an undercover investigation by another state, federal, or local government.

(j) Upon the acceptance of a complaint, the CRD director shall notify, by mail, each complainant on whose behalf the complaint was filed. The notice shall:

(1) acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;

(2) include a copy of the complaint;

(3) advise the complainant of the time limits applicable to complaint processing and of the procedural rights and obligations of the complainant under the Texas Fair Housing Act and this chapter;

(4) advise the complainant of his or her right to commence a civil action under the Texas Fair Housing Act, Subchapter H, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice shall state that the computation of this two-year period excludes any time during which an administrative hearing is pending under this chapter and Texas Fair Housing Act, Subchapter E, with respect to a complaint or charge based on the alleged discriminatory housing practice; and

(5) advise the complainant that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation, conciliation, or an administrative proceeding under this chapter is a discriminatory housing practice that is prohibited under the Texas Fair Housing Act and this chapter.

§819.152. Legal Representation.

The complainant and respondent may be represented by an attorney or designated agent.

§819.153. Investigation of a Complaint.

(a) Upon the acceptance of a complaint under this chapter, CRD shall initiate an investigation. The CRD director may initiate an investigation to determine whether a complaint should be filed under this chapter and the Texas Fair Housing Act, Subchapter E. Such investigations shall be conducted in accordance with the procedures set forth in this chapter.

(b) The CRD director shall determine the scope and nature of the investigation within the context of the allegations set forth in the complaint.

(c) At all reasonable times in the complaint investigation, the CRD director shall have access to:

(1) necessary witnesses for examination under oath or affirmation; and

(2) records, documents, and other information relevant to the investigation of alleged violations of the Texas Fair Housing Act, for inspection and copying.

(d) Within 20 days of the acceptance of a complaint or amended complaint under this chapter, the CRD director shall serve a notice on each respondent by regular mail. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under the Texas Fair Housing Act, Subchapter E, and this chapter, as a person who is alleged to be engaged or to have engaged in the discriminatory housing practice upon which the complaint is based, may be joined as an additional or substitute respondent by service of a notice on the person under this section within 10 days of identification.

(e) The notice to a respondent shall include, but not be limited to, the following:

(1) Identification of the alleged discriminatory housing practice upon which the complaint is based, and a copy of the complaint;

(2) Date that the complaint was accepted for filing;

(3) Time limits applicable to complaint processing under this chapter and the procedural rights and obligations of the respondent under the Texas Fair Housing Act, and this chapter, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice;

(4) Complainant's right to commence a civil action under the Texas Fair Housing Act, Subchapter H, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice; an explanation that the computation of the two-year period excludes any time during which an administrative hearing is pending under this chapter or the Texas Fair Housing Act, Subchapter E, with respect to a complaint or charge based on the alleged discriminatory housing practice;

(5) If the person is not named in the complaint, but is being joined as an additional or substitute respondent, an explanation of the basis for the CRD director's belief that the joined person is properly joined as a respondent;

(6) Instruction that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation, conciliation, or an administrative proceeding under this chapter is a discriminatory housing practice that is prohibited under the Texas Fair Housing Act;

(7) Invitation to enter into a conciliation agreement for the purpose of resolving the complaint; and

(8) Initial request for information and documentation concerning the facts and circumstances surrounding the alleged discriminatory housing practice set forth in the complaint.

(f) The respondent may file an answer not later than 10 days after receipt of the notice described in this section. The respondent may assert any defense that might be available to a defendant in a court of law. The answer shall be signed and affirmed by the respondent. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge."

(g) An answer may be reasonably and fairly amended at any time with the consent of the CRD director.

(h) CRD may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding under the Texas Fair Housing Act, Subchapter E. The CRD director shall have the power to issue subpoenas described under the Texas Fair Housing Act, Subchapter D, in support of the investigation.

(i) As part of the complaint investigation, CRD may request information relevant to the alleged violations of Texas Fair Housing Act. In obtaining this information, CRD may use, but is not limited to using, any of the following:

(1) oral and video interviews and depositions;

(2) written interrogatories;

(3) production of documents and records;

(4) requests for admissions;

(5) on-site inspection of respondent's facilities;

(6) written statements or affidavits; or

(7) other forms of discovery authorized by the Administrative Procedure Act, Texas Government Code §§2001.081 - 2001.103, or the Texas Rules of Civil Procedure.

(j) CRD may establish time requirements regarding responses to requests for information relevant to an investigation of alleged violations of the Texas Fair Housing Act. The CRD director may extend such time requirements for good cause shown.

(k) As part of a complaint investigation, CRD may accept from the complainant or respondent a statement of position or information regarding the allegations in the complaint. CRD shall accept only a sworn or affirmed written statement of position submitted by the respondent setting forth the facts and circumstances relevant to an investigation of alleged violations of the Texas Fair Housing Act.

(l) CRD shall complete the initial investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint.

(m) The complaint shall remain open until a no reasonable cause determination is made, a charge is made, or a conciliation agreement is executed and approved under this chapter and the Texas Fair Housing Act, Subchapter E.

(n) At the end of each investigation under this chapter, CRD shall prepare a final investigative report. The investigative report shall contain:

(1) the names and dates of contacts with witnesses. The report shall not disclose the names of witnesses that request anonymity; however, the names of such witnesses may be required to be disclosed in the course of an administrative hearing or a civil action;

(2) a summary and the dates of correspondence and other contacts with the complainant and the respondent;

(3) a summary description of other pertinent records;

(4) a summary of witness statements; and

(5) answers to interrogatories.

(o) A final investigative report may be amended if additional evidence is discovered.

(p) CRD shall provide a summary of the final determination and shall make available the full investigative report to the complainant and the respondent.

§819.154. Pattern and Practice Complaints.

When the CRD director determines that the alleged discriminatory practices contained in a complaint are pervasive or institutional in nature, or that the processing of the complaint may involve complex issues, questions of first impression, or may affect a large number of people, the CRD director may identify it as a pattern and practice complaint. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Pattern and practice investigations may focus not only on documenting facts involved in the complaint but also on review of other policies and procedures to ensure compliance with the nondiscrimination requirements of the Texas Fair Housing Act.

§819.155. Conciliation.

(a) During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the CRD director, CRD shall attempt to conciliate the complaint.

(b) In conciliating a complaint, CRD shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the complainant, and take such action that will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.

(c) The terms of a settlement of a complaint shall be reduced to a written conciliation agreement. The conciliation agreement shall protect the interests of the complainant, other people similarly situated, and the public interest.

(d) The agreement is subject to the approval of the CRD director, who shall indicate approval by signing the agreement. The CRD director shall approve an agreement and execute the agreement, only if:

(1) the complainant and the respondent agree to the relief; and

(2) the provisions of the agreement shall adequately protect the public interest.

(e) CRD may issue a charge under the Texas Fair Housing Act and this chapter if the complainant and the respondent have executed an agreement that has not been approved by the CRD director.

(f) CRD may terminate its efforts to conciliate the complaint if:

(1) the complainant or the respondent fails or refuses to confer with CRD;

(2) the complainant or the respondent fails to make a good faith effort to resolve any dispute; or

(3) the CRD director finds, for any reason, that voluntary agreement is not likely to result.

(g) When the complainant has commenced a civil action under federal or state law seeking relief for the alleged discriminatory housing practice, the CRD director shall terminate conciliation.

(h) The CRD director may review compliance with the terms of any conciliation agreement. If the CRD director has reasonable cause to believe that a complainant or a respondent has breached a conciliation agreement, the CRD director may refer the matter to the Office of the Attorney General with a recommendation for the filing of a civil action under the Texas Fair Housing Act, Subchapter G, for the enforcement of the terms of the conciliation agreement.

§819.156. Reasonable Cause Determination and Issuance of a Charge.

(a) If a conciliation agreement under this chapter and the Texas Fair Housing Act, Subchapter E, has not been executed by the complainant and the respondent, and approved by the CRD director, the CRD director on behalf of the Commission on Human Rights, within the time limits set forth in subsection (f) of this section, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred. The reasonable cause determination shall be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise disclosed during the investigation. In making the reasonable cause determination, the CRD director shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in state district court.

(b) If the CRD director determines that reasonable cause exists, the CRD director shall immediately issue a charge under the Texas Fair Housing Act, Subchapter E, and this chapter on behalf of the complainant, and shall notify the complainant and the respondent of this determination by certified mail or personal service.

(c) If the CRD director determines that no reasonable cause exists, the CRD director shall issue a short written statement of the facts upon which the CRD director has based the no reasonable cause determination; dismiss the complaint; notify the complainant and the respondent of the dismissal (including the written statement of facts) by certified mail or personal service; and make public disclosure of the dismissal.

(d) If the CRD director determines that the matter involves the legality of local zoning or land use laws or ordinances, the CRD director, in lieu of making a determination regarding reasonable cause, shall refer the investigative materials to the Office of the Attorney General for appropriate action under the Texas Fair Housing Act, Subchapter G, and shall notify the complainant and the respondent of this action by certified mail or personal service.

(e) The CRD director may not issue a charge under this chapter and the Texas Fair Housing Act, Subchapter E regarding an alleged discriminatory housing practice, if a complainant has commenced a civil action under federal or state law seeking relief with respect to the alleged discriminatory housing practice. If a charge may not be issued because of the commencement of a civil action, the CRD director shall notify the complainant and the respondent by certified mail or personal service.

(f) The CRD director shall make a reasonable cause determination within 100 days after filing of the complaint.

(g) If the CRD director is unable to make the determination within the 100-day period, the CRD director shall notify the complainant and the respondent, by certified mail or personal service, of the reasons for the delay.

(h) The CRD director shall notify the complainant and respondent, and any aggrieved person on whose behalf a complaint has been filed, that they may elect to have the claims asserted in the charge decided in a civil action, as provided in Texas Property Code §301.131(b), or an administrative hearing pursuant to §819.191 of this chapter.

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

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SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

40 TAC §819.171, §819.172

The new 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 new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.171. Deferral.

(a) Pursuant to the Texas Fair Housing Act §301.068, CRD may defer proceedings and refer complaints to a municipality that has been certified by HUD.

(b) A local municipality certified by HUD shall submit the following materials and information to CRD before a deferral or referral shall be made:

(1) A copy of the local ordinance that is determined to be substantially equivalent to federal law;

(2) A letter verifying that the ordinance of the municipality has been approved by HUD as substantially equivalent to federal law;

(3) A copy of rules, policies, and procedures governing the administration and enforcement of the local ordinance determined to be substantially equivalent to federal law and the Texas Fair Housing Act; and

(4) A copy of the organizational chart of the municipality's internal structure for enforcing the local ordinance determined to be substantially equivalent to federal law and the Texas Fair Housing Act.

(c) Upon examination of the materials and information provided by the municipality, the CRD director shall notify the municipality in writing as to the determination of its eligibility.

§819.172. Memoranda of Understanding.

The Agency shall enter into memoranda of understanding with local municipalities qualified under §819.171 of this subchapter to ensure

effective and integrated administrative review procedures, share information, and provide technical assistance and 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 K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

40 TAC §§819.191 - 819.201

The new 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 new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.191. Administrative Hearings.

Administrative hearings shall be conducted by the Agency's Special Hearings Department pursuant to the procedures set forth in Texas Government Code, Chapter 2001, Subchapters C - D, F - H, and Z.

§819.192. Ex Parte Communications.

Except as provided in this chapter, and unless required for the disposition of ex parte matters authorized by law, no member of the Commission on Human Rights and no employee of the Agency assigned to propose a decision or assigned to propose or make findings of fact or conclusions of law in a case covered by this subchapter may communicate, directly or indirectly, in connection with any issue of fact or law with any person or party or any representative of either, except on notice and opportunity for all parties to participate.

§819.193. Proposal for Decision and Hearing Officer's Report.

(a) If the proposed decision is not adverse to any party to the hearing proceeding, the hearing officer may propose to the Commission on Human Rights a decision that need not contain findings of fact or conclusions of law.

(b) The Commission on Human Rights shall not make a decision adverse to a party until a proposal for decision has been served on the parties, and an opportunity has been afforded each party adversely affected to file exceptions and present briefs to the Commission on Human Rights.

(c) The proposal for decision shall be accompanied by a hearing officer's report. This report shall contain a statement of the nature of the case and a discussion of the issues, evidence, and applicable law.

(d) Any penalty assessed by the hearing officer for an administrative violation shall be in accordance with Texas Fair Housing Act §301.112.

§819.194. Countersignature by the CRD Director.

The CRD director shall countersign each hearing officer's report and proposal for decision.

§819.195. Oral Argument before the Commission on Human Rights.

A party may request oral argument before the Commission on Human Rights before final determination. A request for oral argument may be incorporated in the exceptions, in a reply to the exceptions, or in a separate pleading.

§819.196. Pleading Before Order.

The CRD director may permit or request parties to file briefs and proposed findings of fact at any time after the hearing and before final decision by the Commission on Human Rights. A party doing so shall file an original and 10 copies with the CRD director, certifying to the CRD director that each party has been served with a copy.

§819.197. Form and Content of the Order.

(a) After the time for filing exceptions and replies to exceptions has expired, the Commission on Human Rights shall consider the hearing officer's report and the proposal for decision. The Commission on Human Rights may adopt the proposal for decision; modify and adopt it; reject it and issue a Commission on Human Rights decision; or remand the matter to the hearing officer. The Commission on Human Rights shall render its decision or issue its final order within 60 days after the hearing closes. The hearing officer shall prepare the final order for the Commission on Human Rights.

(b) It is the policy of the Commission on Human Rights to change a finding of fact or conclusion of law or to vacate or modify any proposed order from the hearing officer when the proposed order is:

(1) erroneous;

(2) against the weight of the evidence;

(3) based on insufficient review of the evidence;

(4) not sufficient to protect the public interest;

(5) an infringement on the Commission on Human Rights' discretion to determine its policies; or

(6) to correct a technical error.

(c) If the Commission on Human Rights modifies, amends, or changes the hearing officer's proposal for decision, a final order reflecting the changes and the justification for the changes shall be prepared.

§819.198. Final Order.

(a) A final order of the Commission on Human Rights that is adverse to one or more parties shall be in writing and signed by a majority vote of the quorum of the Commission on Human Rights. Such a final order shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. If a party submits proposed findings of fact, the decision shall include a ruling on each proposed finding. The CRD director shall deliver a copy of the final order to each party or the party's authorized representative by certified mail or personal service.

(b) A final order is effective on the date it is issued by the Commission on Human Rights, unless otherwise stated in the final order. The date of issuance shall be incorporated in the body of each decision or final order.

(c) The Commission on Human Rights' issuance of a final order remains in effect unless a party to the proceeding files a motion for rehearing before the expiration of 21 calendar days.

§819.199. Rehearing.

(a) A motion for rehearing is not required to exhaust all administrative remedies. A motion for rehearing shall be made before the expiration of 21 calendar days after the date of the Commission on Human Rights' final order, as set forth in §819.198 of this subchapter. Any reply to a motion for rehearing shall be filed with the Commission on Human Rights before the expiration of 30 calendar days after the date of the Commission on Human Rights' final order, as set forth in §819.198 of this subchapter. A party filing a motion for rehearing or a reply to a motion for rehearing shall serve a copy on each party within the filing deadline.

(b) The Commission on Human Rights may, by written order, extend the time for filing motions and replies and for taking Commission on Human Rights action. No extension may extend the period for Commission on Human Rights action beyond 90 days after the date of the final order, as set forth in §819.198 of this subchapter. In the event of an extension, a motion for rehearing is denied on the date fixed by the written order or, in the absence of a fixed date, 90 days from the date of the final order, as set forth in §819.198 of this subchapter.

(c) If a party files a motion for rehearing, the Commission on Human Rights' order is final when the Commission on Human Rights:

(1) denies a motion for rehearing on a final order, as set forth in §819.198 of this subchapter, either expressly or by operation of law; or

(2) renders or issues a final order that includes a statement that no motion for rehearing shall be necessary because imminent peril to the public health, safety, or welfare requires immediate effect be given to the final order.

(d) If the Commission on Human Rights does not act on the motion for rehearing within 45 calendar days, the motion is denied by operation of law and the order is final.

§819.200. Judicial Review.

(a) A person who has exhausted all administrative remedies available under the Texas Fair Housing Act and who is aggrieved by a final order of the Commission on Human Rights is entitled to judicial review under the substantial evidence rule as set forth in the Administrative Procedure Act, §§2001.001 et seq.

(b) Proceedings for judicial review are instituted by filing a petition within 30 calendar days after a final order is issued.

§819.201. Prohibited Interference, Coercion, Intimidation, or Retaliation.

(a) It is unlawful to interfere, coerce, intimidate, or retaliate against any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Texas Fair Housing Act.

(b) Prohibited conduct made unlawful under this section includes, but is not limited to:

(1) coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction based on race, color, disability, religion, sex, national origin, or familial status;

(2) threatening, intimidating, or interfering with individuals in their enjoyment of a dwelling based on race, color, disability, religion, sex, national origin, or familial status of such individuals, or of visitors or associates of such individuals;

(3) threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, based on the race, color, disability, religion, sex, national origin, or familial status of that person or of any person associated with that individual;

(4) intimidating or threatening any person because that person is engaging in activities designed to make other individuals aware of, or encouraging such other individuals to exercise rights granted or protected by this chapter; and

(5) retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Texas Fair Housing Act.

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

Filed with the Office of the Secretary of State on June 15, 2005.

TRD-200502478
Reagan Miller
Acting Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: July 31, 2005
For further information, please call: (512) 475-0829

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SUBCHAPTER L. FAIR HOUSING FUND

40 TAC §819.221

The new rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 new rule affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

§819.221. Fair Housing Fund.

(a) A fair housing fund is a fund in the state treasury in the custody of the Texas Comptroller of Public Accounts.

(b) Civil penalties assessed against a respondent under the Texas Fair Housing Act, Subchapters E and G, shall be deposited to the credit of the fair housing fund.

(c) The Commission on Human Rights may use monies deposited to the credit of the fair housing fund for the administration of the Texas Fair Housing Act.

(d) Gifts and grants received as authorized by the Texas Fair Housing Act, Subchapter D, shall be deposited to the credit of the fair housing fund.

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

Filed with the Office of the Secretary of State on June 15, 2005.

TRD-200502479

Reagan Miller
Acting Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: July 31, 2005
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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

SUBCHAPTER A. PROGRAM ADMINISTRATION

1 TAC §§370.1, 370.4, 370.10

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended sections, submitted by the Texas Health and Human Services Commission have been automatically withdrawn. The amended sections as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11214).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502416

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1 TAC §370.2, §370.3

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed repealed sections, submitted by the Texas Health and Human Services Commission have been automatically withdrawn. The repealed sections as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11216).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502417

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SUBCHAPTER B. APPLICATION SCREENING, REFERRAL AND PROCESSING

DIVISION 1. APPLICATION PROCESS

1 TAC §§370.20 - 370.25

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended sections, submitted by the Texas Health and Human Services Commission have been automatically withdrawn. The amended sections as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11217).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502418

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DIVISION 2. APPLICANT RIGHTS AND RESPONSIBILITIES REGARDING APPLICATION AND ELIGIBILITY

1 TAC §370.30

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas Health and Human Services Commission has been automatically withdrawn. The amended section as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11218).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502419

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1 TAC §370.31

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed repealed section, submitted by the Texas Health and Human Services Commission has been automatically withdrawn. The repealed section as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11219).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502420

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DIVISION 3. ELIGIBILITY DETERMINATION

1 TAC §370.40

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas Health and Human Services Commission has been automatically withdrawn. The amended section as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11219).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502421

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DIVISION 4. ELIGIBILITY CRITERIA

1 TAC §§370.42 - 370.46, 370.49

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended sections, submitted by the

Texas Health and Human Services Commission have been automatically withdrawn. The amended sections as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11219).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502422

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1 TAC §370.48

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed repealed section, submitted by the Texas Health and Human Services Commission has been automatically withdrawn. The repealed section as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11222).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502423

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DIVISION 5. REVIEW AND FAIR HEARINGS OF ELIGIBILITY DENIALS AND TEMPORARY ENROLLMENT

1 TAC §§370.50 - 370.55

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended and new sections, submitted by the Texas Health and Human Services Commission have been automatically withdrawn. The amended and new sections as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11223).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502424

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SUBCHAPTER C. ENROLLMENT, DISENROLLMENT, AND RENEWAL OF MEMBERSHIP

DIVISION 1. ENROLLMENT

1 TAC §§370.301, 370.303, 370.305, 370.307, 370.309

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended sections, submitted by the Texas Health and Human Services Commission have been automatically withdrawn. The amended sections as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11226).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502425

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DIVISION 2. COST-SHARING

1 TAC §370.321, §370.325

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended sections, submitted by the Texas Health and Human Services Commission have been automatically withdrawn. The amended sections as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11227).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502426

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1 TAC §370.323

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed repealed section, submitted by the Texas Health and Human Services Commission has been automatically withdrawn. The repealed section as proposed appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11228).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502427

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.217

The Texas Real Estate Commission withdraws the proposed repeal of §535.217 which appeared in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2829).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502436
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: June 14, 2005
For further information, please call: (512) 465-3900

♦ ♦ ♦

22 TAC §535.220

The Texas Real Estate Commission withdraws the proposed amendment to §535.220 which appeared in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2829).

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502437
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: June 14, 2005
For further information, please call: (512) 465-3900

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.27

The Texas Board of Veterinary Medical Examiners withdraws the proposed amendment to §575.27 which appeared in the January 21, 2005, issue of the *Texas Register* (30 TexReg 268).

Filed with the Office of the Secretary of State on June 21, 2005.

TRD-200502560
Julie A. Barker
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: June 21, 2005
For further information, please call: (512) 305-7555

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER H. INVESTMENTS

7 TAC §91.801

The Credit Union Commission adopts amendments to §91.801 concerning investments in CUSOs without changes to the text published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1211).

The amendments clarify the investment limits for a credit union in CUSOs, require that separate corporate existence between the credit union and the CUSO be clearly maintained, and require that the CUSO be bonded or insured for its operations and obtain an annual opinion audit.

No comments were received on the proposal.

The amendment is adopted under the provision of the Texas Finance Code, §124.352 which provides the Credit Union Commission with the authority to adopt rules limiting investments; and under the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the amendment is Texas Finance Code, §124.352.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 20, 2005.

TRD-200502530
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 10, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 837-9236

♦ ♦ ♦

PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 152. REPAIR, RENOVATION, AND NEW CONSTRUCTION ON HOMESTEAD PROPERTY

7 TAC §§152.1, 152.3, 152.5, 152.7, 152.15

The Finance Commission of Texas and the Texas Credit Union Commission ("Commissions") jointly adopt new 7 TAC §§152.1, 152.3, 152.5, 152.7, and 152.15, concerning interpretations related to a lien on a homestead for home improvement under Texas Constitution, Article XVI, §50(a)(5) (Section 50(a)(5)). The new sections are adopted with non-substantive changes to the proposal as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 955).

The Commissions made non-substantive changes to clarify and simplify the addressed provisions as the result of comments.

The Commissions received one written comment. The following commenter only requested clarifications or recommended modifications: David F. Dulock, Black, Mann & Graham, L.L.P., Attorneys at Law. Notice of a public meeting, for receipt of any oral comments on the proposed new sections, was published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 955). The meeting was held as scheduled, on March 24, 2005, but no one offered oral comments.

Texas Constitution, Article XVI, §50 (Section 50) limits the nature and type of liens that can be imposed on a Texas homestead by identifying and conditioning the specific purposes for which such secured financing may be used. Because of the significantly adverse consequences that can befall a lender who violates a provision of Section 50, clear and unambiguous guidance regarding the meaning of such provisions supports the stability of the credit markets and ensures that home equity loans are as widely available to Texas homeowners as possible. (Because Section 50 primarily addresses only the elements necessary to create a valid lien on a homestead, other statutes and constitutional provisions must also be consulted to fully evaluate the legality under Texas law of credit transactions involving the homestead.)

Each Commission is separately and independently authorized to issue interpretations of certain provisions in Section 50, see Texas Finance Code, §11.308 and §15.413 (as added by Acts 2003, 78th Legislature, Chapter 1207, §2), and the Texas Constitution, Article XVI, §50(u). The Commissions seek to jointly exercise their authority to interpret Section 50 in order to promote consistency and better support the confidence of homeowners and lenders transacting home equity loans in compliance with Section 50. In addition, the Commissions interpret the extent of their interpretive authority to include not only determinations of the explicit meaning of words and terms in Section 50, but also to encompass "filling in the gaps" with respect to material matters that are inadequately addressed in Section 50, including

possible addition of further details to the extent the Commissions believe this to be necessary to fully implement the intent and purposes of Section 50.

Section 50(a)(5) provides exceptions from the protections from forced sale of the homestead of a family or of a single adult person for payment of the following two debts when they meet certain requirements:

(1) work and material used in constructing new improvements on the homestead; and

(2) work and material used to repair or renovate existing improvements on the homestead.

Section 50(a)(5) does not define any of its terms. When interpreting our state Constitution, we rely heavily on its literal text and give effect to its plain language. *Republican Party of Texas v. Deitz*, 940 S.W.2d 86, 89 (Tex. 1997). We presume the language of the Constitution was carefully selected, and we interpret words as they are generally understood. *City of Beaumont v. Boullion*, 896 S.W.2d 143 (Tex. 1995). In the case of *Aerospace Optimist Club v. Texas*, 886 S.W.2d 556, 559 (Tex. App. - Austin 1994, no writ), the court used the Webster's Dictionary definition of the word "proceeds" because it was not defined. When a term is not defined in Section 50(a)(5), we have given it its ordinary meaning.

The language of Section 50(a)(5) raises a question as to whether Section 50(a)(5)(A) - (D) apply to "work and material used to repair and renovate existing improvements" alone or also to "work and material used in constructing new improvements." The Texas Supreme Court held "that a plain-language reading of Texas Constitution Article XVI, Section 50(a)(5) dictates that the protections in Section 50(a)(5)(A) - (D) apply only to 'work and material used to repair or renovate existing improvements' on homestead property, and not to 'work and material used in constructing new improvements'." *Spradlin v. Jim Walters Homes*, 34 S.W.3d 578, 580 (Tex 2000).

The Texas Supreme Court followed the doctrine of last antecedent that a qualifying phrase in a statute or the Constitution must be confined to the words and phrases immediately preceding it to which it may, without impairing the meaning of the sentence, be applied. The Texas Supreme Court concluded that, "'work and material used to repair or renovate existing improvements' constitutes the entire phrase to which Section 50(a)(5)(A) - (D) apply because applying Section 50(a)(5)(A) - (D) to 'work and material used in constructing new improvements' would impermissibly impair the meaning of the provision as a whole. This reading is supported by use of the disjunctive conjunction 'or' between the two phrases, which signifies a separation between two distinct ideas." The Commissions adopt the Texas Supreme Court's holding and reasoning in reaching the holding.

Accordingly, under Section 50(a)(5), the homestead is not protected from forced sale for the payment of debts for "work and material used in constructing new improvements" on the homestead if the work and material are contracted for in writing. Under Section 50(a)(5)(A) - (D), the homestead is not protected from forced sale for the payment of debts "for work and material used to repair or renovate existing improvements" on the homestead if the requirements of Section 50(a)(5)(A) - (D) are complied with.

To determine whether to apply Section 50(a)(5)(A) - (D) to a debt under Section 50(a)(5), a determination must be made as to whether the work and material used are for "constructing new improvements" on the homestead or "repairing or renovating existing improvements" on the homestead. To make this determination, the Commissions concluded that "new improvements" and "existing improvements" must be defined. The plain language of Section 50(a)(5) dictates that "new improvements" are additions to real property that do not exist on the real property prior to entering into a contract for home improvements and construction of the additions will not involve work or material being physically attached to an existing improvement. The plain language of Section 50(a)(5) further dictates that "existing improvements" are additions to real property that are physically attached to the real property prior to entering into a contract for home improvements. For example, a pool cabana could be constructed separate from all other pre-existing improvements; this would be construed to be new improvements as the construction would not be physically attached to any pre-existing improvements. A pool cabana could also share a wall with an existing garage; this would be construed to be existing improvements as the cabana would be physically connected or attached to the pre-existing garage. The phrases "existing improvements" and "new improvements" are defined at Section 152.1(2) and (3), respectively.

Work and material used to construct improvements on a homestead that already has "existing improvements" on it are considered "work and material used in constructing new improvements" so long as work is not performed on and material are not physically attached to the existing improvements. Work that is performed on or material that are in any way physically attached to existing improvements are considered "work and material used to repair or renovate existing improvements" on the homestead, and Section 50(a)(5)(A) - (D) must be complied with to establish a lien on the homestead.

The commenter suggested that the introductory sentence to §152.1 be amended to reflect that the definitions apply to words in Article XVI, Texas Constitution, Section 50. Although, applying the definitions to Section 50 may be consistent with the interpretations, the definitions were drafted to only apply to the interpretations of Section 50(a)(5). The Commissions are concerned about unintended consequences of extending the definitions to apply to words and phrases in Section 50. Therefore, the Commissions decline to make this suggested modification.

The proposed definition of "application" in §152.1(1) defined the term as an application of credit for work and material to repair or renovate existing improvements or to construct new improvements. The definition further clarifies that the term does not refer to the use of a previously established credit line.

The commenter questioned the need for a definition of "application" because Section 50(a)(5) already requires a written application. Alternatively, the commenter suggested that the definition of "application" exclude closed-end home equity loans used for home improvement. The Commissions agree with the commenter that the definition is unnecessary because Section 50(a)(5) requires a written application and federal disclosure regulations already have definitions of application. The Commissions will not adopt a definition of "application."

Proposed §152.1(2) defined a "constitutional lien" as a lien created and made enforceable against a homestead by the lienholder's compliance with the appropriate section of the Texas Constitution.

The commenter asserted that there is no authority for creating a "constitutional lien" without also complying with the enabling statutory requirements of §53.254 of the Property Code. The Commissions agree with the commenter. The Commissions removed the definition of "constitutional lien" and deleted the phrase from §152.3(b) and §152.5(b).

The deletion of the proposed definitions of "application" and "constitutional lien" and the addition of the definition of "physically attach" necessitated renumbering the remaining paragraphs of §152.1.

The definition of "contract" in §152.1(1) is provided solely to provide a shorthand version of the phrase "contract for work and material;" the definition allows the interpretations to use the term "contract" instead of the phrase "contract for work and material." The commenter suggested that the definition of contract include a requirement that it create a lien in accordance with constitutional and statutory requirements in order to clarify that the term pertains only to contracts that are enforceable against Texas homesteads and to avoid confusion with contract documents signed between owner and contractor that do not meet constitutional and Property Code homestead contract requirements. The Commissions amended the definition to require that the contract comply with the Texas Constitution and Texas Property Code.

The definition of "existing improvement" in §152.1(2) and the definition of "new improvement" in §152.1(3) are discussed above. The commenter pointed out that the definition of "new improvement" did not contain the requirement that the improvement be "physically attached" to the homestead. The Commissions agree that this was an oversight. Section 152.1(3) was amended grammatically and to clarify that "new improvements" must be physically attached to the homestead.

The definition of "material" in §152.1(4) clarifies that material become a part of improvements once physically attached to the improvement, whether in the construction of new improvements or the repair or renovation of existing improvements.

For consistency, the Commissions proposed a definition of "owner" in §152.1(5) that is the same as the definition in §153.1(13). The commenter asserted that this definition would require compliance with Section 50(a)(5)(B) - (D) for nonhomestead owners, thereby expanding Texas homestead law beyond protecting only homestead interests in property. Further, the commenter stated that this definition conflicts with §152.7(b), which makes joinder by nonhomestead owners optional. In the absence of legislative history or clear intent in the Constitution, the Commissions cannot define "owner" differently for each subsection of Section 50 in an attempt to avoid some particular consequence. The Commissions decline to modify the definition of "owner."

The commenter suggested that the Commissions define "physically attach" or "physically attached" to clarify what the term means. Commissions did not include a definition of "physically attach" in its proposed interpretations, but have decided that a definition would avoid confusion. Section 152.1(6) defines "physically attach."

Section 152.1(7) defines "repair or renovate" and clarifies that only existing improvements can be repaired or renovated. Section 152.1(7) describes the kind of "work and material" that are considered repairs and renovations and provides examples.

Section 152.1(7)(A) provides that replacing material with the same or similar material on existing improvements is a repair or renovation. "Repair or renovation," as defined in §152.1(7)(B), includes attaching material to existing improvements where the same or similar material were not attached to the existing improvements when the repair or renovation began. Section 152.1(7)(C) makes it clear that the work performed does not have to physically attach material to the homestead to be considered a repair or renovation. Section 152.1(7)(C) additionally includes in the definition of "repair or renovate" work and material used where material are actually removed from the homestead, but not thereafter replaced by material of any kind.

The definition of "title company" in §152.1(8) is consistent with the definition given by the court in *Rooms with a View, Inc. v. Private National Mortgage Association, Inc.*, 7 S.W.3d 840 (Tex. App. - Austin 1999), which includes an agent of a title insurance company. This definition, along with the *Rooms with a View* decision should remove the uncertainty that precipitated the *Rooms with a View* case.

Section 152.3 explains that the only requirement in Section 50(a)(5) for establishing a lien on a homestead for a debt incurred for "work and material used in constructing of new improvements" is that the "work and material used in constructing new improvements" be "contracted for in writing." In Texas, there may be both a constitutional and a statutory lien. The requirements to establish a statutory lien are in Property Code §53.001 *et seq.*; however, this interpretation does not address the Property Code requirements. As stated above, this interpretation is supported by the Texas Supreme Court in its decision in *Spradlin*, 34 S.W.3d at 580.

The commenter recommended that the phrase "Except as provided in §152.5(c) of this chapter" be deleted from §152.3(a) because the commenter believes that §152.5(c) is contrary to the decision in *Spradlin* and should be deleted. Section 152.5(c) provides that a single contract pertaining to constructing new improvements and repairing or renovating existing improvements must comply with Section 50(a)(5)(A) - (D) to establish a lien on the homestead. The commenter contended that *Spradlin* holds "that a plain language reading of Texas Constitution Article XVI, Section 50(a)(5) dictates that the protections in its subparts (A) - (D) apply only to 'work and material used to repair or renovate existing improvements' on homestead property and not to 'work and material used in constructing new improvements'."

The fact that a contract contains both (1) work and material used to construct new improvements and (2) work and material to repair or renovate existing improvements does not change the fact that the contract requires work and material used to repair or renovate existing improvements and is subject to Section 50(a)(5)(A) - (D). *Spradlin* made a distinction between contracts for work and material used to construct new improvements and contracts for work and material used to repair or renovate existing improvements, but it did not address contracts containing both. The Commissions are confident that this interpretation, as proposed, is consistent with the *Spradlin* decision because the contract is in part for work and material used to repair and renovate existing improvements. The Commissions decline to modify Section 152.3(a) and §152.5(c).

Section 152.3(b) provides that a homestead is not protected from forced sale by Section 50 once a lien is established for debt incurred for work and material used in constructing new improvements. The commenter pointed out that the phrase "constitutional lien" used in proposed §152.3(b) was a misstatement because a lien is the right under which a forced sale is conducted and cannot, itself, be subject to a forced sale. The Commissions agree with the commenter and have modified §152.3(b) to reflect that it is the homestead, rather than the constitutional lien, that is not protected from forced sale.

Section 152.5(a) explains that Section 50(a)(5)(A) - (D) apply only to work and material used to repair or renovate existing improvements. This interpretation is also supported by the Texas Supreme Court in *Spradlin*.

Section 152.5(b) provides that to establish a lien for a debt incurred for work and material used to repair and renovate existing improvements, there must be compliance with Section 50(a)(5)(A) - (D).

The Commissions recognize that parties may reach an agreement to construct new improvements and repair or renovate existing improvements in the same contract. The Commissions, in §152.5(c), provide that a single contract pertaining to both must comply with Section 50(a)(5)(A) - (D) to establish a lien on the homestead.

Section 152.7 interprets the consent requirement in Section 50(a)(5)(A) as meaning the joinder requirement in Texas Property Code, §5.001 (Section 5.001). In the case of a family homestead, Section 50(a)(5)(A) requires the "consent of both spouses" to the contract for work and material, "given in the same manner as is required in making a sale and conveyance of the homestead." The Commissions could not find a "consent" requirement with respect to the sale and conveyance of a homestead; however, Section 5.001, provides that: "Whether the homestead is the separate property of either spouse or community property, neither spouse may sell, convey, or encumber the homestead without the joinder of the other spouse except as provided in this chapter or by other rules of law." The Commissions believe that although Section 5.001 uses the term "joinder" rather than "consent," the joinder in Section 5.001 is what the drafters were most likely referring to when they required "consent of both spouses. . .in the same manner as is required in making a sale and conveyance of the homestead."

In keeping with *Spradlin*, §152.15(a) limits the requirements of Section 50(a)(5)(D) to repairs or renovations of existing improvements. The phrase "The owner and, if married, the owner's spouse" that was in proposed §152.15(a) has been modified to "The person granting or acknowledging the encumbrance of their homestead interest" to reflect that anyone granting or acknowledging the encumbrance must execute the contract at the places named in §152.15(a)(1) - (3). The Commissions modified §152.15(a) to avoid unintentionally requiring owners to sign the contract when they are not required to do so by the constitution.

The commenter pointed out that although the constitution limits the lender to a third party making the extension of credit for the work and material, proposed §152.15(a)(1) did not. The Commissions have modified §152.15(a)(1) to conform to the constitution.

The commenter recommended that, because of frequent complexities in home improvement lending, the attorney's office authorized by §152.15(a)(2) for execution of a home improvement contract should be limited to the office of an attorney licensed to practice in Texas. The commenter does not assert that this restriction is in the constitution and the Commissions do not find it in the constitution; thus, the Commissions refuse to make this modification.

Section 152.15(b) makes it clear that the requirements of Section 50(a)(5)(D) are not fulfilled by executing contracts at a mobile office of the lender, an attorney at law, or a title company, unless the mobile office is located at a permanent address of the lender, an attorney at law, or a title company.

Finally, the Commissions emphasize that the Code Construction Act (Texas Government Code, Chapter 311) applies to 7 TAC Chapter 152. For example, words used in the singular include the plural and the plural includes the singular, the heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of an interpretation, and the use of the word "include" means "including but not limited to." A reference in 7 TAC Chapter 152 to "Section 50" refers to the Texas Constitution, Article XVI, §50, unless otherwise noted.

The new sections are adopted pursuant to Texas Finance Code, §11.308 and §15.413 (as added by Acts 2003, 78th Legislature, Chapter 1207, §2), which separately and independently authorize each Commission to issue interpretations of the Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(5) is affected by the adopted new sections.

§152.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, Section 50. Words and terms have these meanings when used in this chapter, unless the context indicates otherwise:

(1) Contract--A contract for work and material, that complies with the Texas Constitution and the Texas Property Code, used to:

(A) construct new improvements;

(B) repair or renovate existing improvements; or

(C) both subparagraphs (A) and (B) of this paragraph.

(2) Existing improvements--A pre-existing addition to a homestead that is physically attached to the homestead.

(3) New improvements--An addition physically attached to a homestead:

(A) that does not exist on the homestead prior to the commencement of the use of work and material to physically attach the new improvements to the homestead under Section 50(a)(5); and

(B) the construction of which will not involve:

(i) work on existing improvements

(ii) the use of material on existing improvements; or

(iii) physically attaching material to existing improvements.

(4) Material--Material used in constructing new improvements or repairing or renovating existing improvements. Material alone is not improvements. Material used to construct new improvements becomes a part of the new improvements once physically attached to the new improvements. Likewise, material used to repair or renovate existing improvements becomes a part of the existing improvements once physically attached to the existing improvements.

(5) Owner--A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(6) Physically attach--To permanently attach, affix, add to, or fasten onto.

(7) Repair or Renovate--Work and material used to:

(A) replace material physically attached to existing improvements whether or not the new material is similar to or the same as the material being replaced (examples include replacing flooring, roofing, built-in appliances, siding, windows, or other material that is attached to existing improvements);

(B) physically attach material to existing improvements where there is no previously attached material being replaced that is the same as or similar to the material being attached (examples include attaching to existing improvements a new room, a built-in cabinet, or a second story); and

(C) mend, remedy or upgrade all or a portion of existing improvements without adding or replacing material to the existing improvements (examples include restoring wood flooring or woodwork of an existing improvement where the work does not include physically attaching material to the existing improvements, and removing flooring to expose flooring underneath).

(8) Title company--A title insurance company or an agent of a title insurance company.

§152.3. Requirements for Construction of New Improvements: Section 50(a)(5).

(a) Except as provided in §152.5(c) of this chapter, Section 50(a)(5)(A) - (D) does not apply to the construction of new improvements on a homestead.

(b) A valid lien, under Section 50(a)(5), may be created on a homestead if the debt for the work and material used for new improvements is contracted for in writing. Once the lien is created, the homestead is not protected by Section 50 from forced sale for the payment of the debt.

§152.5. Requirements for Work and Material Used to Repair or Renovate: Section 50(a)(5)(A) - (D).

(a) Section 50(a)(5)(A) - (D) applies only to contracts and applications for work and material used to repair or renovate existing improvements.

(b) If debt is incurred for work and material used to repair or renovate existing improvements and the requirements of Section 50(a)(5)(A) - (D) have been met, a lien is established on the homestead of a family, or of a single adult person, and it is not protected by Section 50 from forced sale for the payment of the debt.

(c) If the application and contract are for both work and material used to repair or renovate existing improvements and for work and material used in constructing new improvements, the entire transaction is considered a contract to repair and renovate existing improvements and compliance with the constitutional requirements of Section 50(a)(5)(A) - (D) is required to establish a lien on the homestead.

§152.7. Consent of Spouses in the Case of Family Homestead: Section 50(a)(5)(A).

(a) In the case of a family homestead, both spouses must consent in writing to the contract for repair or renovation of existing improvements, regardless of whether the spouse has a community property interest or other ownership interest in the homestead.

(b) In addition to the consent of both spouses of a family homestead, the lender or contractor, at its option, may also require all other owners and their spouses to consent to the contract.

§152.15. Place for Execution of Contract for Work and Material: Section 50(a)(5)(D).

(a) The persons granting or acknowledging the encumberance of their homestead interest must execute the contract for work and material used to repair or renovate existing improvements at the permanent physical address of:

(1) the office or branch office of a third-party lender making an extension of credit for the work and material;

(2) an attorney at law; or

(3) a title company.

(b) Execution of the contract may not occur at a mobile office located at:

(1) the homestead; or

(2) any other place not permitted by subsection (a) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2005.

TRD-200502512
Leslie L. Pettijohn
Commissioner
Joint Financial Regulatory Agencies
Effective date: July 7, 2005
Proposal publication date: February 25, 2005
For further information, please call: (512) 936-7640

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE COMMUNITIES IN SCHOOLS PROGRAM

19 TAC §89.1501, §89.1502

The Texas Education Agency (TEA) adopts new §89.1501 and §89.1502, concerning the Communities In Schools (CIS) program. The new sections are adopted without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2348) and will not be republished.

The new sections establish definitions and the equitable funding formula for local CIS programs. The adopted new rules implement the provisions of the Texas Education Code (TEC), Chapter 33, Service Programs and Extracurricular Activities, Subchapter E, Communities In Schools Program, which transfers the CIS program to the TEA from the Department of Family and Protective Services (DFPS), formerly known as the Department of Protective and Regulatory Services (DPRS).

The CIS program is a statewide youth dropout prevention program that provides effective assistance to Texas public school students who are at risk of dropping out of school or engaging in delinquent conduct, including students who are in family conflict or emotional crisis. In 2003, the 78th Texas Legislature passed Senate Bill 1038 which transferred the CIS program from the DFPS, formerly known as the DPRS, to the TEA.

Senate Bill 1038 specified that on September 1, 2003, a reference in law or administrative rule to the DPRS that relates to the CIS program means the TEA and that a reference in law or administrative rule of the executive director of the DPRS that relates to the CIS program means the commissioner of education. The legislation also stated that a rule of the DPRS relating to the CIS program continues in effect as a rule of the commissioner of education until superseded by rule of the commissioner of education. Accordingly, the commissioner of education has proceeded with the rulemaking process to adopt provisions for the CIS program.

The CIS provisions in new 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter EE, Commissioner's Rules Concerning the Communities In Schools Program, supersede those in 40 TAC Chapter 702, General Administration, Subchapter E, Memorandum of Understanding with Other State Agencies, and Chapter 704, Prevention and Early Intervention Services, Subchapter E, Communities In Schools.

Adopted new 19 TAC Chapter 89, Subchapter EE, establishes definitions and the equitable funding formula for local CIS programs. The adoption outlines the funding allocation for developing programs, fully-developed programs, and replication and expansion of the CIS program. Provisions relating to other funding, special initiatives, and funding plans are also outlined.

During the preparation of the proposal, CIS state staff met with the executive directors of the local CIS programs. Their comments and recommendations were considered during the development of the proposed rules. The following is a summary of public comments received on the proposed new 19 TAC Chapter 89, Subchapter EE, and corresponding agency responses.

§89.1502(a)--Equitable funding formula.

Comment. The executive director of the Communities In Schools (CIS) Galveston program commented that the formula finalized by the state office is fair and equitable.

Agency response. The agency agrees.

Comment. The executive director representing both the CIS Southeast Harris County, Inc., and the CIS Brazoria County, Inc., programs; the executive director of the CIS Bay Area program; a CIS Bell Coryell program board member and board chair; and two individuals commented that the proposed formula is not considered "fair" and "equitable," as required in the proposed rule and as authorized in the Texas Education Code (TEC), §33.156.

Agency response. The agency disagrees. The proposed formula was developed in accordance with statutory requirements outlined in the TEC and will allow programs to maintain current level funding (based on CIS receiving the same legislative funding amount as received for the last six years) as long as programs meet their contract requirements.

Comment. The executive directors for the CIS Laredo, El Paso, and Corpus Christi programs expressed agreement with the proposed rule and commented that the formula follows suit with the statutory requirements that the agency fund the local CIS programs in a manner that is equitable. The executive directors supported the provision that a community's financial resources be considered and integrated as an element of the formula. These individuals supported the formula as equitable and stable.

Agency response. The agency agrees.

§89.1502(c)--Fully-developed programs.

Comment. An individual on behalf of the CIS Houston program recommended adjusting the stop loss amounts from the range of 5.0% - 25% to 5.0% - 15%.

Agency response. The agency disagrees. The provision in subsection (c) allows the agency to apply a stop loss in the range of 5.0% - 25% allowing the agency the flexibility in applying a loss or gain in funding allocations.

§89.1502(c)(2)--Funding formula based on students contracted.

Comment. The executive director representing both the CIS Southeast Harris County, Inc., and the CIS Brazoria County, Inc., programs and an individual on behalf of the CIS Houston program disagreed with the proposal to change the funding formula from case-managed students to students contracted because it could potentially decrease the statewide number of case-managed students served. The commenters expressed a preference for the state to "respect, recognize and fund the FY 2004 contracted numbers and not dictate or fund a state imposed maintenance level contracted number."

Agency response. The agency disagrees. CIS programs currently contract for a specific number of students to be served; however, they are paid on the number actually served. The increase in student numbers is supported by using state funds to leverage local funds. Legislative funding has remained static for the past six years, yet the total number of case-managed students served has increased. Funding programs based on the number of students served places an unfair disadvantage on some programs because some are able to leverage more local dollars, thus increasing number of students served while maintaining or exceeding the contracted number. The proposed formula will fund each program based on the number of students contracted to serve and will not decrease any program's current state allocation as long as the program continues to meet its contract requirements. Based on history, it is expected that programs will continue to exceed the contract numbers of students.

Comment. The executive director of the CIS Galveston program commented that this formula should not decrease the numbers substantially, and this should not be problematic since local programs receive shared funds from school districts as well as local resources.

Agency response. The agency agrees.

Comment. The executive directors of the CIS Laredo, El Paso, and Corpus Christi programs supported the proposed formula to fund programs based on students contracted. These executive directors commented that if state funds are increased, programs could receive additional funding. In addition, programs should be able to achieve satisfaction by serving as many students as possible without sole dependence on state funding.

Agency response. The agency agrees.

§89.1502(c)(3)(A)--Weighted financial resources.

Comment. The executive directors of the CIS Laredo, El Paso, and Corpus Christi programs supported the inclusion of using taxable property values as a means to measure the financial resources available to communities across the state.

Agency response. The agency agrees.

Comment. The executive director representing both the CIS Southeast Harris County, Inc., and the CIS Brazoria County, Inc., programs expressed opposition to the proposed distribution of weighted financial resources because he believes that most of the organizations that benefit from this are not necessarily economically disadvantaged. He commented that the school districts that are eligible for weighted financial resources are also the most eligible to receive other types of state and federal funding. He noted that his interpretation of the intent of the TEC, §33.156, which requires the agency to develop and implement an equitable formula for funding the CIS program, is not to distribute funds to any organization based on the "financial resources" factor. He stated that the language was included to not harm these organizations if the state reduced funding in order to use that funding to replicate or expand the program with the savings after reduction. He presented his analysis of the proposed funding formula and pointed out scenarios that he felt would be equitable. Finally, he expressed his belief that allocating money based on a district's financial resources is "welfare."

Agency response. The agency disagrees. The TEC, §33.156, states that the formula for CIS "must consider the financial resources of individual communities and school districts." The data elements used take into consideration school districts' taxable property values, student membership, and the percentage of economically disadvantaged students listed in each program's contract.

Comment. An individual on behalf of the CIS Houston program expressed concern for the data elements chosen to calculate the weight in the weighted financial resource provision. The individual noted that although they are not against the inclusion of weighted financial resources in the funding formula, the concern is regarding the meaning of the data elements in relation to true resources.

Agency response. The agency disagrees. The TEC, §33.156, states that the formula for CIS "must consider the financial resources of individual communities and school districts." The data elements used take into consideration school districts' taxable property values, student membership, and the percentage of economically disadvantaged students listed in each program's contract.

§89.1502(d)(2)--CIS expansion and replication based on at-risk percentages.

Comment. The executive directors of the CIS Laredo, El Paso, and Corpus Christi programs supported the inclusion of one option for expansion, using a district's at-risk percentage as a weight in the funding formula. They expressed their belief that this option should be included because of the disparity in the at-risk populations from school district to school district.

Agency response. The agency agrees.

Comment. The executive director representing both the CIS Southeast Harris County, Inc., and the CIS Brazoria County, Inc. programs; the executive director of the CIS Bay Area program; a CIS Bell Coryell program board member; and two individuals expressed opposition to the inclusion of a district's at-risk percentage in the funding formula. They expressed their belief that a program contracting with one school in the district would result in the inclusion of the entire district in the calculation and would result in an inequitable allocation of funds.

Agency response. The agency disagrees. This component is very important to the program because the purpose of the CIS program and the required use of these funds are to serve at-risk students by providing services that will help them stay in school and improve in academics, attendance, and behavior. Including a district's at-risk percentage in the funding formula is one of four options the agency may use for allocating funds for expansion.

§89.1502(d)(3)--CIS expansion and replication; students contracted.

Comment. The executive director representing both the CIS Southeast Harris County, Inc., and the CIS Brazoria County, Inc., programs; the executive director of the CIS Bay Area program; a CIS Bell Coryell program board member; and two individuals suggested that the agency use the previous method of funding the expansion of programs, using the number of students served rather than contracted. They expressed their belief that the contracted number has the potential of decreasing the total number of students served by organizations that actually case managed more students than are contracted.

Agency response. The agency disagrees. CIS programs currently contract for a specific number of students to be served; however, they are paid on the number actually served. The increase in student numbers is supported by using state funds to leverage local funds. Legislative funding has remained static for the past six years, yet the total number of case-managed students served has increased. Funding programs based on the number of students served places an unfair disadvantage to some programs because some are able to leverage more local dollars, thus increasing the number of students served while maintaining or exceeding the contracted number. The proposed formula will fund each program based on the number of students contracted to serve and will not decrease any program's current state allocation as long as the program continues to meet its contract requirements. Based on history, it is expected that the programs will continue to exceed the contract numbers of students.

Comment. The executive directors for the CIS Laredo, El Paso, and Corpus Christi programs noted that a formula for expansion based on students contracted rather than actually served has not yet been implemented because the funding allocation for the CIS has been stable for the past six years. The executive directors commented that putting this formula in place without increased funding would have resulted in taking funding away from smaller programs. The executive directors expressed their belief that it is "imperative" that the state office be allowed to determine the contracted numbers for local CIS programs.

Agency response. The agency agrees. The agency will continue to determine the state target of case-managed students.

§89.1502(d)(4)--Replication and expansion; program allocation.

Comment. The executive director representing both the CIS Southeast Harris County, Inc., and the CIS Brazoria County, Inc., programs; the executive director of the CIS Bay Area program; a CIS Bell Coryell program board member; and two individuals expressed concern that it is unclear how the formula will be calculated. They commented that using the fiscal year 2004 amount, which is unchanged for the last five years and uses

six-year-old data, will continue the "unfair and inequitable" distribution of funding. They further commented that this will result in an even more disproportionate allocation of funding.

Agency response. The agency disagrees. This proposed provision would provide the agency the ability to allocate funds to each individual local CIS program based on a ratio of the respective local CIS program's total allocation relative to the amount allocated to all fully-developed CIS programs. The inclusion of subsection (d)(4) in the proposed rule was designed to give the agency an additional method to distribute funds available for expansion and replication of the CIS program.

§89.1502(d)(5)--Replication and expansion; competitive process.

Comment. The executive director of the CIS Galveston program expressed a sense of understanding for the necessity of providing another means of allocating money in addition to the current funding formula.

Agency response. The agency agrees.

Comment. An individual on behalf of the CIS Houston program and the executive directors of the CIS Dallas, Greater Tarrant County, and Bay Area programs expressed opposition to any funds, state or other, being distributed through a competitive Request For Proposal (RFP) process. The commenters stated that they would prefer that all funds be distributed as outlined in §89.1502(d)(4).

Agency response. The agency disagrees. The inclusion of a provision to address a competitive process for allocating funds is necessary to address any additional funds (state, federal, or other) which may become available in the future. Not including this provision could limit the agency's ability to accept grant monies for the CIS program to be allocated specifically for certain projects or endeavors which may require an RFP process. In addition, the RFP process is consistent with the agency's grant initiatives for local school districts and other special initiatives. Finally, any CIS funds allocated in a competitive application process will only be used for CIS programs.

Comment. The executive director representing both the CIS Southeast Harris County, Inc., and the CIS Brazoria County, Inc., programs; a CIS Bell Coryell program board member; numerous individuals representing CIS programs, including the McLennan County Challenges Academy, McLennan County Youth Collaboration, Kid's Health Campaign, and One Bear Place; and the program manager of the P.A.C.E.S. program expressed opposition to any type of competitive application because it is their opinion that it is unfair and inequitable. These individuals proposed that this factor not be considered for expansion or the funding formula.

Agency response. The agency disagrees. The inclusion of a provision to address a competitive process for allocating funds is necessary to address any additional funds (state, federal, or other) which may become available in the future. Not including this provision could limit the agency's ability to accept grant monies for the CIS program to be allocated specifically for certain projects or endeavors. In addition, the RFP process is consistent with the agency's grant initiatives for local school districts and other special initiatives. Finally, any CIS funds allocated in a competitive application process will only be used for CIS programs.

§89.1502(e)--Other funding.

Comment. The executive director of the CIS Greater Tarrant County program expressed concern about funding in any other manner than as specifically outlined in subsection (d). The executive director stated that this could "open the door" to options not specifically addressed in the rule which has allowed for public comment.

Agency response. The agency disagrees. The inclusion of subsection (e) is necessary to address any additional funds (state, federal, or other) which may become available in the future. Not including this provision could limit the agency's ability to accept grant monies for the CIS program to be allocated specifically for certain projects or endeavors.

Comment. The executive director for the CIS Dallas program expressed support for funding "through such process as the TEA deems appropriate to include the guidelines and determinations" delineated in subsection (d). The executive director specifically supported using any one or combination of the following guidelines: 1) Replication, 2) Proportion of at-risk students served, and 3) Proportion of total students contracted. The executive director noted that these funding guidelines would be reasonable.

Agency response. The agency agrees.

Comment. The executive director of and six individuals from the CIS McLennan County Youth Collaboration program; the program manager of the P.A.C.E.S. program; and individuals representing the McLennan County Challenges Academy, Kid's Health Campaign, and One Bear Place recommended deletion of subsection (e).

Agency response. The agency disagrees. As stated previously, the inclusion of subsection (e) is necessary to address any additional funds (state, federal, or other) which may become available in the future. Not including this provision could limit the agency's ability to accept grant monies for the CIS program to be allocated specifically for certain projects or endeavors.

§89.1502(g)--Funding plan.

Comment. An individual on behalf of the CIS Houston program expressed the belief that the proposed provision requiring that each program develop a funding plan to ensure that the level of service is maintained if state funding is reduced is based on an unreal expectation. In addition, the individual commented that funding plans should reflect current and expected funding conditions as applicable to each individual program, which may include a reduction in service levels.

Agency response. The agency disagrees. Local CIS programs are required to develop strategic plans which include a plan for maintaining funding and expanding to meet growth. These plans are subject to changes but ensure that local programs are striving to meet the needs of their communities. In addition, given the same funding allocation, programs are expected to maintain the same level of service. As always, local CIS programs are expected to leverage local resources to ensure that the service level is above and beyond what is contracted with the agency.

The new sections are adopted under the Texas Education Code, §33.156, which authorizes the agency to develop and implement an equitable formula for the funding of local Communities In Schools programs.

The new sections implement the Texas Education Code, §§33.152, 33.156, 33.157, and 33.158.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502438
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: July 4, 2005
Proposal publication date: April 22, 2005
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 227. PILOT PROGRAMS FOR INNOVATIVE APPLICATIONS TO PROFESSIONAL NURSING EDUCATION

22 TAC §§227.1 - 227.6

The Board of Nurse Examiners (Board) adopts new Chapter 227, §§227.1 - 227.6, Pilot Programs for Innovative Applications to Professional Nursing Education without changes to the text as published in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2825). The Board has the authority to approve and adopt rules regarding pilot programs for the innovative application in the practice and regulation of professional nursing as authorized by Texas Occupations Code §301.1605 which was enacted by Senate Bill 718, 78th Texas Legislature, Regular Session. In April 2005, the Board agreed to waive certain requirements of the Board's Chapter 215, Professional Nursing Education, in order to develop and implement strategies designed to enhance enrollment in Texas schools of nursing. Concurrent with the adoption of this rule, the Board will issue a Request for Proposal for professional nursing education pilot programs.

No comments were received regarding adoption of the new rules.

The new rules are adopted under the authority of the Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the NPA.

The adoption of the new rules affect the NPA, Texas Occupations Code §301.1605 and §301.1606, as they pertain to pilot programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502411
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: July 4, 2005
Proposal publication date: May 13, 2005
For further information, please call: (512) 305-6811

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) adopts amendments to §535.51 concerning General Requirements without changes to the proposed text as published in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2827) and will not be republished.

The amendment revises subsection (c)(6) of §535.51 to clarify that an education evaluation must be obtained within one year of the date of application for a license. An applicant must submit a new request for evaluation and pay the $20 fee if an existing evaluation is obtained more than one year before the date of application for a license.

The reasoned justification for the amendments is to clarify that an education evaluation must be obtained timely.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502433
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: July 4, 2005
Proposal publication date: May 13, 2005
For further information, please call: (512) 465-3900

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SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §535.71

The Texas Real Estate Commission (TREC) adopts amendments to §535.71 concerning Mandatory Continuing Education (MCE): Approval of Providers, Courses and Instructors with changes to the proposed text as published in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2827). A non-substantive change was made due to a typographical error found in the last sentence in subsection (b) which caused a cite to reference §101.455 instead of §1101.455 of the Texas Occupations Code. This was corrected.

The amendment revises subsection (d)(11) of §535.71 which adopts by reference MCE Form 14-1, Individual MCE Partial Credit Request Form to revise the verification on the form to parallel existing language in §535.72(b)(1)(E). Under this subsection, an education provider must sign the partial credit request form as evidence that the provider has no reason to believe the amount of credit claimed is inaccurate. In addition, the amendment adds new subsection (hh) to allow accredited colleges and universities, and professional trade associations that are otherwise approved MCE providers, to use experts from other related fields, including those from outside Texas, to teach an MCE elective course without first registering as a commission-approved instructor. At the same time, the MCE elective course must be approved in advance by the Commission before any MCE elective credit would be authorized. Finally, a commission-approved instructor would be responsible for supervising and coordinating the course, and would also be responsible for verifying the attendance of those who request MCE elective credit.

The reasoned justification for the amendments is to provide for better educated licensees who are taught relevant real estate related courses by experts in the appropriate field of expertise.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

§535.71. Mandatory Continuing Education: Approval of Providers, Courses and Instructors.

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

(1) Act--The Real Estate License Act, Texas Occupations Code, Chapter 1101.

(2) Applicant--A person seeking approval to be a provider or instructor of a course for which mandatory continuing education credit is given.

(3) Hour--Fifty minutes of actual session time.

(4) Certified legal course instructor--An instructor approved by the Texas Real Estate Commission and certified to teach the required legal update course or the required ethics course.

(5) Commission--The Texas Real Estate Commission.

(6) Day--A calendar day.

(7) Distance learning course--A correspondence course, alternative delivery method course or course offered through video presentation.

(8) Elective credits--The nine hours of non-legal mandatory continuing education required by §1101.455 of the Act.

(9) Instructor--A person approved by the Texas Real Estate Commission to teach mandatory continuing education courses.

(10) MCE--Mandatory Continuing Education.

(11) Person--An individual, partnership, or a corporation, foreign or domestic.

(12) Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the commission.

(13) Provider--A person approved by the Texas Real Estate Commission to offer courses for which mandatory continuing education credit is given.

(14) Required legal ethics course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(15) Required legal update course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(16) Required legal course or legal credits--The required legal update or legal ethics courses or credits earned for attending such courses.

(17) Student--An individual taking an MCE course for credit.

(b) Mandatory Continuing Education Requirements. On or after January 1, 2005 and except as authorized by §535.92 of this chapter, for the next and all subsequent renewals of a license on active status that is not subject to the annual education requirements of §1101.454 of the Act, the license holder must attend during the term of the current license, two Commission-developed legal courses consisting of a three-hour required legal update course and a three-hour required legal ethics course to satisfy the six legal hours of mandatory continuing education required by §1101.455 of the Act. The remaining nine hours required by §1101.455 of the Act may consist of elective credit courses registered with the commission under this section.

(c) Application. A person who wishes to offer courses accepted by the commission for MCE credit shall apply to the commission for approval to be an MCE provider and shall register each MCE course using application forms prepared by the commission. The commission may refuse to accept any application which is not complete or which is not accompanied by the appropriate filing fee. Each prospective provider shall submit a provider application and at least one principal information form.

(d) Forms. The commission adopts by reference the following forms published and available from the commission, P.O. Box 12188, Austin, Texas, 78711-2188:

(1) MCE Form 1A-2, MCE Provider Application;

(2) MCE Form 1B-2, MCE Provider Application Supplement;

(3) MCE Form 2-3, MCE Principal Information Form;

(4) MCE Form 3A-2, MCE Course Application;

(5) MCE Form 3B-3, MCE Course Application Supplement;

(6) MCE Form 8-4, MCE Course Completion Roster;

(7) MCE Form 9-7, Alternative Instructional Methods Reporting Form;

(8) MCE Form 10-2, MCE Credit Request for an Out of State Course;

(9) MCE Form 11-4, MCE Instructor Credit Request;

(10) MCE Form 12-2, Individual MCE Elective Credit Request for State Bar Course;

(11) MCE Form 14-1, Individual MCE Partial Credit Request Form

(12) MCE Form 15-0, Individual MCE Elective Credit Request for Professional Designation Course; and

(13) MCE Form 16-0, MCE Instructor Application.

(e) Provider application. To be approved as an MCE provider, a person must satisfy the commission as to the person's ability to administer with honesty, trustworthiness and integrity a course of continuing education in MCE subjects registered with the commission. If the person proposes to employ independent contractors to conduct or to administer the courses, any independent contractor named in the application must meet this standard as if the independent contractor were the applicant; however, the applicant is responsible for responding to communications from the commission relating to the application.

(f) Additional information related to application. The commission may request that an applicant provide additional information, and the commission may terminate an application without further notice if the applicant fails to provide the additional information within 60 days of the mailing of a request by the commission.

(g) Fees. The commission shall establish fees in accordance with the provisions of the Act, §1101.152, at such times as the commission deems appropriate. Fees are not refundable and must be submitted in the form of a check or money order, or, in the case of state agencies, colleges or universities, in a form of payment acceptable to the commission.

(h) Approval of applicants. The commission may authorize the manager or director of the education division of the commission, or a designate, to determine whether applications for MCE providers or instructors should be approved or certified. The commission may disapprove an application for failure to satisfy the commission as to the applicant's honesty, trustworthiness or integrity, or for any reason which would be a ground to suspend or revoke a real estate license. If an application is disapproved, the commission shall provide written notice to the applicant detailing the basis of the decision.

(i) Appeal. An applicant may appeal a disapproval by filing with the commission a written request for a hearing within 10 days after the receipt of the notice of disapproval. Following the hearing, the commission may sustain or withdraw the disapproval or establish conditions for the approval of a provider, course or instructor. Proceedings involving applications shall be conducted in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001. Venue for any hearing conducted under this section shall be in Travis County.

(j) Power of attorney. If a provider does not maintain a fixed office in this state for the duration of the provider's approval to offer courses, the provider shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the provider is required to maintain by these sections. A power-of-attorney designating the resident must be filed with the commission in a form acceptable to the commission.

(k) Subsequent application for provider approval or course registration. Unless withdrawn earlier for cause as provided by these sections, a provider's authority to offer courses for which MCE credit is given expires two years from the date the provider is approved by the commission. Authority to offer any MCE courses ends with the expiration of the provider's approval, and the provider must pay current fees and reapply for approval as a provider in order to offer MCE courses again. An elective credit course registered with the commission may be offered by the provider for a period of two years after the course is registered or until the provider's authority to act as a provider finally expires or is withdrawn for cause, whichever first occurs. If a course was originally registered by another provider, the registration period is measured from the date of registration for the original provider. A provider may apply for approval to be a provider for another two years no sooner than six months prior to the expiration of existing provider approval.

(l) Approval of instructor. A person who wishes to be an instructor of any MCE course shall apply to the commission for approval using an application form approved by the commission. To be approved as an instructor of any MCE course, an applicant must satisfy the commission as to the applicant's honesty, trustworthiness and integrity. Subsections (f) - (i) of this section apply to an applicant for approval of an instructor.

(m) Term of instructor approval. If the commission determines that the applicant meets the standards for instructor approval, the commission shall approve the application and provide a written notice of the approval to the applicant. Unless surrendered or revoked for cause, the approval will be valid for a period of five years.

(n) Subsequent application for instructor approval. No more than six months prior to the expiration of the current approval, an instructor may apply for approval for another five year period.

(o) Required legal update and ethics courses. The commission shall approve bi-annually a legal update course and a legal ethics course which shall be conducted through providers by instructors certified by the commission under this subchapter. The subject matter and course materials for the courses shall be created for and approved by the commission. The courses expire on December 31 of each odd-numbered year and shall be replaced with new courses approved by the commission. A provider may not offer a new course until an instructor of the course obtains recertification by attending a new instructor training program. Providers must acquire the commission-developed course materials and utilize such materials to conduct the required legal courses. The required legal courses must be conducted as prescribed by the rules in this subchapter and the course materials developed for the commission.

(p) Modification of the required legal courses. Providers and instructors may modify a required legal course only to provide additional information on the same or similar topics covered in the course or to create distance learning courses that are substantially similar to the live courses developed for the commission. To the extent that a required legal course is modified or integrated into a longer course for which additional elective credit is requested, the commission shall grant elective and legal credit for the combined course.

(q) Instructor certification. Only instructors certified by the commission may teach the required legal courses or develop distance learning courses for the presentation of required legal courses. An instructor must obtain prior commission approval under subsection (m) of this section prior to attending an instructor training program. The commission shall issue a written certification to an instructor to teach the applicable required legal course(s) upon the instructor's satisfactory completion of a training program to teach the required legal course(s) that is acceptable to the commission. An instructor may obtain certification to teach either one or both required legal courses. A certified legal course instructor may teach the required legal courses for any approved provider after the instructor has attended an instructor training program. A certified legal course instructor may not independently conduct a required legal course unless the instructor has also obtained approval as a provider. An instructor must obtain written certification from the commission prior to teaching the required legal courses and prior to representing to any provider or other party that he or she is certified or may be certified as a legal course instructor. An instructor's certification to teach a required legal course expires on December 31 of every odd-numbered year. An instructor may obtain recertification by attending a new instructor training program.

(r) Elective credit courses. To be approved to offer a course for MCE elective credit, the provider must demonstrate that the course subject matter is appropriate for a continuing education course for real estate licensees and that the information provided in the course will be current and accurate by submitting a brief statement that describes the objective of the course and explains how the subject matter is related to activities for which a real estate license is required, including but not limited to relevant issues in the real estate market or topics which increase or support the licensee's development of skill and competence.

(s) Elective course application. A provider applicant must submit an MCE Form 3A-2, MCE Course Application and receive written acknowledgment from the commission prior to offering an MCE elective course. Prior to advertising or offering a course offered by another provider, the subsequent provider must submit an MCE Form 3B-3, Course Application Supplement and receive written acknowledgment from the commission.

(t) Legal update and legal ethics course application. A provider must submit an MCE form 3B-3, Course Application Supplement and receive written acknowledgment from the commission prior to offering a required legal update or required legal ethics course.

(u) Core courses for elective credit. Courses approved by the commission for core real estate course credit provided in the Act, §1101.356 and §1101.358, may be accepted for satisfying MCE elective credit course requirements provided the student files a course completion certificate with the commission.

(v) Acceptable combined courses. An elective credit course offered by a provider to satisfy all or part of the nine hours of other than legal topics required by the Act, §1101.455, may be offered with the required legal update course or required legal ethics course.

(w) Required legal courses for real estate related courses. MCE legal update and legal ethics courses may be accepted by the commission as real estate related courses for satisfying the education requirements of §1101.356 and §1101.358, of the Act.

(x) Correspondence courses for elective credit. An MCE provider may register an MCE elective course by correspondence with the commission if the course is subject to the following conditions:

(1) the course must be offered by a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, which offers correspondence courses, whether credit or noncredit, in other disciplines;

(2) the content of the course must satisfy the requirements of the Act, §1101.455, and these sections; and

(3) the course does not include a request for required legal course credit.

(y) Alternative delivery method courses for elective credit. An MCE provider may register an MCE elective course by alternative delivery method with the commission if the course is subject to the following conditions:

(1) The content of the course must satisfy the requirements of the Act, §1101.455, and these sections;

(2) the course does not include a request for required legal course credit; and

(3) every provider offering a registered course under this subsection shall:

(A) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;

(B) provide that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course; and

(C) certify students as successfully completing the course only if the student:

(i) has completed all instructional modules; and

(ii) has attended any hours of live instruction and/or testing required for a given course.

(z) Correspondence courses for required legal credit. The commission may approve a provider to offer an MCE required legal ethics course by correspondence subject to the following conditions:

(1) the course must be offered by a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, which offers correspondence courses, whether credit or noncredit, in other disciplines;

(2) the content of the course must satisfy the requirements of the Act, §1101.455 and these sections, and must be substantially similar to the legal courses disseminated and updated by the Commission;

(3) students receiving MCE credit for the course must pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks MCE credit; and

(4) written course work required of students must be graded by an approved instructor or the provider's coordinator or director, who is available to answer students' questions or provide assistance as necessary, using answer keys approved by the instructor or provider.

(aa) Each required legal course offered by correspondence must contain the following:

(1) course description;

(2) learning objectives;

(3) evaluation techniques;

(4) lessons;

(5) learning activities;

(6) final examination;

(7) source materials disseminated by the Commission including all updates; and

(8) instructor grading guidelines, including acceptable answers for lessons, assessments and examinations.

(bb) Alternative delivery method courses for required legal credit. The commission may accept required legal courses offered by alternative delivery method subject to the following conditions.

(1) The content of the course must satisfy the requirements of the Act, §1101.455 and these sections, and must be substantially similar to the legal courses disseminated and updated by the Commission.

(2) Every course accepted under this subsection shall teach to mastery. Teaching to mastery means that the course must, at a minimum:

(A) divide the material into major units of instruction that follows the outline of the applicable required legal course for delivery on a computer or other approved interactive audio or audiovisual programs;

(B) specify the learning objectives for each unit of instruction;

(C) specify an objective, quantitative criterion for mastery used for each learning objective;

(D) implement a structured learning method by which each student is able to attain each learning objective;

(E) provide a means of diagnostic assessment of each student's performance on an ongoing basis during each unit of instruction, measuring what each student has learned and not learned at regular intervals throughout each unit of instruction;

(F) provide a means of tailoring the instruction to the needs of each student as identified in subparagraph (D) of this paragraph. The process of tailoring the instruction shall ensure that each student receives adequate remediation for specific deficiencies identified by the diagnostic assessment;

(G) continue the appropriate remediation on an individualized basis until the student demonstrates achievement of mastery of each unit; and

(H) require that the student demonstrate mastery of all material covered by the learning objectives for the module before the module is completed.

(3) The commission must approve the method by which each of the above elements of mastery in paragraph (2)(A) - (H) of this subsection is accomplished.

(4) The rationale for the education processes implemented in the course must be based on sound instructional strategies which have been systematically designed and proven effective through educational research and development. The basis and rationale for any proposed instructional approach must be specified in the application for approval. Programs which consist primarily of text material will not be approved.

(5) An approved instructor or the provider's coordinator/director shall grade the written course work.

(6) Every provider offering an approved course under this subsection shall:

(A) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;

(B) satisfy the commission that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course;

(C) certify students as successfully completing the course only if the student;

(i) has completed all instructional modules required to demonstrate mastery of the material;

(ii) has attended any hours of live instruction and/or testing required for a given course; and

(iii) has passed either:

(I) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(II) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks MCE credit; and

(D) provide the students with the same materials given to students who attend the same course by live instruction.

(cc) Supervised Video Instruction for elective course credit. A provider may register a course under subsection (s) of this section to be taught by supervised video instruction if:

(1) the provider complies with §535.72 of this chapter when offering and advertising the course and when completing rosters and retaining records;

(2) a proctor is present during the time the video is shown; and

(3) the provider discloses in any advertisement for the course that the instruction will be by supervised video instruction.

(dd) Supervised Video Instruction for required legal course credit. A provider may register a course under subsection (o) of this section to be taught by supervised video instruction if the provider:

(1) complies with subsection (cc)(1) - (3) of this section;

(2) ensures that a certified instructor is available to answer students' questions or provide assistance as necessary; and

(3) ensures that students receiving MCE credit for the course passed a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider.

(ee) An applicant must submit an MCE Form 3B-3, MCE Course Application Supplement to seek approval to offer an MCE distance learning required legal course and receive written acknowledgment from the commission prior to offering the course. Distance learning legal courses may be offered on or after July 1, 2005.

(ff) For a distance learning course, the provider shall award the student credit for the course upon completion of the course requirements for credit and shall report the awarding of credit to the commission. Course credit must be reported either by the provider filing a completed MCE Form 9-7, Alternative Instructional Methods Reporting Form, signed by the student, or submitting the information contained in MCE form 9-7 by electronic means acceptable to the commission.

(gg) A provider may use as guest speakers persons who have not been approved as instructors, provided that no more than a total of 50% of the course is taught by the unapproved persons for a registered MCE elective credit course. The commission-registered instructor must remain in the classroom during the guest speaker's presentation.

(hh) A provider may use guest speakers who have not been approved as instructors to conduct a registered MCE elective credit course if:

(1) the provider is an accredited college or university or a professional trade association as defined by §535.62(b) of this chapter; and

(2) the course is supervised and coordinated by a commission-approved instructor who is responsible for verifying the attendance of all who request MCE credit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502434
Loretta DeHay
General Counsel
Texas Real Estate Commission
Effective date: July 4, 2005
Proposal publication date: May 13, 2005
For further information, please call: (512) 465-3900

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SUBCHAPTER L. TERMINATION OF SALESPERSON'S ASSOCIATION WITH SPONSORING BROKER

22 TAC §535.121

The Texas Real Estate Commission (TREC) adopts amendments to §535.121 concerning Inactive License without changes to the proposed text as published in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2828) and will not be republished.

The amendment revises subsection (b) to clarify that a broker may notify the Commission that sponsorship of a salesperson has ended by either sending the license or a copy of the license to the Commission, or otherwise notifying the Commission that sponsorship has ended. Subsection (b) is revised because brokers are no longer required to display a salesperson's license certificate at the broker's place of business. In addition, due to budget constraints, the Commission no longer provides a license certificate and a duplicate pocket license on initial licensure. The Commission mails one license to the broker which the broker then gives to the licensee to use for identification purposes. The Commission recommends that the broker retain a copy of the license and the information provided with the license so that the broker can notify the Commission regarding sponsorship and renewal matters. Brokers may use an existing TREC form, Notice of Salesperson Sponsorship Termination, to notify the Commission that sponsorship has terminated. This form is available at no charge through the TREC web site at www.trec.state.tx.us.

The reasoned justification for the amendments is to clarify the requirements for brokers to provide notice when their sponsorship of a salesperson ends.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loretta DeHay
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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER C. LICENSE RENEWALS

22 TAC §571.54

The Texas Board of Veterinary Medical Examiners adopts amendments to §571.54, concerning Retired License Status, without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1565).

The amendments to this section pertain to a licensee who wishes to come out of retirement and be reinstated to active status. Different requirements are imposed, depending on whether the request for reinstatement occurs during or after the same license renewal period in which the licensee retires. In order to inform the retiring licensee of his options, the Board must inform the licensee, prior to expiration of the initial renewal period, that he or

she may apply for reinstatement, or remain in retired status. A licensee electing to remain in retired status will no longer receive license renewal notices and will not be required to renew his or her retired license.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Occupations Code, §801.151(a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2005.

TRD-200502404
Julie A. Barker
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: July 4, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 305-7555

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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §573.40

The Texas Board of Veterinary Medical Examiners adopts amendments to §573.40, concerning Labeling of Medications Dispensed, without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1566).

This section contains requirements for labeling of containers of medications dispensed by veterinarians. The amendments add a requirement that a veterinarian's telephone number, including area code, be listed on the label in order that pet owners may quickly locate their dispensing veterinarian.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Occupations Code, §801.151(a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

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-200502405
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Effective date: July 4, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 305-7555

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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.26

The Texas Board of Veterinary Medical Examiners adopts amendments to §575.26, concerning Complaint Form, without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1567).

The amendments to this section update the address and contact information for persons wishing to file complaints with the Board, and request that complainants submit details of the complaint and list events in chronological order to assist the Board in accurately and quickly processing the complaint.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Occupations Code, §801.151(a) which authorizes the Board to adopt rules necessary to administer the Veterinary Licensing Act.

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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Julie A. Barker
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Effective date: July 4, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 305-7555

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 73. BENEFITS

34 TAC §73.43

The Employees Retirement System of Texas ("ERS") adopts new rule 34 TAC §73.43, concerning the deduction from an ERS annuity for certain membership fees, without changes to the proposed text as published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2652). The text of the rule will not be republished.

New subsection (a) of §73.43 is adopted to authorize, in a manner specified by the System, a deduction by a person who receives an annuity from ERS to pay membership fees in a state employee organization. This new subsection is adopted to further comply with and conform to Texas Government Code §814.009.

New subsection (b) of §73.43 is adopted to require a state employee organization to certify to ERS, at such times as the System determines, that the organization meets the required membership level to qualify as a state employee organization under Texas Government Code §814.009(a)(2). This new subsection

is necessary to ensure that a state employee organization meets the membership level requirements of §814.009(a)(2).

New subsection (c) of §73.43 is adopted to authorize ERS to provide to a state employee organization such identifying information as the System considers necessary to identify a person who elects to participate in the membership fee deduction program.

New subsection (d) of §73.43 is adopted to provide that the System is not liable or responsible for any disputes arising out of a person's authorization or cancellation of a membership fee deduction, and requires that the person seek a resolution through the applicable state employee organization. This new subsection is necessary to ensure that disputes are resolved by the appropriate responsible state employee organization.

ERS received no comments regarding the proposed new rule.

The new rule is adopted under Texas Government Code §814.009(c), which provides authorization for the board of trustees to adopt rules governing the deduction from an ERS annuity and Texas Government Code §815.102(a)(2), which provides authorization for the board of trustees to adopt rules for the administration of the funds of the retirement system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 16, 2005.

TRD-200502507
Paula A. Jones
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Employees Retirement System of Texas
Effective date: July 6, 2005
Proposal publication date: May 6, 2005
For further information, please call: (512) 867-7421

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 7. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES

CHAPTER 189. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

40 TAC §189.6

The Texas Council on Purchasing from People with Disabilities (the Council) adopts amendments to 40 TAC §189.6, concerning Criteria for Recognition and Approval of Community Rehabilitation Programs (CRP) with changes to the text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1620) and corrected in the April 1, 2005, issue of the *Texas Register* (30 TexReg 2004).

The amendments set forth the requirements and procedure for the certification of CRPs and establish the requirement for periodic recertification. The amendments include the deletion of subsections (f) - (j) since that language has been relocated for administrative convenience and clarification in new rule §189.13 in Chapter 189, concerning Recognition and Approval of Community Rehabilitation Programs Products and Services. The adopted amendments are new subsections (a) - (i).

The adopted rule is required to fulfill the mandates of SB 261 passed by the 78th Legislature. SB 261, which became effective September 1, 2003, amended §122.003 of the Human Resources Code to require the Council to adopt rules establishing a formal certification process for CRPs.

Subsection (a) of the new rule is amended to allow the Council to accept a CRP which employs persons with disabilities although that function may not be their primary purpose. This change allows a broader class of participants in the program. Subsection (d)(1) specifies the detailed information that must be provided to the central nonprofit agency. Subsection (d)(2) provides for central nonprofit agency's (CNA) review of the submission and forwarding of the completed applications for certification to the Council's Subcommittee on Certification. A CRP whose application is not recommended for approval has the right to protest at the next Certification Subcommittee meeting pursuant to new subsection (d)(2)(C). Subsection (e) provides that a CRP must not be an outlet for an entity whose primary purpose is not the employment of people with disabilities. Subsection (f) allows the Council to recognize a CRP that has a national accreditation or whose services have been approved by a state rehabilitation agency.

The clarification and standardization of the requirements for recognition as a CRP provide guidance to potential program participants that will facilitate Council approval. Further, moving previous subsections (f) - (j) to §189.13 provides a more logical and user-friendly chapter.

On April 1, 2005, the Council published a correction to subsection (d)(2)(B) that distinguishes the function of the Certification Subcommittee as a recommendation and that requires Council approval for eligibility in the state use program.

The public comment period ended April 17, 2005. There were no comments.

Non-substantive changes in punctuation and grammar were made in subsections (a), (d)(2) and (d)(2)(B).

The amendments are adopted under the authority of the Texas Human Resource Code, Title 8, Chapter 122, §122.003 and §122.013.

The following code is affected by these amendments: §122.019 and §122.0215.

§189.6. Criteria for Recognition and Approval of Community Rehabilitation Programs.

(a) A CRP must be a government entity or private nonprofit unincorporated entity which has its own nonprofit status and federal tax identification number and has among its purposes the employment of persons with disabilities to produce products or perform services for compensation, or a private nonprofit incorporated entity with its own federal tax identification number, articles of incorporation and bylaws that establish its existence for the primary purpose of employing persons with disabilities to produce products or perform services for compensation.

(b) A CRP must maintain payroll, human resource functions, accounting and documentation of disability for people employed to produce goods or services under the state use program.

(c) A CRP must maintain contracts and billing and payment records if it contracts with outside entities for services of any kind.

(d) Procedures for Certification

(1) To qualify for participation in the State Use Program under Human Resource Code Chapter 122, an applicant must submit a completed required application and the following documents to the Certification Subcommittee, through the State Use Program's CNA, transmitted by a letter signed by an officer of the corporation, and/or chief administrator for the corporation. Upon receipt, the CNA will verify the completeness and accuracy of each application.

(A) A legible copy of the IRS non-profit determination 501(c) (3) when required by law.

(B) A legible copy of the Certification of Incorporation granted by the Secretary of State when required by law.

(C) A list of each service or product you propose to offer, and the location(s) where it will be produced.

(D) A roster of your board of directors, including names and addresses.

(E) A legible copy of your organizational chart with job title.

(F) A legible copy of your current liability insurance for each location where clients will be served.

(G) Current fire inspection certificate awarded by the city, county, or state fire marshal for each location where clients will be served.

(H) A legible copy of the building inspection certificate or occupancy certificate, if required by city regulation, for each location where clients will be served.

(I) Wage exemption certificate (WH-228), if you will be paying sub-minimum wages to clients.

(J) A CRP must provide a notarized statement that at least seventy-five percent (75%) of the hours of direct labor necessary to perform services or reform raw materials, assemble components, manufacture, prepare, process and/package products will be performed by persons with disabilities.

(2) The CNA will submit all new CRP's completed application and necessary documents to the Certification Subcommittee of the Texas Council on Purchasing from People with Disabilities. The CNA will deliver a copy of the application to the Certification Subcommittee not less than fifteen days prior to the regularly scheduled Certification Subcommittee meeting.

(A) The Certification Subcommittee is composed of three Council members appointed by the presiding officer to review applications of the Community Rehabilitation Programs.

(B) The Certification Subcommittee shall review each application and documentation and, if acceptable, forward the recommendations to the Council for approval. Once approved, the Council will notify the CRP in writing of their approved designation and present each with a certification number. Only the Council can approve eligibility. A CRP shall not participate in the State Use Program prior to the Council's certification.

(C) A CRP may protest a non-approval recommendation at the next scheduled Certification Subcommittee meeting.

(D) To maintain its certification, each CRP must meet the requirements as set forth in this chapter and Chapter 122 of the Human Resources Code. Each CRP must be recertified every three (3) years by the Council. The staff of the Council shall establish a schedule for the recertification process for all CRPs. The CNA shall assist each CRP as necessary to facilitate the recertification of the CRPs.

(e) The organization must not serve, in whole or in part, as an outlet or front for any entity whose primary purpose is not the employment of people with disabilities.

(f) The council may:

(1) recognize a CRP that maintains accreditation by a nationally accepted vocational rehabilitation accrediting organization, and

(2) approve CRP services that have been approved for a purchase by a state habilitation or rehabilitation agency.

(g) The council, at its sole discretion, may review, or have reviewed, any CRP approved to participate in this program to verify that the CRP meets the applicable qualifications contained in this chapter.

(h) Violation of any of the requirements of his chapter, or verified instances of conflict of interest by a CRP may result in suspension of approval or in disapproval of a CRP's eligibility to participate in this program, and/or may result in suspension or disqualification of any product or service.

(i) Neither the council, nor any individual member, the State of Texas, nor any other Texas state agency will be responsible for any loss or losses, financial or otherwise, incurred by any CRP should its product not be approved for the state use program as provided by law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2005.

TRD-200502508
Margaret Pfluger
Chairman
Texas Council on Purchasing from People with Disabilities
Effective date: July 7, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 463-3244

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas State Cemetery Committee

Title 13, Part 5

TRD-200502496
Filed: June 15, 2005

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Texas Council on Purchasing from People with Disabilities

Title 40, Part 7

TRD-200502497
Filed: June 15, 2005

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Proposed Rule Reviews

Texas State Cemetery Committee

Title 13, Part 5

Pursuant to the Administrative Procedure Act (APA), Gov't Code §2001.039, Agency Review of Existing Rules, the Texas Building and Procurement Commission proposes to review 13 TAC Chapter 71 pertaining to the Texas State Cemetery Committee. The review will determine whether the rules will be amended, repealed, or re-adopted.

The committee's existing rules may be found on the cemetery website at http://www.cemetery.state.tx.us or in the Texas Administrative Code (TAC) at 13 TAC Chapter 71, §§71.1, 71.3, 71.11, 71.13, 71.14, 71.15, 71.17, 71.19, 71.21, and 71.23.

Actions to amend, repeal, or adopt rules may begin independently of this schedule if required by legislative action, court decision, committee decision, or other causes. In those instances, reasonable opportunity for comments will be provided pursuant to APA §2001.029.

Public comment on the proposed rule review may be sent by mail to Elizabeth J. Boyt, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047 or by fax to 512-236-6171. Comments may also be emailed to elizabeth.boyt@tbpc.state.tx.us. The deadline for comments is thirty days from the date of publication of this notice.

The review of the rules will begin June, 2005 and will be completed by November, 2005.

TRD-200502499
Ingrid K. Hansen
General Counsel
Texas State Cemetery Committee
Filed: June 15, 2005

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Texas Council on Purchasing from People with Disabilities

Title 40, Part 7

Pursuant to the Administrative Procedure Act (APA), Gov't Code §2001.039, Agency Review of Existing Rules, the Texas Building and Procurement Commission proposes to review 40 TAC Chapter 189, pertaining to the Texas Council on Purchasing from People with Disabilities. The review will determine whether the rules will be amended, repealed, or re-adopted.

The council's existing rules may be found on the website at http://www.tcppd.state.tx.us or in the Texas Administrative Code (TAC) at 40 TAC Chapter 189, §§189.1 - 189.10.

Actions to amend, repeal, or adopt rules may begin independently of this schedule if required by legislative action, court decision, committee decision, or other causes. In those instances, reasonable opportunity for comments will be provided pursuant to APA §2001.029.

Public comment on the proposed rule review may be sent by mail to Elizabeth J. Boyt, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047 or by fax to 512-236-6171. Comments may also be emailed to elizabeth.boyt@tbpc.state.tx.us. The deadline for comments is thirty days from the date of publication of this notice.

The review of the rules will begin June, 2005 and will be completed by November, 2005.

TRD-200502498
Ingrid K. Hansen
General Counsel
Texas Council on Purchasing from People with Disabilities
Filed: June 15, 2005

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Adopted Rule Reviews

Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas, on behalf of the Office of Consumer Credit Commissioner (agency), has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 85, relating to Rules of Operation for Pawnshops, pursuant to §2001.039, Texas Government Code. Notice of the review of 7 TAC, Part 5, Chapter 85, was published in the *Texas Register* as required on April 8, 2005 (30 TexReg 2099). The agency received no comments in response to that notice.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for initially adopting the rules contained in this chapter continue to exist. However, the agency determined that certain revisions are appropriate and necessary. Proposed amendments to Chapter 85, Subchapter B (§§85.202-85.203, 85.205-85.206, and 85.210-85.211), relating to Pawnshop License; Subchapter C (§§85.301 and 85.303-85.304), relating to Pawnshop Employee License; Subchapter D (§§85.401, 85.404, 85.407, 85.410, 85.413, 85.416, 85.418, and 85.420), relating to Operation of Pawnshops; Subchapter E (§85.503), relating to Inspections and Examination; and Subchapter F (§85.603 and §85.607), relating to License Revocation, Suspension, and Surrender, are being concurrently published in the Proposed Rules Section of this issue 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. Amendments to §85.402 and §85.405 will be proposed at a later date, depending upon the outcome of pending legislation.

Also, proposed new §85.308, regarding Availability of Pawnshop Employee License Information, and the proposed repeal of §85.409, regarding Sale of Pawn Transactions, are each being concurrently published elsewhere in this issue 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.

Any questions or written comments pertaining to the proposed changes (published elsewhere in this issue) resulting from this rule review should be directed to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to sealy.hutchings@occc.state.tx.us.

Subject to the proposed amendments to sections in Chapter 85, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts these sections without changes in accordance with the requirements of Texas Government Code §2001.039.

This concludes the review of 7 TAC, Chapter 85.

TRD-200502527
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 17, 2005

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Credit Union Department

Title 7, Part 6

The Credit Union Commission has completed the review of Texas Administrative Code Title 7, Chapter 91, §§91.103 relating public notice of department activities; 91.104 relating to notice of applications; 91.105 relating to applications for authorization from the commissioner; 91.110 relating to protest procedures for applications; 91.120 relating to posting of notice regarding certain loan agreements; 91.201 relating to incorporation procedures; 91.206 relating to underserved area credit unions - secondary capital; 91.210 relating to foreign credit unions; 91.1110 relating to share and deposit guaranty requirements; 91.3001 relating to opportunity to submit comments on certain applications; and 91.3002 relating to conduct of meetings to receive comments. Notice of the proposed review and a request for comments was published in the March 18, 2005 issue of the *Texas Register* (30 TexReg 1645).

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting 7 TAC §§91.103, 91.104, 91.105, 91.110, 91.120, 91.201, 91.206, 91.210, 91.1110, 91.3001, and 91.3002 continue to exist and readopts these sections without changes, pursuant to the requirements of Government Code, Section 2001.039.

TRD-200502531
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 20, 2005

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Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas ("ERS") has completed its review of Texas Administrative Code, Title 34, Part 4, Chapter 74 (Qualified Domestic Relations Orders) and Chapter 81 (Insurance), in accordance with the requirements of Texas Government Code §2001.039. The notice of intent to review these rules was published in the May 6, 2005, issue of the *Texas Register* (30 TexReg 2693). ERS received no comments regarding these reviews.

As a result of the reviews, ERS has determined that the reasons for adopting the rules contained in Chapters 74 and 81 continue to exist, and both chapters are, therefore, readopted without changes. If it is later determined that amendments need to be made to either chapter, those amendments will be made in accordance with Texas Administrative Code and Texas Register requirements.

This concludes ERS' review of 34 Texas Administrative Code Chapters 74 and 81 at this time.

TRD-200502504
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: June 16, 2005

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Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas, on behalf of the Office of Consumer Credit Commissioner (agency), has completed the review of Texas Administrative Code, Title 7, Part 1, Chapter 1, Subchapter J (§§1.826-1.828; 1.830-1.839; 1.841; and 1.845), relating to Authorized Lender's Duties and Authority; Subchapter K (§§1.851-1.858 and 1.860-1.863), relating to Prohibitions on Authorized Lenders; Subchapter P (§§1.901-1.902), relating to Registration of Retail Creditors; and Subchapter R (§§1.1301-1.1309), relating to Motor Vehicle Installment Sales Contract Provisions, pursuant to §2001.039, Texas Government Code.

Notice of the review of 7 TAC, Chapter 1, Subchapters J, K, P, and R, was published in the *Texas Register* as required on April 8, 2005 (30 TexReg 2099). The agency received no comments in response to that notice.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for initially adopting the rules contained in these subchapters continue to exist. However, the agency determined that certain revisions are appropriate and necessary. Proposed amendments to Chapter 1, Subchapter J (§§1.828, 1.836, 1.839, 1.841, and 1.845), relating to Authorized Lender's Duties and Authority; Subchapter K (§§1.856-1.858 and 1.861), relating to Prohibitions on Authorized Lenders; Subchapter P (§§1.901-1.902), relating to Registration of Retail Creditors; and Subchapter R (§§1.1301, 1.1303, and 1.1307-1.1308), relating to Motor Vehicle Installment Sales Contract Provisions, are being concurrently published in the Proposed Rules Section of this issue 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. Additional amendments to revise §§1.830-1.831 and 1.833 are anticipated in the near future.

Any questions or written comments pertaining to the proposed changes (published elsewhere in this issue) resulting from this rule review should be directed to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to sealy.hutchings@occc.state.tx.us.

Subject to the proposed amendments to sections in Chapter 1, Subchapters J, K, P, and R, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts these sections without changes in accordance with the requirements of Texas Government Code §2001.039.

This concludes the review of 7 TAC, Chapter 1, Subchapters J, K, P, and R.

TRD-200502526
Leslie Pettijohn
Commissioner
Finance Commission of Texas
Filed: June 17, 2005

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §1.1308(1)(A)

"(Optional:)DATE _____)
BUYER _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____

SELLER/CREDITOR _____
ADDRESS _____
CITY _____ TX __ ZIP _____
PHONE _____

(Optional Co-Buyer Identification)
CO-BUYER _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____"

Figure: 7 TAC §1.1308(5)

MOTOR VEHICLE IDENTIFICATION

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	☐ New ☐ Demonstrator ☐ Factory Official/Executive ☐ Used	USE FOR WHICH PURCHASED ☐ PERSONAL, FAMILY OR HOUSEHOLD ☐ BUSINESS OR COMMERCIAL ☐ AGRICULTURAL

Figure: 7 TAC §1.1308(11)

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for Creditors who finance physical damage insurance. Creditors who do not routinely finance Physical Damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this Figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	___	☐$_____
Comprehensive	___	☐$_____
Fire, Theft, and Combined Additional Coverage	___	☐$_____
Other	___	☐$_____

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. ***[Note: alternatively, these optional coverages may be disclosed as part of Figure 1: 7 TAC 1.1308(12).]***

☐$_____ Towing and Labor Costs Reimbursement ☐$_____ Rental Reimbursement

☐$_____ Other:_____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

Figure: 7 TAC §1.1308(12)

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES

Optional insurance coverages. The insurance described below is not required to obtain credit. It will not be provided unless I sign and agree to pay the extra cost. ***[At Creditor's Option, the following may be added:]*** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

Coverage	Term in Months	Premium
GAP*	_____	☐ $_____
Invol. Unemployment	_____	☐ $_____
_____	_____	☐ $_____
Liability Insurance	_____	☐ $_____

$_____ per person $_____ property damage
$_____ per accident

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner.

I want the optional coverages for which premiums are included above.

Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

Figure: 7 TAC §1.1308(13)

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. ***[At Creditor's Option, the following may be added:]*** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

☐Credit Life, one buyer	$_____	☐Credit Life, both buyers	$_____	Term _____
☐Credit Disability, one buyer	$_____	☐Credit Disability, both buyers	$_____	Term _____

[Optional additional sentence for balloon payment contracts:] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first ____ payments and does not cover the last scheduled payment. ***[Optional additional language for true daily earnings method contracts:]*** Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.
If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.
Buyer's Signature: _____ Date: _____
Co-Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

Figure: 7 TAC §85.407(a)

MEMORANDUM OF EXTENSION

Date _____ Pawn Ticket No. _____

(Name, address, and telephone number of pawnshop [~~pawn shop~~] here)

1. Finance Charge (Pawn Service Charge) Paid Today .....$ _____
2. Daily Amount of Finance Charge (Pawn Service Charge) .....$ _____
3. Finance Charge (Pawn Service Charge) Paid to (Date) .....$ _____
4. New Maturity Date ..... _____
5. New Last Day of Grace ..... _____

AMOUNT DUE AT REDEMPTION:

a. Amount Financed (shown on pawn ticket) .....$ _____
PLUS

b. Finance Charge:
Number of days from date in Line 3 to date paid _____ X _____ = ...$ _____
(Daily Amount)
(Line 2)

c. Total Amount Due (Line a amount + Line b amount) .....$ _____

YOU ARE NOT OBLIGATED TO PAY THIS PAWN TRANSACTION, HOWEVER, TO PREVENT LOSS OF YOUR GOODS DUE TO NON-PAYMENT, YOU MUST EXTEND OR RENEW YOUR PAWN TRANSACTION OR PAY YOUR PAWN TRANSACTION IN FULL ON OR BEFORE THE LAST DAY OF GRACE.

KEEP THIS MEMORANDUM WITH YOUR PAWN TICKET. BRING YOUR PAWN TICKET TO REDEEM YOUR PLEDGED GOODS.

Figure: 7 TAC §85.418(a)(2)

ACCEPTANCE OF GOODS
MODEL POLICY

The *Texas Pawnshop Act* requires that the pawnbroker monitor goods purchased, accepted in pawn, or goods otherwise acquired in order to identify and prohibit transactions involving stolen goods.

This pawnshop will not accept for pledge or otherwise acquire any item that is stolen or has the appearance of not belonging to the person offering such item for pledge or purchase.

Each employee of this pawnshop will not accept for pledge or otherwise acquire:

1. Any item on which the serial number has been defaced, altered, or removed;
2. Any item that is marked in a manner that suggests or indicates ownership by a:
    a. Rental company;
    b. Motel;
    c. Training school;
    d. Construction company;
    e. Governmental body; or
    f. Any person or firm other than the person offering the item.
3. Any item of new merchandise still in the box.

The only exception occurs if the seller or pledgor [~~pledger~~] of the offered item produces a valid receipt or other evidence of ownership or purchase of the item. In each case, a copy of the receipt must be attached to and retained with the item or filed with this pawnshop's copy of the pawn or purchase ticket.

Each employee of this pawnshop will require, at a minimum, one of the following forms of identification as a prerequisite to any pawn transaction or purchase;

1. A state-issued driver's license;
2. A state-issued identification card;
3. A passport;
4. A valid military identification;
5. A nonresident alien border crossing card;
6. A resident alien border crossing card; or
7. A United States Immigration and Naturalization Service Identification.

The form of identification must contain a photograph of the pledgor [~~pledger~~] or seller. Each employee's best effort must be used to determine that the identification used is genuine and unaltered and that the identification presented properly identifies the pledgor [~~pledger~~] or seller.

Used or secondhand personal property shall not be purchased from a person other than another pawnbroker unless a record is established that contains:

a. The name, address, and physical description of the seller;
b. Either the driver's license number, military identification number, identification certificate number, or other official number capable of identifying the seller;

c. A complete description of the property including the serial number if reasonably available or other identifying characteristics; and

d. A signed document from the seller stating that the seller has the right to sell the property.

No employee shall accept as pledged goods building construction materials including copper pipes, tubing and wiring, aluminum wire, plumbing supplies, electrical supplies, window glass, lumber, or other similar materials unless a record is established that contains the information authorizing the purchase of used or secondhand personal property as discussed above.

This pawnshop will not accept stolen items for pledge or purchase. Each employee should use the best judgment possible when evaluating the pledgor [~~pledger~~] or seller of goods to determine that the person is the rightful owner of the goods. If an employee doubts the rightful ownership or authority of the person offering goods for pledge or purchase, the transaction should not be made. Each employee is instructed to observe the actions of the person offering the goods. It is important to pay attention to the value of the item being offered as compared to the price requested and any other circumstances of the offeror that might relate to the validity of the transaction.

AGAIN, THIS PAWNSHOP DOES NOT ACCEPT FOR PLEDGE OR PURCHASE ANY ITEM THAT IS STOLEN OR HAS THE APPEARANCE OF BEING STOLEN.

The undersigned employee acknowledges receipt of this policy and understands full compliance with the terms of this policy is a condition of continued employment.

_____

Signed

_____

Printed Name

_____

Date

Figure: 22 TAC §577.15

Fee Schedule

(a) EXAMINATIONS	FEE		
Texas State Board Licensing Exam (SBE)	$150 [~~$155~~]		
Special License	$150 [~~$155~~]		
(b) APPLICATION PROCESSING (except for Provisional License)	$50		
(c) RENEWALS	BOARD FEE	PROF. FEE	TOTAL FEE
License Renewal (current)	$122 [~~$118~~]	$200	$322 [~~$318~~]
Delinquent Renewals (90 days or less)	$173 [~~$196~~]	$200	$373 [~~$396~~]
Delinquent Renewals (over 90 days but less than one year)	$244 [~~$273~~]	$200	$444 [~~$473~~]
Inactive Renewals	$122 [~~$118~~]	$0	$122 [~~$118~~]
Delinquent Inactive Renewal (90 days or less)	$173 [~~$196~~]	$0	$173 [~~$196~~]
Delinquent Inactive Renewals (over 90 days but less than one year)	$244 [~~$273~~]	$0	$244 [~~$273~~]
Special License	$117 [~~$113~~]	$200	$317 [~~$313~~]
Delinquent Special License Renewals (90 days or less)	$176 [~~$191~~]	$200	$376 [~~$391~~]
Delinquent Special License Renewals (over 90 days but less than one year)	$235 [~~$268~~]	$200	$435 [~~$468~~]
(d) PROVISIONAL LICENSE	$250 [~~$255~~]	$0	$250 [~~$255~~]

(e) OPEN RECORDS
Charges for all open records and other goods/services such as tapes, disks, will be in accordance with Texas Building and Procurement Commission §§111.61 - 111.71 --"Charges for Public Records"

(f) RETURNED CHECK FEE $25

TEXAS Department of State Health Services

Department of State Health Services Immunization Schedule

Figure: 25 TAC §97.221

Age ▶ / Vaccine ▼	Birth	1 month	2 months	4 months	6 months	12 months	15 months	18 months	24 months	4–6 years	11–12 years	13–18 years
Hepatitis B[1]	HepB #1	HepB #2			HepB #3				HepB Series			
Diphtheria, Tetanus, Pertussis[2]			DTaP	DTaP	DTaP		DTaP			DTaP	Td	Td
Haemophilus influenzae type b[3]			Hib	Hib	Hib	Hib						
Inactivated Poliovirus			IPV	IPV	IPV					IPV		
Measles, Mumps, Rubella[4]						MMR #1				MMR #2	MMR #2	
Varicella[5]						Varicella			Varicella			
Pneumococcal[6]			PCV	PCV	PCV	PCV			PCV	PPV		
Influenza[7]					Influenza (Yearly)				Influenza (Yearly)			
Vaccines below red line are for selected populations												
Hepatitis A[8]									Hepatitis A Series			

This schedule indicates the recommended ages for routine administration of currently licensed childhood vaccines for children through age 18 years. Any dose not given at the recommended age should be given at any subsequent visit when indicated and feasible. ■ Indicates age groups that warrant special effort to administer those vaccines not previously given.

1. Hepatitis B (HepB) vaccine. All infants should receive the first dose of hepatitis B vaccine soon after birth and before hospital discharge; the first dose may also be given by age 2 months if the infant's mother is hepatitis B surface antigen (HBsAg) negative. Only monovalent HepB can be used for the birth dose. Monovalent or combination vaccine containing HepB may be used to complete the series. Four doses of vaccine may be administered when a birth dose is given. The second dose should be given at least 4 weeks after the first dose, except for combination vaccines which cannot be administered before age 6 weeks. The third dose should be given at least 16 weeks after the first dose and at least 8 weeks after the second dose. The last dose in the vaccination series (third or fourth dose) should not be administered before age 24 weeks.

Infants born to HBsAg-positive mothers should receive HepB and 0.5 mL of Hepatitis B Immune Globulin (HBIG) within 12 hours of birth at separate sites. The second dose is recommended at age 1 to 2 months. The last dose in the immunization series should not be administered before age 24 weeks. These infants should be tested for HBsAg and antibody to HBsAg (anti-HBs) at age 9 to 15 months.

Infants born to mothers whose HBsAg status is unknown should receive the first dose of the HepB series within 12 hours of birth. Maternal blood should be drawn as soon as possible to determine the mother's HBsAg status; if the HBsAg test is positive, the infant should receive HBIG as soon as possible (no later than age 1 week). The second dose is recommended at age 1 to 2 months. The last dose in the immunization series should not be administered before age 24 weeks.

2. Diphtheria and tetanus toxoids and acellular pertussis (DTaP) vaccine. The fourth dose of DTaP may be administered as early as age 12 months, provided 6 months have elapsed since the third dose and the child is unlikely to return at age 15 to 18 months. The final dose in the series should be given at age ≥4 years. **Tetanus and diphtheria toxoids (Td)** is recommended at age 11 to 12 years if at least 5 years have elapsed since the last dose of tetanus and diphtheria toxoid-containing vaccine. Subsequent routine Td boosters are recommended every 10 years.

3. *Haemophilus influenzae* type b (Hib) conjugate vaccine. Three Hib conjugate vaccines are licensed for infant use. If PRP-OMP (PedvaxHIB® or ComVax® [Merck]) is administered at ages 2 and 4 months, a dose at age 6 months is not required. DTaP/Hib combination products should not be used for primary immunization in infants at ages 2, 4 or 6 months but can be used as boosters following any Hib vaccine. The final dose in the series should be given at age ≥12 months.

4. Measles, mumps, and rubella vaccine (MMR). The second dose of MMR is recommended routinely at age 4 to 6 years but may be administered during any visit, provided at least 4 weeks have elapsed since the first dose and both doses are administered beginning at or after age 12 months. Those who have not previously received the second dose should complete the schedule by age 11—12 years.

5. Varicella vaccine. Varicella vaccine is recommended at any visit at or after age 12 months for susceptible children (i.e., those who lack a reliable history of chickenpox). Susceptible persons age ≥13 years should receive 2 doses, given at least 4 weeks apart.

6. Pneumococcal vaccine. The heptavalent **pneumococcal conjugate vaccine (PCV)** is **recommended** for all children age 2 to 23 months. It is also recommended for certain children age 24 to 59 months. The final dose in the series should be given at age ≥12 months. **Pneumococcal polysaccharide vaccine (PPV)** is recommended in addition to PCV for certain high-risk groups including children with sickle disease, asplenia, HIV infection, or other immunocompromising conditions or chronic diseases. **(Not required for school/child-care entry)**

7. Hepatitis A vaccine. Hepatitis A vaccine is recommended for children and adolescents in geographic areas designated by the department and for certain high-risk groups. For a list of designated geographic areas, go to www.ImmunizeTexas.com. Children and adolescents in these geographic areas and high-risk groups who have not been immunized against hepatitis A can begin the hepatitis A immunization series during any visit. The 2 doses in the series should be administered at least 6 months apart.

8. Influenza vaccine. Influenza vaccine is recommended annually for children aged ≥6 months with certain risk factors (including but not limited to, asthma, cardiac disease, sickle cell disease, human immunodeficiency virus infection, and diabetes), healthcare workers, and other persons (including household members) in close contact with persons at high risk (see *MMWR* 2004; 53[RR-6]:1-40). In addition, healthy children age 6 to 23 months and close contacts of healthy children aged 0-23 months are recommended to receive influenza vaccine because children in this age group are at substantially increased risk for influenza-related hospitalizations. For healthy persons aged 5-49 years, the intranasally administered, live, attenuated influenza vaccine (LAIV) is an acceptable alternative to the intramuscular trivalent inactivated influenza vaccine (TIV). See *MMWR* 2004;53(RR-6):1-40. Children receiving TIV should be administered a dose appropriate for their age (0.25 mL if aged 6-35 months or 0.5 mL if aged = 3 years). Children aged = 8 years who are receiving influenza vaccine for the first time should receive 2 doses (separated by at least 4 weeks for TIV and at least 6 weeks for LAIV). **(Not required for school/child-care entry)**

Informed by recommendations of the 2005 Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP), and adopted by the Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. (800) 252-9152. The above information is available at www.ImmunizeTexas.com.

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.

Office of the Attorney General

Texas Health and Safety Code, Texas Water Code and Texas Clean Air Act

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Cause No. SA-05-CA-0569-RF; *United States of America v. Valero Refining Company - California, et al.*, in the United States District Court, Western District of Texas, San Antonio Division.

Nature of Defendant's Operations: Valero and affiliated companies own and operate 14 petroleum refineries, 6 of which are located in Texas. The remaining refineries are located in Louisiana, Oklahoma, Colorado, New Jersey, and California. The State of Texas and EPA allege that Valero violated provisions of the Federal Clean Air Act, the Texas Clean Air Act, and the Texas Water Code by failing to implement new and more rigorous pollution regulations and install pollution control devices as it upgraded and modernized its refineries. Valero also committed other Texas regulatory violations documented by TCEQ investigations.

Proposed Agreed Judgment: The proposed Consent Decree calls for Texas to receive payment of $1,250,000 in civil penalties out of the total penalty of $5.5 million. Valero Refining Co. will make major upgrades totaling $700 million to significantly improve air quality in six states, including Texas, where it operates the greatest number of refineries. Valero will also perform, in Texas, supplemental environmental projects at or near Valero's Texas facilities estimated to cost $11,000,000. Valero will pay $50,000 to cover Texas' attorney's fees.

For a complete description of the proposed settlement, the complete proposed Consent Decree should be reviewed. Requests for copies of the Consent Decree, and written comments on the proposed settlement should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200502559
Nancy S. Fuller
Attorney General
Office of the Attorney General
Filed: June 21, 2005

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Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the General Land Office (GLO), announces the issuance of a **Request for Proposals (RFP) #303-5-11162**. TBPC seeks a five (5) year lease of approximately 11,250 sq. ft. of office space in League City or Dickinson, Galveston County, Texas.

The deadline for questions is July 11, 2005 and the deadline for proposals is July 15, 2005 at 3:00 P.M. The award date is August 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=59407.

TRD-200502536
Kenneth Ming
Purchaser
Texas Building and Procurement Commission
Filed: June 20, 2005

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 10, 2005, through June 16, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on June 22, 2005. The public comment period for these projects will close at 5:00 p.m. on July 22, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Yuma E&P; Location: The project is located in Trinity Bay, in State Tract (ST) 86, approximately 5.2 miles northwest of Smith Point, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 323070; Northing: 3277089. Project Description: The applicant proposes to discharge 2,4481 cubic yards of shell or gravel for

the construction of a 235-foot by 95-foot by 3-foot shell pad and appurtenances, including drilling barge mooring pilings and production facilities, for drilling and producing the ST 86 Royal Prospect. CCC Project No.: 05-0291-F1; Type of Application: U.S.A.C.E. permit application #23791 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Apex Oil & Gas, Inc.; Location: The project is located in State Tracts (ST's) 16, 17, 18, 34, 35, 36, and 37 in Copano Bay, beginning approximately 0.5 mile west of the Lyndon Baines Johnson Causeway and extending approximately 3.4 miles west, west of Lamar, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lamar, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 692000; Northing: 3115000. Project Description: The applicant proposes to install 17,028.4 feet of 6-inch pipe from their existing Well No. 1 in ST 18 to an existing oil production facility on Newcomb Point to convey petroleum products. Approximately 4,426 feet of the pipe will be installed by directionally drilling beneath an oyster reef (Lap Reef), and wetlands and seagrasses off of Newcomb Point. The remaining 12,601.6 feet will be jetted, disked, or plowed a minimum of 3 feet below the bay bottom. Approximately 2,800.4 cubic yards of sand, silt and clay will be displaced during this portion of construction. The trench is expected to fill in naturally. CCC Project No.: 05-0317-F1; Type of Application: U.S.A.C.E. permit application #23489(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Jackson County Boat Club; Location: The project is located at in a man-made canal contiguous with Carancahua Bay, in Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Olivia, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 753375, Northing: 3173601. Project Description: The applicant proposes to mechanically dredge approximately 70 cubic yards of material to a depth of minus 4 feet mean low tide from the entrance channel to two residential canals. The dredge material will be placed on an upland area directly adjacent to the project site. The canals were originally constructed sometime around 1954. An original maintenance dredging permit was issued for this location on September 17, 1974. The applicant also proposes to restore a grandfathered rock groin that was built around the same time as the canals to its original size of 25 feet by 50 feet by placing 25 cubic yards of clean riprap at the end of the exiting groin to a level 2 feet above mean high tide. The purpose of restoring the rock groin is to decrease the amount of future siltation in the channel opening. CCC Project No.: 05-0318-F1; Type of Application: U.S.A.C.E. permit application #22758(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Neumin Production Company; Location: The project is located in Lavaca Bay, in State Tract (ST) 10, Well No. 1, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Lavaca East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 735601; Northing: 3168051. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities for the proposed ST 10 Well No. 1. The applicant proposes to drill for petroleum resources and install a 2.5-inch O.D. pipeline approximately 1,464 feet in length. The pipelines will be jetted or plowed a minimum of 3 feet below the bay bottom. Approximately 325 cubic yards of sand, silt, and clay will be displaced during pipeline construction. The trench is expected to fill in naturally. CCC Project No.: 05-0329-F1; Type of Application: U.S.A.C.E. permit application #23779 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Neumin Production Company; Location: The project is located in Lavaca Bay, in State Tract (ST) 11, Well No. 1, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Lavaca East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 735703; Northing: 3169717. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities for the proposed ST 11 Well No. 1. The applicant proposes to drill for petroleum resources and install a 2.5-inch O.D. pipeline approximately 4,212 feet in length. The pipelines will be jetted or plowed a minimum of 3 feet below the bay bottom. Approximately 936 cubic yards of sand, silt, and clay will be displaced during pipeline construction. The trench is expected to fill in naturally. CCC Project No.: 05-0330-F1; Type of Application: U.S.A.C.E. permit application #23780 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Transtexas Gas Corporation; Location: In Galveston Bay State Tracts (ST's) 116A, 346, 347, 336, 335, and 334, approximately 3 miles northeast of Texas City, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Bolivar, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15: Proposed Well #1 in N/2 ST 116A: Easting: 321437; Northing: 3253452; Proposed Well #1 in S/2 ST 346: Easting: 321317; Northing: 325429; Proposed Well #1 in N/2 ST 346 Easting: 321960; Northing: 3255302. The Tie-in Point to the existing Tejas Pipeline in ST 334 is Easting: 319188; Northing: 3259479. Project Description: The proposed project would involve drilling 3 wells and construction of 3 pipelines. The project would be conducted in 3 stages.

First stage: The applicant would drill ST 346 Well #1 (N/2 346; SL# 102033). Upon completion of the ST 346 (N/2) Well #1 as a producing well, a first sales line measuring 16,443 feet long would be constructed from the ST 346 (N/2) Well #1 platform to an existing transmission pipeline located in ST 334, owned and operated by Tejas. ST 346 (N/2) Well #1 platform would be the production platform for the entire proposed project.

Second stage: The applicant would drill ST 346 Well #1 (S/2 346; SL# 102034). Upon completion of ST 346 (S/2) Well #1 as a producing well, a second sales line measuring 3,660 feet long would be constructed from the ST 346 (S/2) Well #1 platform to the ST 346 (N/2) Well #1 platform.

Third Stage: The applicant would drill ST 116A Well #1 (N/2 166A; SL# 102018). Upon completion of ST 116A Well #1 as a producing well, a third sales line measuring 3,103 feet long would be built from the ST 116A Well #1 platform to the ST 346 (N/2) Well #1 platform using the same easement and laid in the same ditch as the ST 346 (S/2) Well #1 pipeline. CCC Project No.: 05-0331-F1; Type of Application: U.S.A.C.E. permit application #23824 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: W. Frank Hart; Location: The project is located in the Gulf Intracoastal Waterway, at 1948 Canal Drive, in Sargent, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Cedar Lakes West, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 245930; Northing: 3185945. Project Description: The applicant proposes to place 48 cubic yards of fill material below the plane of the high tide line to fill and protect a portion of eroded property. The applicant also plans to construct a new bulkhead to protect the property from further erosion. CCC Project No.: 05-0332-F1; Type of Application: U.S.A.C.E. permit application #23772 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200502564
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: June 21, 2005

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Comptroller of Public Accounts

Notice of Contract Award

The Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the award of a contract under Request for Proposals (RFP #172c), for Actuarial Services for the Texas Guaranteed Tuition Plan, the state's prepaid higher education tuition program (Program).

The Comptroller announces that a contract is awarded to: Buck Consultants LLC (Buck), located at One Boston Place, Boston, Massachusetts 02110-4408. The term of the contract is on or about June 11, 2005, through June 30, 2009. The total amount of the Contract is not-to-exceed $200,000.00.

The Request for Proposals was issued on Friday, March 4, 2005. The notice of the Request for Proposals was published on Friday, March 4, 2005, in the *Texas Register* (30 TexReg 1326). The Contract activities commenced on or about June 11, 2005.

TRD-200502503
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 16, 2005

♦ ♦ ♦

Notice of Contract Award

Pursuant to §1201.027; Chapter 2155, §2155.001; Chapter 2156, §2156.101; and Chapter 403, §403.011, of the Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces under its Request for Proposals (RFP #172d) the award of the following contract:

A contract is awarded to NPSI, Ltd, 2500 McHale Court, Suite 100, Austin, Texas 78758. The total contract amount is based on usage but estimated to be a maximum of $1,854,236 for the contract term. No minimum amount is guaranteed. The term of the contract is June 15, 2005 through August 31, 2006.

The Comptroller's Request for Proposals (RFP #172d) related to this contract award was published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1657) and amended by publication in the March 25, 2005, issue of the *Texas Register* (30 TexReg 1836).

TRD-200502513
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: June 17, 2005

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Notice of Request for Qualifications

Pursuant to Senate Bill 1458, 77th Texas Legislature codified in Subchapter A, Chapter 111, §111.0045, Texas Tax Code, the Comptroller of Public Accounts, an agency of the State of Texas (Comptroller), issues this Request for Qualifications (RFQ #172k) from qualified independent persons or firms to perform certain services. As a clarification, as used in this RFQ #172k and the Comptroller's rules codified at 34 TAC §3.3, the services under any contracts resulting from this RFQ mean tax compliance examination services; such services do not include any attestation services or rendition of an opinion of any nature by any such contractors.

The Comptroller issued this RFQ #172k by posting it on the Texas Marketplace on July 1, 2005, and, by publishing this RFQ #172k in the July 1, 2005 issue of the *Texas Register*. The Comptroller solicits a Statement of Qualifications pursuant to Chapter 2254, Subchapter A, of the Texas Government Code from persons or firms that are interested in contracting with the Comptroller to perform examinations that meet the requirements of Section 111.0045, Texas Tax Code, administrative rules adopted and procedures established by the Comptroller under that statute, and other applicable law. The Comptroller has adopted a rule governing contract examiners as codified at 34 TAC §3.3. Under this RFQ, the Comptroller reserves the right to select and contract with one or more persons or firms to conduct these examinations on an as-needed basis. No minimum amount of examinations or compensation is guaranteed to any selected contractor.

The Comptroller solicits Statements of Qualifications in response to this RFQ from existing contract examiners as well as qualified persons or firms not currently or previously under contract with the Comptroller. All respondents, including contract examiners selected under previous RFQs (#130c, 137d, 148b, 157b, and 167h), must meet all qualifications of this RFQ and attend Mandatory Orientation conducted by the Comptroller prior to receipt of any examination packages under any contract awarded under this RFQ.

By this contract examination program, the Comptroller intends to increase the number of examinations of taxpayers. The Comptroller has implemented a program to contract with interested persons and firms that meet the following minimum qualifications and other reasonable qualifications established by the Comptroller consistent with Section 111.0045, Texas Tax Code the Comptroller's administrative rules and procedures and other applicable law.

The Comptroller will accept Statements of Qualifications in response to this RFQ from firms and individuals that have the following minimum qualifications:

(i) a bachelor's degree from an accredited senior college or university with a minimum of twenty-four (24) hours of accounting, including six (6) hours of intermediate accounting and three hours of auditing; and

(ii) one (1) year of experience in Texas tax auditing, accounting, or other Texas tax services.

For state fiscal year 2006, the Comptroller will select, in its sole discretion, those qualified contract examiners to perform examinations on an as-needed and as-assigned basis that the Comptroller identifies as appropriate for inclusion in such contracts. At the time of assignment, the Comptroller will provide selected contract examiners with a preliminary examination package containing the identity and requisite information for each taxpayer that will be examined under the contract. The contracts will provide for one or more awards of not to exceed $150,000 firm fixed price payment to the examiner upon successful completion of the assigned examinations (final examination package) and the Comptroller's written acceptance of the examination report and other contract deliverables, including workpapers. Awards shall be based on the qualifications of the examiners proposed in the Statement of Qualifications submitted. Individual examiners submitting Statements of Qualification who have no other examiner employees shall be considered, in the Comptroller's sole discretion, for one (1) $60,000, $75,000, or $90,000 award and individual examiners with at least one (1) employee examiner and firms in the form of any business entity that may lawfully perform examinations and which have two (2) or more examiners may be considered, in the Comptroller's sole discretion, for multiple awards of $60,000 or $75,000. Barring unforeseen circumstances only one (1) round of awards will be made at the beginning of the one (1) year contract term; however, the Comptroller reserves the right, in its sole discretion, to make additional awards during the one (1) year contract term. Payment will be made in accordance with the terms of the contract. Each contract will require the examiner to perform and complete the examinations, including the examination reports, for a group of taxpayers that, based on historical examination completion data, should require about 1280 person hours of work for each $60,0000 amount to complete at the rate of $46.88 per hour Examiners will be paid for assigned work completed to date in $10,000 increments (except the last payment, if applicable) upon completion of a set number of the examinations assigned as determined by the Comptroller and, upon submission to and acceptance by Comptroller as provided in the contract.

In performing assigned examinations and for the contracted lump sum payments, selected contract examiners will complete all work necessary to identify the correct amount of tax that should have been reported by each taxpayer and provide the Comptroller with the data and other information necessary to support any assessment of tax or refund of tax that results from the examination report. Selected contract examiners will also provide any time reports and other written documentation required by the Comptroller. The Comptroller will not make any payments in advance.

Under this RFQ, the maximum contract amount paid to any individual examiner without additional examiner employees, an individual examiner with additional examiner employees or a firm with multiple examiners will not exceed $150,000.00 each for either FY 2006 or FY 2007 or $300,000 combined total for both fiscal years, if the Comptroller elects to renew or extend the contract.

Selected contract examiners must complete all work and submit all examination reports, workpapers and other deliverables no later than required under the terms of the proposed contract.

Selected contract examiners must meet professional conflict of interest standards and other standards established by the Comptroller to ensure the independence of each assigned examination.

Regarding prior employment with the Comptroller, the following provisions shall apply in determining eligibility for contract awards, if any, resulting from this RFQ.

Section 2252.901, Texas Government Code reads as follows:

"(a) A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency."

Pursuant to the above statute, an individual employed by the Comptroller during the last twelve (12) months may be employed by another Contractor but shall not work on projects or perform examinations on taxpayers he or she examined while employed by the Comptroller. That is, the Comptroller interprets "projects" within Section 2252.901 to include specific examinations performed or worked on by the former employee. Additionally, it is the Comptroller's policy that if a former employee of the Comptroller of the type described above is employed by or associated with a business entity in which such employee holds any equity interest, then the firm may not contract with the Comptroller within the twelve (12) month period. The twelve (12) month period is determined by working back from the effective date of the proposed contract.

Section 572.054, Texas Govt Code reads in pertinent part as follows:

"(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(c) Subsection (b) applies only to:

(1) a state officer of a regulatory agency; or

(2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan."

This Section 572.054 (b) prohibition against working on matters that the former employee participated in while employed by the Comptroller applies without limitation to any such past actions by the employee even if longer than twelve (12) months, if the employee's compensation exceeded $33,000 annually while employed by the Comptroller at any time during that employee's employment with the Comptroller. Again, it is the Comptroller's policy interpretation that "matter" includes specific examinations of taxpayers.

Time is of the essence in implementation of this program. Respondents to this RFQ must be available to begin accepting assignments no later than September 2005 upon completion of orientation or other

timelines established by the Comptroller for such implementation. The Comptroller anticipates awarding multiple master contracts as a result of this RFQ and will not entertain negotiation of the basic terms and conditions. All respondents will be offered the same master contract terms and conditions. Respondents should not respond to this RFQ if they cannot agree to the terms and conditions of the sample contract. Any resulting contracts are non-exclusive and the Comptroller may issue additional solicitations for the contracted services at any time. The Comptroller is not obligated to assign any examinations to recipients of master contract awards.

Questions; Proposed Contract: Questions concerning this RFQ must be in writing and submitted via hand delivery or facsimile no later than July 18, 2005, 2:00 pm, Central Zone Time (CZT) to Thomas H. Hill, Assistant General Counsel, Contracts, General Counsel Division, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, facsimile (512) 475-0973. The Comptroller's official response to questions received by this deadline will be posted as an addendum to the Texas Marketplace notice as soon as possible after receipt; the Comptroller expects to post these official responses no later than July 22, 2005 or as soon thereafter as practicable. Respondents should note that the Official Response to Questions may contain information modifying the terms and conditions of the RFQ, revising or amending the RFQ and/or other documents attached to the RFQ. For these reasons, respondents should carefully review and consider the Official Response to Questions, amendments or modifications before submitting their Statements of Qualification. A copy of the sample master contract, the standard form vita described below, mandatory Execution of Statement of Qualifications Form, and Required Checklist for Statements of Qualification are all attached to this RFQ for reference and use by respondents.

Closing Date: An original with original ink signatures on each document within the Statement of Qualifications requiring signatures and ten (10) copies of each Statement of Qualifications clearly marked as copies must be hand delivered to and received in the Office of the Assistant General Counsel, Contracts, at the address specified above no later than 2:00 p.m. (CZT), on August 1, 2005. Statements of Qualifications received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Statements of Qualifications.

Content: Statements of Qualifications must include all of the following information in order to be considered:

1. Checklist in format of Exhibit G to this RFQ as posted on the addenda to the Texas Marketplace notice of issuance of this RFQ;

2. Transmittal letter that (a) describes specific experience and qualifications of both the firm and each individual in the conduct of state tax examinations; and (b) outlines the respondent's understanding of Section 111.0045 Texas Tax Code other relevant provisions of the Texas Tax Code and other related enabling legislation related to conduct of these examinations on an as needed basis;

3. Physical address of firm's or individual's business offices and each local examination facility and primary contact person;

4. Vita for each individual who will be involved in the project. The Vita must be on the form contained on the addenda to the Texas Marketplace notice of issuance of this RFQ. This response to the RFQ must disclose all personnel who will perform professional services under the terms of the Master Agreement. Respondent understands only those persons disclosed by the Vita will be admitted to the required orientation classes. This provision will be strictly enforced." All information on the vita form must be fully filled out and complete in all respects. Evaluation of respondents will be based in part on the information on this form and it is vitally important that the information be fully complete and accurate. Failure to submit a complete, separate, and signed Vita by each person who applies to perform examination services shall result in disqualification of the Statement of Qualifications;

5. A sample Examination Plan providing a list of the examination procedures and resources that will be utilized to conduct these examinations on an as needed basis if selected by the Comptroller. The Examination plan should list or describe the actual procedures to be used in sufficient detail so as to demonstrate an understanding of internal control, record keeping, and taxpayer reporting responsibilities for sales tax and the appropriate examination procedures necessary for verification of correct amounts of tax. The sample Examination Plan must include all items contained in the General Audit Checklist section of the Comptroller's Auditing Fundamentals Manual, Chapter 3, and all items contained in the Audit Plan published in Chapter 4 of the Comptroller's Sales Tax Audit Policy/Procedures Manual. The sample examination plan should include all necessary procedures and instructions for completing those procedures in sufficient detail to allow any person who meets the one year experience requirement in 34 TAC §3.3 to properly perform a sales and use tax examination with minimal supervision. If portions of any Comptroller publication, manual, or other document are used to prepare the examination plan or incorporated into the plan, the most current version must be used. The Comptroller's audit manuals may be found at the following internet location:

http://www.window.state.tx.us/taxinfo/audit/auditman.htm;

6. Proposed sample Workplan (including Timeline, Tasks and Deliverables) to implement each of the examinations after assignment, including (a) methods for deploying personnel and equipment to perform the examinations timely and otherwise in accordance with each contractual requirement; (b) methods for making personnel available for orientation and examination; (c) date availability for each of the personnel to perform assigned examinations; (d) methods for conducting preliminary (prior to receipt of taxpayer questionnaire) and final (after receipt of taxpayer questionnaire) conflicts checks regarding actual or potential conflicts of interest and notifying the Comptroller prior to accepting or beginning an assignment, and (e) an understanding of the Audit Flowchart Timelines contained in the appendix of the Comptroller's Audit Fundamentals Manual;

7. Statement of whether the respondent is a Historically Underutilized Business (HUB) and its efforts and willingness of the respondent to comply with the HUB requirements of Texas law and administrative rules and regulations;

8. Confirmation of understanding of and willingness to comply with the policies, directives, rules, procedures and guidelines of the Comptroller and other Standards of Performance established by the Comptroller for the conduct of the assigned examinations;

9. Confirmation of understanding of and willingness to adhere to all provisions of the sample contract, including, without limitation, the proposed fee arrangements, as posted on the addenda to the Texas Marketplace notice of issuance of this RFQ;

10. Completed and Signed Execution of Statement of Qualifications Form on the form as posted on the addenda to the Texas Marketplace notice of issuance of this RFQ;

11. Signed Nondisclosure Agreement on the form set out on Exhibit E to this RFQ as posted on the addenda to the Texas Marketplace notice of issuance of this RFQ;

12. Signed letter or letters from a qualified insurance agent or agents containing quotations for ALL OF the required insurance coverages set out in Section VIII of the Master Agreement for Professional Services

and stating that the coverages are available to the respondent upon selection, if any, of the contract examiner pursuant to this RFQ. In the alternative, respondents may submit current certificates of insurance showing the required coverage is already in force and in effect. Respondent's insurance agents shall be ready to immediately issue policies and certificates upon notification of the Respondent's selection. Time is of the essence and no Agreements will be executed without the coverage required. A successful Respondent's preliminary selection may be rescinded due to failure to have the required insurance coverage by the time set by the Comptroller;

13. Signed Statement of representation that the respondent and all persons listed as examiners in its Statement of Qualifications are neither respondents under any other Statement of Qualifications responding to this RFQ, nor are employed by, contracted with, and do not own any equity or debt interest in any other respondent to this RFQ; and

14. Compliance with any amendments, modifications, or other requirements and changes to the RFQ set out in the Official Response to Questions in connection with this RFQ and posted by Comptroller on the Texas Marketplace prior to the Closing Date for this RFQ.

The above 14 items shall be submitted in the respondent's Statement of Qualification as separate and independent numbered sections corresponding to the above items. Failure to properly label and fully respond to each of the 14 items above shall result in disqualification of the respondent.

Mandatory Orientation Session: Respondents must attend, at their sole cost and expense, mandatory orientation session to be conducted by the Comptroller in Austin on August 30, 2005 through September 1, 2005 or as soon thereafter as possible. Questions regarding this mandatory session should be submitted prior to the deadline for submission of other written questions on this RFQ. A contract examiner responding to this RFQ who has previously attended orientation offered by the Comptroller in connection with any of the five prior RFQs for contract examiners shall not be required to attend the above orientation session.

Evaluation and Award Procedure: All qualifying Statements of Qualifications received by the deadline above will be evaluated based on the evaluation criteria set out on Exhibit H attached to and made a part of this RFQ. The Comptroller will make the final selections in accordance with Chapter 2254, Subchapter A, Texas Government Code in its sole discretion in the best interests of the Comptroller and the State of Texas. Notice of contract awards will be published in the Texas Marketplace as soon as possible after all contracts, if any, resulting from this Statement of Qualifications, are fully executed. The Comptroller staff is unable to give out information regarding the status of contract awards before they are posted on the Texas Marketplace. The Texas Marketplace may be accessed online at: http://esbd.tbpc.state.tx.us/1380/sagency.cfm.

Protests. Protests regarding this RFQ or actions taken under it shall be governed by the Comptroller's rule located at 34 Texas Administrative Code Section 1.72, Protests of Agency Purchases.

Limitations: The Comptroller reserves the right to accept or reject any or all Statements of Qualifications submitted in response to this RFQ. The Comptroller reserves the further right to evaluate individual examiners employed by a firm or who are employees of a respondent and approve of contract examiners on an individual basis based on the evaluation criteria. The Comptroller is not obligated to execute any contract or contracts or any specific number of contracts as a result of issuing this RFQ. The Comptroller further reserves the right to issue additional RFQs or other solicitations for the contracted or similar services at any time as the Comptroller determines are necessary to ensure an adequate number of examiners for any assigned examination under this program or any similar program. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this RFQ. The Comptroller reserves the right to award contracts on the basis of the need to achieve appropriate examination coverage in all geographical areas of the State of Texas and/or nationwide and to evaluate respondents in a manner that will best achieve this need.

Summary of Schedule: The anticipated schedule is as follows: Issuance of RFQ, including sample contract, on Texas Marketplace-July 1, 2005, 2:00 p.m. CZT; Questions -July 18, 2005, 2:00 p.m. CZT; Posting of Official Responses to Questions-July 22, 2005, 5:00 p.m. CZT or as soon thereafter as practical; Statements of Qualifications Due -August 1, 2005, 2:00 p.m. CZT; Contract Execution-August 21, 2005, or as soon thereafter as practical; Notice of Contract Awards posted on Texas Marketplace-August 23, 2005 or as soon thereafter as practical; Mandatory Orientation-August 30, 2005 through September 1, 2005; and Beginning of Examinations-September 8, 2005 upon completion of Orientation, or as soon thereafter as practical.

TRD-200502575
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: June 22, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 06/27/05 - 07/03/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 06/27/05 - 07/03/05 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 07/01/05 - 07/31/05 is 6% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 07/01/05 - 07/31/05 is 6% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200502550
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 21, 2005

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Court Reporters Certification Board

Certification of Court Reporters

Following the examination of applicants on May 13, 2005, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND: REBECCA GULDE - AMARILLO, TX; ROXANNE DAVENPORT - ROUND ROCK, TX; KRISTI HEASLEY - PARADISE, TX; PATRICIA FAIRLEY - ULSTER PARK, NY; KELLY CARNEGIE - CLARKSTON, MI; ELIZABETH KING - RICHMOND, TX; KELLY KELLY - RICHMOND, TX; JURTIANA JEON - GARLAND, TX; MALISSA MORROW - HURST, TX; JULIE GANDEE - WEATHERFORD, TX; PATRICIA WAGNER - COLUMBUS, TX; KRISTI BRIGHT - DALLAS, TX; KENDRA GARCIA - HOUSTON, TX; JOIE RIVERA - ROWLETT,TX; JENA SHEFFIELD - TYLER, TX; MICHELLE ASHWORTH - STARKS, LA; FRANCHESKA DUFFEY - DALLAS, TX; RACHEL SIMONS - SHADY SHORES, TX; DAWN LARSON - BROOMFIELD, CO; CHARON EVANS - CARROLLTON, TX; TERESITA FONSECA - DENTON, TX; ROBYN CRUMP - HURST, TX; CANDACE KHOROUZAN - MCKINNEY, TX; JONNA GREENWOOD - BURLESON, TX; SHYLOA MYERS - SILSBEE, TX; LAURIN RAINER - COLLEGE STATION, TX; MARY TAYLOR - ALLEN, TX; JESUS ZAPATA - DALLAS, TX; GINA OLIVER - ROSHARON, TX; CRYSTAL ANDERSON - ARLINGTON, TX; AND SHAUNA BEACH - EDGEWOOD, WA.

Following the examination of applicants on May 13, 2005, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

ORAL STENOGRAPHY: JACKIE SMITH - LINDEN, TX; ANDREA BRANTLEY - FT. WORTH, TX; REBECCA ERHARDT - OOSTBURG, WI; TYLEEN MONTGOMERY - RANCHO VIEJO, TX; CHANEL RODRIGUEZ - GRAND PRAIRIE, TX; and JODI POWELL - N. RICHLAND HILLS, TX.

TRD-200502514
Sheryl Jones
Administrator of Licensing
Court Reporters Certification Board
Filed: June 17, 2005

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Texas Commission on Environmental Quality

Notice of District Petition

Notice mailed June 13, 2005

TCEQ Internal Control No. 04222005-D01; 688 Partners, LP (Petitioner) filed a petition for creation of Grand Mission Municipal Utility District No. 2 of Fort Bend County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, SouthTrust Bank, on the property to be included in the proposed District; (3) the proposed District will contain approximately 688.4 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The Petitioner has provided the TCEQ with a certificate evidencing the consent of SouthTrust Bank to the creation of the proposed District. By Ordinance No. 2004-1274, effective December 21, 2004, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, repair, improve, extend, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; (4) construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law; and (5) purchase, construct, acquire, operate, maintain, repair, improve, extend, and develop park and recreational facilities, a solid waste collection and disposal system, a roadway system and a fire department and fire-fighting services. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $28,030,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687- 4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200502543
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 20, 2005

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and

petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; 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. 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 **August 8, 2005**. 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 a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or 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. 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 August 8, 2005**. 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, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Pleasure Point Water Supply Corporation; DOCKET NUMBER: 2004-0606-PWS- E; TCEQ ID NUMBERS: 0030007 and RN101281749; LOCATION: Highway 147 about 3.5 miles from Zavalla, Angelina County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notice subsequent to two water outages; 30 TAC §290.46(g), by failing to provide required bacteriological sampling after repairing lines; 30 TAC §290.42(e)(3) and §290.110(a), by failing to properly disinfect the water before providing to the public; and 30 TAC §290.51 and §291.76, by failing to pay public health service fees and associated penalties and interest, and by failing to pay water regulatory assessment fees and associated penalties and interest; PENALTY: $1,250; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200502562
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 21, 2005

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 8, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within 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. 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 August 8, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: BP Products North America Inc.; DOCKET NUMBER: 2005-0284-AIR-E; TCEQ ID NUMBERS: RN102535077 LOCATION: 2401 5th Avenue South, Texas City, Galveston County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§111.111(a)(1)(B), 116.110(a), and 116.115(b)(2)(F), Texas Health and Safety Code (THSC), §382.085(b), and Air Permit Number 2384A, Special Condition 7, by failing to comply with permitted emissions limits and causing, suffering, allowing, and/or permitting the unauthorized emissions of air contaminants; PENALTY: $9,125; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239-6996; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Sunoco, Inc.; DOCKET NUMBER: 2004-1685-AIR-E; TCEQ ID NUMBERS: HG1996R, 3126A, and RN100524008; LOCATION: 9802 Fairmont Parkway, Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c), Air Permit Number 3126A, Special Condition Number 1, and THSC, §382.085(b), by exceeding its permitted limits; PENALTY: $5,800; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200502561
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 21, 2005

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Notice of Public Hearing and Opportunity for Comment on the Edwards Aquifer Protection Program

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct hearings to receive comments from the public on actions the commission should take to protect the Edwards Aquifer from pollution, as required under Texas Water Code, §26.046. This requirement assists the commission in its shared responsibility with local governments, such as cities and groundwater conservation districts, to protect the water quality of the aquifer.

Annual hearings are held on the Edwards Aquifer Protection Program and the TCEQ's rules, 30 Texas Administrative Code (TAC) Chapter 213, which regulate development over the delineated contributing, recharge, and transition zones of the Edwards Aquifer. Since the last public hearing, the TCEQ has proposed rulemaking relating to the remapping of the Edwards Aquifer Recharge Zone, as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1403); proposed draft revisions to the TCEQ publication RG-348 entitled *Complying with the Edwards Aquifer Rules: Technical Guidance on Best Management Practices* found at *http://www.tnrcc.state.tx.us/EAPP/index.html#manual*; and developed optional enhanced measures for the protection of water quality in the Edwards Aquifer found at *http://www.tceq.state.tx.us/comm_exec/forms_pubs/pubs/rg/rg-348/rg-348a.html*.

The hearings for 2005 will be held at the following times and locations: Tuesday, July 12, 2005, at 9:30 a.m. at the Texas Commission on Environmental Quality, Park 35 Office Complex, 12100 Park 35 Circle, Building E, Room 201S, Austin; and Wednesday, July 13, 2005, at 6:30 p.m. at the City of San Antonio Municipal Council Chambers, 103 Main Plaza, San Antonio.

These hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the program 30 minutes prior to the hearings and will answer questions before and after the hearings.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend a hearing should contact the Office of Administrative Services Facilities Liaison at (512) 239-0080. Requests should be made as far in advance as possible.

Comments should reference the Edwards Aquifer Protection Program and may be sent to Tracy Callen, Texas Commission on Environmental Quality, Field Operations Division, MC 174, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-0404, or emailed to tcallen@tceq.state.tx.us. Comments must be received by **5:00 p.m., August 13, 2005**. For further information or questions concerning these hearings, please contact Ms. Callen at (512) 239-4127.

TRD-200502563
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 21, 2005

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114 and to the Texas Inspection and Maintenance State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, and the Texas Inspection and Maintenance State Implementation Plan (SIP), concerning the El Paso area, under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The commission proposes amendments to §§114.2, 114.50, 114.51, and 114.53. The proposed amendments would revise the existing Inspection and Maintenance (I/M) Program for all gasoline-powered motor vehicles two through 24 years old that are registered and primarily operated in El Paso County. The amendments would implement on-board diagnostic (OBD) testing of all OBD-equipped 1996 and newer model year vehicles beginning on May 1, 2006, and continue two-speed idle (TSI) testing of pre-1996 model year vehicles. The amendments would require all emissions test stations in the El Paso program area to offer both TSI testing and OBD testing to the public. Additionally, the amendments would update the vehicle emissions testing equipment specifications used in all Texas I/M program areas to include an EPA communications component, known as controller area network (CAN).

In addition to the proposed rule amendments, the proposed revisions to the SIP narrative clarify the new program elements, such as applicability changes; performance standards; emissions testing network type; adequate tools and resources; emissions testing; affected vehicle populations; test procedures, standards, and test equipment; motorist compliance enforcement; and the implementation schedule.

A public hearing on this proposal will be held on July 19, 2005, at 6:30 p.m., at the City of El Paso Council Chambers, 2nd Floor, located at 2 Civic Center Plaza, El Paso, Texas. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs, should contact Lola Brown, Office of Legal Services at (512) 239-0348. Requests should be made as far in advance as possible.

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-026-114-EN. Comments must be received by 5:00 p.m., August 2, 2005. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Bob Wierzowiecki, Air Quality Planning and Implementation Division, at (512) 239-1769.

TRD-200502511
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 17, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of June 7, 2005 through June 9, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, 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 THIS NOTICE.

CAMP LONGHORN CAPITAL, INC has applied for a renewal of Permit No. 13460-001, which authorizes the disposal of treated domestic

wastewater at a daily average flow not to exceed 30,000 gallons per day via surface irrigation of 5 acres of perennial pasture. The wastewater treatment facilities and disposal area are located approximately 5 miles east of the intersection of State Highway 29 and Farm to Market Road 1431 just west of Inks Lake in Llano County, Texas.

CITY OF JEWETT has applied for a major amendment to TPDES Permit No. WQ0011392001 to authorize an increase in the discharge 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 150,000 gallons per day. The facility is located approximately 500 feet southeast of Sugar Street, approximately 4,000 feet east of State Highway 79, on the east side of the City of Jewett in Leon County, Texas.

MICHAEL LANTZ O'NEILL has applied for a major amendment to TPDES Permit No. 14015- 001 to remove the fecal coliform limit from the permit, increase the two-hour peak flow and incorporate authorization to dispose of the sewage sludge from the facility at another wastewater treatment plant. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,900 gallons per day. The facility is located in Carrice Creek Cove, 6 miles east of Milam in Sabine County, Texas.

CITY OF PRESIDIO has applied for a renewal of Permit No. 14274-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 340,000 gallons per day via surface irrigation of 200 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located immediately adjacent to Farm-to-Market Road 170 and two miles northwest of the intersection of U. S. Highway 67 and Farm-to-Market 170 in Presidio County, Texas.

CITY OF SEADRIFT which operates the Dallas Avenue Water Plant, a municipal water treatment plant, has applied for a renewal of TPDES Permit No. WQ0003954000, which authorizes the discharge of reverse osmosis reject water at a daily average flow not to exceed 200,000 gallons per day via Outfall 001. The facility is located 301 East Dallas, approximately 300 feet east of the intersection of Dallas Avenue and Main Street, on the north side of Dallas Avenue in the City of Seadrift, Calhoun County, Texas.

CITY OF STINNETT has applied for a renewal of Permit No. 10291-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day via irrigation of 160 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility is located approximately 1.2 miles north- northwest of the intersection of Farm-to-Market Road 2277 and State Highway 136, and approximately 0.65 mile south of the intersection of State Highway 136 and State Highway 152. The irrigation site is located approximately 1 mile north of the intersection of Farm-to-Market Road 2277 and State Highway 136, south of Stinnett in Hutchinson County, Texas.

UNITED STATES OF AMERICA; DEPARTMENT OF THE INTERIOR AND TEXAS PARKS AND WILDLIFE DEPARTMENT has applied to the TCEQ for a major amendment to Permit No. WQ0013100001, to authorize the design and construction of a pond system and evaporation ponds that will replace the existing septic tanks and evaporation ponds and to amend the pond liner requirements that are included in the existing permit. The permittee is requesting to dispose of treated domestic wastewater at a daily average flow not to exceed 0.013 million gallons per day via evaporation which is the same as the current permit. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located within the boundary of Choke Canyon State Park, Calliham Unit, approximately 12 miles east of the City of Tilden and 10.5 miles west of the City of Three Rivers in McMullen County, Texas.

WEBB COUNTY has applied for a renewal of TPDES Permit No. 13577-003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located approximately 2,000 feet east of the Rio Grande, 10,000 feet west of U.S. Highway 83 and approximately 13,000 feet south-southwest from the intersection of U.S. Highway 83 and Hein Mangana Road in Webb County, Texas.

TRD-200502542
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 20, 2005

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Notice That the Commission's Environmental Testing Laboratory Accreditation Program Has Met the Standards of the National Environmental Laboratory Accreditation Conference

In accordance with House Bill 2912, 77th Legislature, 2001, Article 18 (Transitions; Effective Date), §18.03 (Transfer of Environmental Testing Laboratory Certification Program), the Texas Commission on Environmental Quality (commission) is publishing notice that the commission's environmental testing laboratory accreditation program established under Texas Water Code, Chapter 5, Subchapter R, has met the standards of the National Environmental Laboratory Accreditation Conference.

House Bill 2912, Article 18, §18.03(d), provided that the change in law made by the addition of Texas Water Code, §5.127, relating to the acceptance of environmental testing laboratory results by the commission, applied only to environmental testing laboratory results submitted to the commission on or after the third anniversary of the date on which the commission publishes notice in the *Texas Register* that the commission's environmental laboratory testing program has met the standards of the National Environmental Laboratory Accreditation Conference.

Texas Water Code, §5.127, as added by House Bill 2912 and as amended by Senate Bill 934, 78th Legislature, 2003 provides:

(a) The commission may accept environmental testing laboratory data and analysis for use in commission decisions regarding any matter under the commission's jurisdiction relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions only if the data and analysis is prepared by an environmental testing laboratory accredited by the commission under Subchapter R or an environmental testing laboratory described in Subsection (b) or (e).

(b) The commission may accept for use in commission decisions data and analysis prepared by:

(1) an on-site or in-house environmental testing laboratory if the laboratory:

(A) is periodically inspected by the commission; or

(B) is located in another state and is accredited or periodically inspected by that state;

(2) an environmental testing laboratory that is accredited under federal law; or

(3) if the data and analysis are necessary for emergency response activities and the required data and analysis are not otherwise available, an environmental testing laboratory that is not accredited by the commission under Subchapter R or under federal law.

(c) The commission by rule may require that data and analysis used in other commission decisions be obtained from an environmental testing laboratory accredited by the commission under Subchapter R.

(d) The commission shall periodically inspect on-site or in-house environmental testing laboratories described in Subsection (b).

(e) The commission may accept for use in commission decisions data from an on-site or in-house laboratory if the laboratory is performing the work:

(1) for another company with a unit located on the same site; or

(2) without compensation for a governmental agency or a charitable organization if the laboratory is periodically inspected by the commission.

TRD-200502551
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 21, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 1, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 1, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Adams Resources & Energy, Inc.; DOCKET NUMBER: 2005-0144-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 27005, Regulated Entity Number (RN) 100525641; LOCATION: League City, Galveston County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $800; ENFORCEMENT COORDINATOR: Susan Longenecker, (512) 239-0968; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: BP Amoco Chemical Company; DOCKET NUMBER: 2005-0361-AIR-E; IDENTIFIER: Air Account Number GB0001R, RN102536307; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §115.352(4) and §116.715(a), Permit Number 1176, and THSC, §382.085(b), by failing to obtain regulatory authority or meet the demonstration requirements of 30 TAC §101.222 for emissions, and by failing to obtain regulatory authority for emissions from the paraxylene unit two; and 30 TAC §101.211(c) and THSC, §382.085(b), by failing to submit a copy of the final record for any scheduled maintenance, startup, or shutdown; PENALTY: $10,725; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: City of Brady; DOCKET NUMBER: 2005-0099-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Permit Number 1732, RN102003811; LOCATION: Brady, McCulloch County, Texas; TYPE OF FACILITY: MSW landfill; RULE VIOLATED: 30 TAC §330.111(a) and §330.130, by failing to maintain field sampling records in the operating record, by failing to maintain permit documentation at the facility, and by failing to install Phase II gas monitoring probes; 30 TAC §330.55(b)(10)(A)(i) - (iv), (F), and (J), by failing to install site boundary markers, buffer zone markers, easement, and right-of-way markers; 30 TAC §330.117(b), by failing to prohibit the unloading of waste in unauthorized areas; 30 TAC §§330.111(a), 330.55(b)(2), §330.56(a)(1), (o)(3) and (4), 330.119, and 330.136(a), by failing to design, construct, and maintain a run-on control system, by failing to properly manage contaminated surface water runoff, by failing to have an adequate site layout plan, by failing to conduct proper waste screening, random load inspections, and train personnel to perform these duties, by failing to perform site maintenance inspections, by failing to perform semi-annual inspections of the groundwater monitoring wells, by failing to follow the approved fill sequence, by failing to post complete and accurate information on the site sign; and by failing to obtain prior written approval for the disposal of special waste; 30 TAC §330.133(f), by failing to repair erosion on areas of the landfill with intermediate cover; and 30 TAC §330.116, by failing to prevent uncontrolled access to the landfill; PENALTY: $10,358; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(4) COMPANY: Celanese Limited; DOCKET NUMBER: 2005-0213-AIR-E; IDENTIFIER: Air Account Number HX2763T, RN103012183; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by allegedly emitting into the atmosphere unauthorized pollutants; PENALTY: $4,040; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Convenience Management Services, Inc. dba CMSI 301; DOCKET NUMBER: 2005-0398-PST-E; IDENTIFIER: PST Facility Identification Number 15031, RN101435543; LOCATION: Flatonia, Fayette County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; and 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the cathodic protection system; PENALTY: $6,480; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(6) COMPANY: Coolidge Grain & Produce, Inc.; DOCKET NUMBER: 2005-0369-PST-E; IDENTIFIER: PST Facility Identification Number 60274, RN101747962; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $840; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Crockett Farm & Fuel Center, Inc.; DOCKET NUMBER: 2005-0619-PST-E; IDENTIFIER: RN102280377; LOCATION: Lovelady, Houston County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $976; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Crosby County Fuel Association; DOCKET NUMBER: 2005-0360-PST-E; IDENTIFIER: PST Facility Identification Number 74022, RN102831427; LOCATION: Crosbyton, Crosby County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and (B)(ii) and the Code, §26.3467(a), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate, by failing to make available a valid, current delivery certificate, and by failing to submit a properly completed UST registration and self-certification form; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(9) COMPANY: Richard Deckelman; DOCKET NUMBER: 2005-0385-LII-E; IDENTIFIER: RN104455571; LOCATION: Vernon, Wilbarger County, Texas; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §30.5(a) and §334.4(a), the Code, §37.003(a), and Texas Occupations Code, §1903.251, by failing to hold an irrigator license; PENALTY: $200; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(10) COMPANY: Deepak & Mashuk Corporation, Inc. dba Garland Mart; DOCKET NUMBER: 2004-1729-PST-E; IDENTIFIER: PST Facility Identification Number 40218, RN102402070; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.7(d)(3), by failing to amend the UST registration for any changes; 30 TAC §334.8(c)(4)(B) and (5)(A)(i) and (C), and the Code, §26.3467(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed, by failing to make available to a common carrier a valid, current delivery certificate, and by failing to permanently label all tank fill pipes; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $7,261; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Degussa Engineered Carbons, L.P.; DOCKET NUMBER: 2005-0410-IWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 00814, RN100209386; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: carbon black manufacturing; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 00814, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for total chlorine, fecal coliform, and zinc; PENALTY: $10,720; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: City of Dell City; DOCKET NUMBER: 2004-0609-MLM-E; IDENTIFIER: Water Quality (WQ) Permit Number 0014256001, Public Water Supply (PWS) Number 115001; LOCATION: Dell City, Hudspeth County, Texas; TYPE OF FACILITY: wastewater treatment and public water supply; RULE VIOLATED: 30 TAC §305.125(1), WQ Permit Number 0014256001, and the Code, §26.121(c), by failing to erect adequate signs stating that irrigation water is from a non-potable water supply, by failing to design and maintain irrigation practices, by failing to provide equipment to determine application rates and maintain accurate records of the volume of effluent applied, and by failing to make an annual analysis of a representative soil sample from the root zone of the irrigated site; 30 TAC §290.46(d)(2)(A) and (q)(1) and (2), by failing to maintain a minimum free chlorine residual of 0.2 milligrams per liter and by failing to issue a boil water notice; and 30 TAC §290.121(c)(3), by failing to maintain a monitoring plan; PENALTY: $10,185; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(13) COMPANY: Dan Chorenziak dba Dutchman's Hidden Valley Store; DOCKET NUMBER: 2005-0328-PWS-E; IDENTIFIER: PWS Number 0970006, RN101264364; LOCATION: Hamilton, Hamilton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(d)(2)(A)(ii) and THSC, §341.0315(a)(1), by failing to meet the minimum pressure tank capacity requirements for a transient, noncommunity water system; 30 TAC §290.41(c)(3)(L), (N), and (O) and THSC, §341.0315(c), by failing to ensure that the well blowoff line terminates in a downward direction, by failing to provide adequate metering to all water pumped from the well, and by failing to secure the well house against intruders; and 30 TAC §290.46(v) and THSC, §341.0315(c), by failing to install all electrical wiring in accordance with a local or national code; PENALTY: $1,037; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Ricky Lynn Freeman dba Freeman's Station; DOCKET NUMBER: 2005-0378-PST-E; IDENTIFIER: PST Facility Identification Number 40430, RN101856193; LOCATION: Lovelady, Houston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $2,280; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Grecoair, Inc.; DOCKET NUMBER: 2005-0303-PST-E; IDENTIFIER: PST Facility Identification Number 72171, RN102827920; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: aircraft refueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,016; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(16) COMPANY: Hanover Compression Limited Partnership; DOCKET NUMBER: 2004-1907-AIR-E; IDENTIFIER: Air Standard Permit Number 50957, RN102093648; LOCATION: North Zulch,

Madison County, Texas; TYPE OF FACILITY: natural gas treating and compression plant; RULE VIOLATED: 30 TAC §116.620(a)(1) and THSC, §382.085(b), by failing to maintain the sulfur dioxide (SO2) emissions; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to notify the regional office after the discovery of an excess SO2 emissions event; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Hardin County; DOCKET NUMBER: 2005-0171-PST-E; IDENTIFIER: PST Facility Identification Number 57349, RN102033024; LOCATION: Kountze, Hardin County, Texas; TYPE OF FACILITY: aircraft refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and the Code, §26.3467(a), by failing to renew a previously issued UST delivery certificate and by failing to have a valid delivery certificate; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Susan Longenecker, (512) 239-0968; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: City of Hawkins; DOCKET NUMBER: 2005-0622-MWD-E; IDENTIFIER: TPDES Permit Number 10439-001, RN101611986; LOCATION: Hawkins, Wood County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10439-001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for chlorine residual and dissolved oxygen (DO); PENALTY: $6,080; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(19) COMPANY: Hidalgo County Municipal Utility District 1; DOCKET NUMBER: 2005-0719-PWS-E; IDENTIFIER: PWS Number 1080033, RN101175511; LOCATION: Palmview, Hidalgo County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and (f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level for trihalomethanes; PENALTY: $540; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(20) COMPANY: Al Sadaka, Inc. dba Hopper Food Mart; DOCKET NUMBER: 2005-0183-PST-E; IDENTIFIER: PST Facility Identification Number 30096, RN102718905; LOCATION: Houston, Harris County, Texas; 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; PENALTY: $2,740; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: ISP Synthetic Elastomers LP; DOCKET NUMBER: 2005-0315-AIR-E; IDENTIFIER: Air Account Number JE0017A, RN100224799; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: elastomers manufacturing; RULE VIOLATED: THSC, §382.085(a), by failing to prevent 28.8 pounds of unauthorized styrene emissions; PENALTY: $2,040; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: J. Cleo Thompson Investment Management, LLC; DOCKET NUMBER: 2005-0391-AIR-E; IDENTIFIER: Air Account Number CZ0035V, RN100224385; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.145(2)(B) and §122.146(1) and THSC, §382.085(b), by failing to submit the annual compliance certification report and the semi-annual deviation report; PENALTY: $10,700; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(23) COMPANY: Omar Alzubi dba JR 2 Food Mart and Abdallah R. Alzubki dba JR 2 Food Mart; DOCKET NUMBER: 2005-0476-PST-E; IDENTIFIER: PST Facility Identification Number 20904, RN102856028; LOCATION: Gainesville, Cooke County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method of release detection; 30 TAC §334.48(c), by failing to properly conduct inventory control for all USTs; 30 TAC §334.8(c)(4)(B) and (5)(A)(i) and the Code, §26.3467(a), by failing to submit a completed registration and self-certification form and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $5,200; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Kirby & Kirby Oil Company, Inc.; DOCKET NUMBER: 2005-0404-PST-E; IDENTIFIER: PST Facility Identification Numbers 24670 and 24657, RN102054822 and RN102063088; LOCATION: Marshall, Harrison County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Suzanne Baldwin, (512) 239-1675; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(25) COMPANY: Kraft Foods Global, Inc.; DOCKET NUMBER: 2005-0149-AIR-E; IDENTIFIER: Air Account Number HG0473P, RN100214931; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: coffee processing; RULE VIOLATED: 30 TAC §122.145(2)(C) and §122.146(2) and THSC, §382.085(b), by failing to submit their annual compliance certifications and deviation reports; PENALTY: $3,960; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Lake Livingston Water Supply & Sewer Service Corporation dba Paradise Acres Water System; DOCKET NUMBER: 2005-0402-PWS-E; IDENTIFIER: PWS Number 1870076, RN101201960; LOCATION: Livingston, Polk County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1) and (r), by failing to issue a boil water notice and by failing to maintain a minimum required pressure; PENALTY: $280; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: Lisa Motor Lines, Inc.; DOCKET NUMBER: 2004-1855-PST-E; IDENTIFIER: PST Facility Identification Number 46730, RN100638527; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: freight trucking terminal with fleet refueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Mill Creek Water Supply Corporation; DOCKET NUMBER: 2005-0503-PWS-E; IDENTIFIER: PWS Number 0930054, RN101456069; LOCATION: Plantersville, Grimes County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(m), (u), and (v), by failing to maintain

the public water system so as to ensure the good working condition and general appearance of the system's facilities and equipment, by failing to plug an abandoned public water supply well, and by failing to install all water system electrical wiring in compliance with local or national electrical code; 30 TAC §290.43(d)(9), by failing to get prior approval for exceeding the maximum allowable number of pressure tanks at any one site; 30 TAC §290.45(b)(1)(C)(ii) - (iv) and THSC, §341.0315(c), by failing to meet the minimum water system capacity requirements for a ground storage tank and adequate pressure tank capacity and by failing to meet the minimum water system capacity requirements to provide two or more pumps with a total capacity of two gallons per minute per connection; and 30 TAC §290.51(a)(3) and THSC, §341.041, by failing to pay past due public health service fees; PENALTY: $1,380; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(29) COMPANY: N.E. Jones Oil Company, Inc.; DOCKET NUMBER: 2005-0440-PST-E; IDENTIFIER: PST Facility Identification Numbers 46699, 18515, 62899, 33929, 33931, and 68377, RN101808046, RN101831147, RN101805562, RN101823565, RN101818409, and RN101723633; LOCATION: Smithland, Wake Village, and Texarkana; Marion and Bowie Counties, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $13,680; ENFORCEMENT COORDINATOR: Suzanne Baldwin, (512) 239-1675; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(30) COMPANY: Yousef Hakemy dba One Stop Food Store; DOCKET NUMBER: 2005-0241-PST-E; IDENTIFIER: PST Facility Identification Number 62794, RN101631117; LOCATION: Mesquite, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $2,624; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(31) COMPANY: City of Pearsall; DOCKET NUMBER: 2005-0093-PST-E; IDENTIFIER: PST Facility Identification Number 12456, RN102022563; LOCATION: Pearsall, Frio County, Texas; TYPE OF FACILITY: refueling station for city vehicles; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; and 30 TAC §§21.4, 290.51(a)(3), and 334.22(a) and the Code, §5.702, by failing to pay consolidated water quality and public health service fees; PENALTY: $2,140; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(32) COMPANY: PNI Transportation, Inc.; DOCKET NUMBER: 2005-0375-PST-E; IDENTIFIER: RN103081055; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $10,080; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(33) COMPANY: Stantrans, Inc.; DOCKET NUMBER: 2005-0193-AIR-E; IDENTIFIER: Air Account Number GB0005J, RN100218767; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: bulk products storage terminal; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by failing to prevent the unauthorized release of 400 pounds of butadiene; and 30 TAC §101.201(a)(2)(F) and (H) and (g) and THSC, §382.085(b), by failing to properly notify the commission of an emissions event; PENALTY: $2,330; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: Mohammad Arif dba Super Mart; DOCKET NUMBER: 2005-0027-PST-E; IDENTIFIER: RN102275955; LOCATION: Liberty, Liberty County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: Shujat Swati dba Super Stop 24; DOCKET NUMBER: 2005-0322-PST-E; IDENTIFIER: PST Facility Identification Number 44987, RN102353182; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to amend the UST registration; 30 TAC §334.8(c)(5)(C), by failing to ensure that all tank fill ports are properly labeled; and 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that the UST system has a method of release detection; PENALTY: $2,880; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(36) COMPANY: The Grocers Supply Company, Inc.; DOCKET NUMBER: 2005-0591-PST-E; IDENTIFIER: PST Facility Identification Number 72891, RN102255494; LOCATION: Pearland, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,680; ENFORCEMENT COORDINATOR: Suzanne Baldwin, (512) 239-1675; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(37) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2004-0674-IWD-E; IDENTIFIER: TPDES Permit Number WQ0000639000, RN100221589; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical plant which manufactures special chemicals; RULE VIOLATED: 30 TAC §290.51(a)(6) and the Code, §5.702, by failing to pay the public health service fees; and 30 TAC §305.125(a), TPDES Permit Number WQ0000639000, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for oil and grease, five-day biochemical oxygen demand, pH, and flow; PENALTY: $25,600; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(38) COMPANY: Trimac Transportation, Inc.; DOCKET NUMBER: 2005-0511-PST-E; IDENTIFIER: RN103142667; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $560; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(39) COMPANY: Vining Enterprises, Inc. dba Quick Food Mart; DOCKET NUMBER: 2005-0251-PST-E; IDENTIFIER: PST Facility Identification Number 76031, RN103935045; LOCATION: Magnolia, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,552; ENFORCEMENT COORDINATOR:

Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: Westphalia Water & Sewer Supply Corporation; DOCKET NUMBER: 2005-0496-MWD-E; IDENTIFIER: TPDES Permit Number 14382001, RN103930061; LOCATION: Lott, Falls County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number 14382001, by failing to comply with permitted effluent limits for DO, biochemical oxygen demand, and total suspended solids; PENALTY: $2,756; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200502558
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 21, 2005

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of SRI ADMINISTRATORS, INC., a foreign third party administrator. The home office is INDIANAPOLIS, INDIANA.

Application for admission to Texas of ARGUS HEALTH SYSTEMS, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200502571
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 22, 2005

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of EMPLOYER SUPPORT SERVICES, INC., a foreign third party administrator. The home office is BATON ROUGE, LOUISIANA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200502578
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 22, 2005

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North Central Texas Council of Governments

Request for Proposals to Conduct a Truck Lane Pilot Study

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firm(s) to conduct a Truck Lane Pilot Study. The objective of the study is to document the impacts of test truck lane restrictions and make recommendations on the applicability of truck lane restrictions and dedicated truck lanes within the Dallas-Fort Worth region. The project includes policy, planning, test implementation, data collection and roadway system analysis/recommendations associated with truck lanes. The test sections for implementation are along the Interstate 20 Corridor in Dallas County and the Interstate 30 Corridor in Tarrant County. Engineering services are anticipated for this study.

Due Date

Proposals must be received no later than 5 p.m. Central Daylight Time on Friday, July 29, 2005, to Greg Royster, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200502579
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 22, 2005

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Board of Nurse Examiners

Request for Proposals for Pilot Programs

The Board of Nurse Examiners for the State of Texas (BNE or Board) is soliciting proposals for pilot programs designed to allow professional nursing programs to investigate the development of alternative avenues to increase admissions into schools of nursing and elicit creative approaches for evidence-based nursing education. The BNE is requesting the submission of proposals as authorized by §301.1605 of Texas Occupations Code which was enacted by Senate Bill 718 in the 78th

Texas Legislature, Regular Session. The BNE has adopted new chapter 227, 22 Texas Administrative Code §§227.1 - 227.6, Pilot Programs for Innovative Applications to Professional Nursing Education, which was originally proposed in the May 13, 2005, issue of the *Texas Register* (30 TexReg 2825) and was subsequently adopted without comment or changes. The effective date of chapter 227 is July 5, 2005, and the request for proposals will be available on this date. The request for proposal can be downloaded from the BNE's website home page at http://www.bne.state.tx.us.

Brief Description of Services: Section 301.1605 of the Occupations Code authorizes the Board of Nurse Examiners to approve and adopt rules regarding pilot programs for innovative applications in the practice of and including the regulation of professional nursing. Pursuant to §301.1605, approval of a pilot study would allow for a waiver of the educational requirements from some of 22 Texas Administrative Code ch. 215's (Professional Nurse Education) for the purpose of conducting research. During the April 2005 BNE meeting, chapter 227, Pilot Programs for Innovative Applications to Professional Nursing Education, was approved by the Board, subsequently adopted, and effective on July 5, 2005.

Eligible Applicants: Eligible offerors include Board-approved professional nursing programs capable of conducting a self-funded or grant-funded research project with the verifiable ability to meet the purpose of §301.1605 and 22 Texas Administrative Code ch. 227.

Limitations: All proposals must be self-funded or recipients of grants as no BNE funds are available for any approved program. There will be no more than six (6) programs approved. All approved programs must be completed within two (2) years of approval. BNE reserves the right to reject or refuse approval to any program that can not meet the purposes of Texas Occupations Code §301.1605 and 22 Texas Administrative Code ch. 227.

Deadlines for Proposals: Proposals will be open until the specified number (6) of programs have been approved.

Contact Person: Potential offerors may obtain a copy of the RFP on or about July 5, 2005. Requests for a RFP must be in writing to Kathy Thomas, Executive Director, Board of Nurse Examiners for the State of Texas, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or may be downloaded from the Board's web site. Comments will be accepted and considered for 30 days following the publication of this proposal in the *Texas Register*.

TRD-200502541
Katherine Thomas
Executive Director
Board of Nurse Examiners
Filed: June 20, 2005

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Texas Parks and Wildlife Department

Opportunity for Public Hearing and Public Comment

This is a notice of an opportunity for public comment and a public hearing on CSB Materials Partnership, Ltd. (f/k/a CSB Materials, Inc.) application to renew a Texas Parks and Wildlife Department (TPWD) permit to dredge state-owned sand and gravel from the Brazos River bed: 1) approximately five miles south-southeast of Missouri City and 5,780 feet upstream from the Brisco irrigation pump station adjacent to the property of R.G. Schindler; and 2) approximately 6 miles downstream from US Hwy 59 and approximately 12 miles upstream from FM 1462, in Fort Bend County. The hearing will be held on Monday, July 25, 2005, at 2:00 p.m. in the Law Library at TPWD Headquarters, 4200 Smith School Rd., Austin, TX 78744. The hearing is not a contested case hearing under the Administrative Procedure Act. Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing. Submit written comments, questions, or requests to review the application to: Lisa Belli, TPWD, by mail; fax (512) 389-4770; e-mail lisa.belli@tpwd.state.tx.us; phone (512) 389-4770.

TRD-200502570
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: June 22, 2005

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 14, 2005, InfoHighway filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60293. Applicant intends to reflect a change in ownership/control.

The Application: Application of InfoHighway for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31237.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 6, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31237.

TRD-200502506
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2005

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On June 10, 2005, amended by a filing on June 14, 2005, Global Metro Networks Texas, LLC filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60431. Applicant intends to relinquish its certificate.

The Application: Application of Global Metro Networks Texas, LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31224.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 6, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31224.

TRD-200502492

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2005

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Notice of Filing to Discontinue Services Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of Valley Telephone Cooperative Incorporated's application filed with the Public Utility Commission of Texas (commission) on June 3, 2005, to withdraw services pursuant to P.U.C. Substantive Rule §26.208.

Docket Title and Number: Application of Valley Telephone Cooperative, Incorporated to Withdraw its Optional Calling Plan Block of 500 Minutes Pursuant to P.U.C Substantive Rule §26.208(h), Docket Number 31189.

The Application: On June 3, 2005, Valley Telephone Cooperative, Incorporated (the Cooperative) filed an application to withdraw its optional calling plan block of 500-minutes. The Cooperative proposes to withdraw this plan and instead, offer additional optional plan choices in both lesser and greater blocks of minutes.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas, by July 18, 2005, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All correspondence should refer to Docket Number 31189.

TRD-200502500
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2005

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on June 10, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or around June 17, 2005.

Docket Title and Number: Sugar Land Telephone Company's Application for Approval of LRIC Study for the ALLTEL Feature Select Custom Calling Package Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 31225.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 31225. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31225.

TRD-200502493
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2005

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on June 10, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or around June 17, 2005.

Docket Title and Number: Texas ALLTEL, Inc.'s Application for Approval of LRIC Study For ALLTEL Feature Select Calling Package Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 31226.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 31226. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31226.

TRD-200502494
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2005

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on June 10, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or around June 20, 2005.

Docket Title and Number: Southwestern Bell Telephone Company, L.P., doing business as SBC Texas, Application for Approval of LRIC Study for PLEXAR Dial Plan for Advanced Solutions Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 31230.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 31230. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31230.

TRD-200502495

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2005

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Request for Comments on Form for Application for an Electric Service Area Exception

The Public Utility of Texas (commission) proposes an amended form, *Application for an Electric Service Area Exception*, to be used for the proceedings filed pursuant to Public Utility Regulatory Act (PURA) §37.056(c). This amended form provides information needed to submit (1) the required applicant information; (2) information pertaining to PURA §37.056(c) criteria; (3) affidavits to ensure that applicants provide documentation of the customer's request for service from the neighboring utility, relinquishment of the right to serve by the incumbent utility, and accuracy of the application; and (4) a map depicting required information. Project Number 30718 has been established for this proceeding.

Copies of the proposed form amendment are available at the Commission's Central Records Division, Room G-113, under Project Number 30718. Copies of the form may also be accessed via the Internet at http://www.puc.state.tx.us/electric/projects/30718/30718.cfm.

Written comments on the proposed form and related questions may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78711 on or before Monday, August 1, 2005. Reply comments, if any, should be submitted on or before Wednesday, August 10, 2005. Pursuant to P.U.C. Procedural Rule §22.71, 16 copies must be filed, and all comments should refer to Project Number 30718.

Questions concerning this form or this notice should be directed to Shelah J. Cisneros, Attorney, Legal and Enforcement Division, at (512) 936-7292; or shelah.cisneros@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200502505
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2005

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Stephen F. Austin State University

Notice of Consultant Contract Availability

Stephen F. Austin State University, Nacogdoches, Texas, requests proposals from content editing firms for editing the entire SFA Web site for a re-design.

The SFA Web site is undergoing a major architectural re-design, and is over 30,000 pages in size. A content editor is required to edit the entire site for grammar, syntax, spelling, word choice, and punctuation in order for the site to be ready for launch in January 2006. General copy editing of the entire Web site is necessary, and some original copy writing is necessary for the launch of the new site. The University's President finds that the consulting services are necessary in order to accomplish the Web site re-design.

The consultant selected for this project must evidence, through previous experience with similar projects or through a comprehensive set of references, the following skills, qualifications, knowledge, and experience:

-Master of Arts in English

-At least ten years experience with copy editing

-At least ten years experience with copy writing

-Professional experience with copy writing and editing specifically for academic communities (perspective and current students, faculty, staff and general community readers)

-Professional experience writing and editing for publications presenting their content in multi-media formats

The total cost for all phases of this agreement, including consultant travel and other expenses, is not to exceed $40,000.

The firm or individual selected to perform this project will be chosen on the basis of competitive proposals received in response to this request for proposals.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant.

Proposals must be received in the office of Dr. L. Tiffany Evans, Director of the Ralph W. Steen Library, Stephen F. Austin State University, P. O. Box 13055, 1936 North Street, Nacogdoches, Texas 75962 by July 15, 2005 in order to be considered. Please contact Dr. Evans at (936) 468-4101 for further information.

TRD-200502565
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: June 21, 2005

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Notice of Consultant Contract Availability

Stephen F. Austin State University, Nacogdoches, Texas, requests proposals from web graphics design firms to design and implement a new set of graphics for the entire SFA Web site for a re-design.

The SFA Web site is undergoing a major architectural re-design, and is over 30,000 pages in size. A graphics designer is required to design, develop, and prepare and implement an entirely new set of graphics for the "look and feel" of the SFA Web Site in order the be ready to launch the new site in January 2006. The University's President finds that the consulting services are necessary in order to accomplish the Web site re-design.

The consultant selected for this project must evidence, through previous experience with similar projects or through a comprehensive set of references, the following skills, qualifications, knowledge, and experience:

-Expert-level proficiency in Web graphics design

-Expert-level proficiency in developing, creating, and implementing Web graphics

-Expert-level proficiency in internal and external marketing and advertising

The total cost for all phases of this agreement, including consultant travel and other expenses, is not to exceed $40,000.

The firm or individual selected to perform this project will be chosen on the basis of competitive proposals received in response to this request for proposals.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant.

Proposals must be received in the office of Dr. L. Tiffany Evans, Director of the Ralph W. Steen Library, Stephen F. Austin State University, P. O. Box 13055, 1936 North Street, Nacogdoches, Texas 75962 by July 15, 2005 in order to be considered. Please contact Dr. Evans at (936) 468-4101 for further information.

TRD-200502566
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: June 21, 2005

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Notice of Consultant Contract Availability

Stephen F. Austin State University, Nacogdoches, Texas, requests proposals from web shell coordinating and programming firms to prepare and program the entire SFA Web site for a re-design.

The SFA Web site is undergoing a major architectural re-design, and is over 30,000 pages in size. A Web shell coordinator and programmer is required to prepare and program the entire site (in the .NET protocol) for launch in January 2006. A back end database needs to be built and populated. The University's President finds that the consulting services are necessary in order to accomplish the Web site re-design.

The consultant selected for this project must evidence, through previous experience with similar projects or through a comprehensive set of references, the following skills, qualifications, knowledge, and experience:

-Expert-level proficiency in database design, XML, Crystal Reports, Flash, ASP, Cold Fusion, and configuring hardware and Internet access

-Expert-level proficiency in Web-based information architecture

-Expert-level proficiency in usability testing

-Expert-level proficiency in Web site mapping

-At least 10 years experience in large-scale project management

The total cost for all phases of this agreement, including consultant travel and other expenses, is not to exceed $40,000.

The firm or individual selected to perform this project will be chosen on the basis of competitive proposals received in response to this request for proposals.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant.

Proposals must be received in the office of Dr. L. Tiffany Evans, Director of the Ralph W. Steen Library, Stephen F. Austin State University, P. O. Box 13055, 1936 North Street, Nacogdoches, Texas 75962 by July 15, 2005 in order to be considered. Please contact Dr. Evans at (936) 468-4101 for further information.

TRD-200502567
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: June 21, 2005

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Notice of Consultant Contract Renewal

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of renewal of the University's contract with consultant Charles H. Warlick, Ph.D, 4306 Oak Creek Dr., Nacogdoches, TX 75965. The original contract was in the sum of $20,720 plus expenses. The first renewal was published in the August 27, 2004, issue of the *Texas Register* (29 TexReg 8183). The contract will be renewed beginning September 1, 2005 and continuing through August 31, 2006, with a total amount not to exceed $10,000.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant.

For further information, please call David Justus at (936) 468-4101.

TRD-200502568
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: June 21, 2005

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Notice of Consultant Contract Renewal

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of renewal to the University's contract with LCS Development Group, 115 N. University Dr., Suite F, Nacogdoches, TX 75964. The original contract was in the sum of $35,000 with three subsequent renewals in the amount of $10,000. The original contract award was published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5947). The first renewal was published in the October 5, 2001, issue of the *Texas Register* (26 TexReg 7663), the second renewal was published in the September 6, 2002, issue of the *Texas Register* (27 TexReg 8355), the third renewal was published in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5001), and the fourth renewal was published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7813). The contract will be renewed in an additional sum not to exceed $10,000.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant. Services are provided on an as-needed basis.

For further information, please call (936) 468-2206.

TRD-200502569
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: June 21, 2005

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Texas Department of Transportation

Notice of Intent - Environmental Impact Statement State Highway 190

Environmental Impact Statement: Pursuant to 43 TAC §2.43(c)(8) and §2.43(f)(3), the Texas Department of Transportation (TxDOT) is issuing a Notice of Intent (NOI) to advise the public that an Environmental Impact Statement (EIS) will be prepared for State Highway (SH) 190 (The East Branch) from Interstate Highway (IH) 30 to IH 20 within southeast Dallas County. The study corridor is approximately 11 miles in length. From a regional and local perspective, there is an increasing demand for additional transportation capacity and access through the corridor. In the last 30 years, southeast Dallas County has experienced growth in population and employment and this trend is expected to continue. The proposed project is being developed jointly with the Federal Highway Administration.

Previous feasibility studies and *Mobility 2025 Metropolitan Transportation Plan-Amended April 2005*, the Metropolitan Transportation

Plan (MTP) for the Dallas-Fort Worth region, has examined a full range of alternatives and alignments within the corridor. SH 190 is included in the current MTP as a new location six-lane roadway. The environmental study will examine viable alternatives and potential transportation modes including the No-Build and the potential for toll-application to the build alternative alignments. All alternative alignments begin at or near the proposed IH 30/President George Bush Turnpike interchange and proceed south toward and ultimately terminate at IH 20. These proposed alternatives would be contained within a corridor generally bounded to the east by the Dallas/Kaufman County Line and to the west by Bobtown Road in Garland, Collins Road and Clay Road in Sunnyvale, and Clay-Mathis Road and Lawson Road in Mesquite. The project has included public involvement to address the long-term mobility needs of both the region and local community. The environmental study will include the determination of the number of lanes, roadway configuration, and operational characteristics. It will also include a discussion of the effects on the social, economic, and natural environments and of other known and reasonably foreseeable agency actions proposed within the SH 190/East Branch Corridor. If a build alternative is selected, and if it is determined to be a viable project, TxDOT shall construct and operate the facility. Issues relative to the project include noise, archeological sites, historic properties, socio-economic effects, changes to travel patterns, air quality, water quality, floodplains, and wetlands.

Correspondence describing the proposed action and soliciting comments have been sent to appropriate federal, state, regional, and local agencies, and to organizations and persons who have previously expressed an interest or are known to have an interest in this proposal. Public meetings will be held throughout the process. Public notice will be given stating the time and place of the future public hearing. The Draft EIS will be available for public and agency review and comment before the public hearing.

A public scoping meeting in an Open House format with no formal presentation will be conducted on Tuesday, July 26, 2005, between the hours of 4:00 p.m. and 8:00 p.m. at the Mesquite Convention Center and Rodeo Center located at 1700 Rodeo Drive, Mesquite, Texas 75149. This will be the first in a series of meetings to solicit public comments on the proposed action as part of the National Environmental Policy Act (NEPA) process. Persons interested in attending this meeting who have special communication or accommodation needs are encouraged to contact the local TxDOT Public Information Office at (214) 320-6100 at least two days prior to the hearing. Because the public meeting will be conducted in English, any requests for language interpreters or other special communication needs should also be made at least two days prior to the public scoping meeting. Every reasonable effort will be made to accommodate these needs.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Additional project information may be obtained by visiting the project's website at www.theeastbranch.org.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be directed to William Hale, District Engineer, Dallas District, Texas Department of Transportation, P.O. Box 133067, Dallas, Texas 75313-3067, or by telephone (214) 320-6100.

TRD-200502577
Joanne Wright
Assistant General Counsel
Texas Department of Transportation
Filed: June 22, 2005

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: **http://www.dot.state.tx.us**. Click on Aviation, then click on Aviation Public Hearing. Or, contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 800-68- PILOT.

TRD-200502555
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 21, 2005

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Public Notice - Creation of Specialty License Plates

Pursuant to Title 43, Texas Administrative Code §17.28(i)(1)(B), the Texas Department of Transportation is required to publish notice of all tentatively approved specialty license plates for public comment. The department will accept comments on these specialty license plates for 30 days from the date of this publication.

The specialty license plates tentatively approved and open for comment are: Texas Department of Public Safety; American Quarter Horse; and Big Brothers/Big Sisters. All comments will be considered prior to the final decision.

Please submit comments to Jerry Dike, Director, Vehicle Titles and Registration Division, Texas Department of Transportation, Attention: Specialty License Plates, 4000 Jackson Avenue, Austin, TX 78779-0001. For questions regarding these license plates or the comment procedures contact Bobby Johnson at 512-465-7719.

TRD-200502533
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 20, 2005

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Record of Decision - State Highway 121, From IH 30 to FM 1187, Tarrant County, Texas; FHWA-TX-EIS-99-05-F

The following Record of Decision for the State Highway 121 project was signed by the Federal Highway Administration (FHWA) on June 13, 2005. The project is being developed jointly with the FHWA and the Texas Department of Transportation.

1. Decision

The Federal Highway Administration (FHWA) approves the selection of the **Build Alternative**, Alternative C/A, in agreement with the Texas Department of Transportation (TxDOT) and the North Texas Tollway Authority (NTTA). Alternative C/A is the selected alternative for the construction of State Highway 121 (SH 121) from Interstate Highway (IH) 30 near downtown Fort Worth in Tarrant County to Farm-to-Market Road (FM) 1187. SH 121 will be a muti-lane controlled access tollroad.

Alternative C/A was initially presented by the City of Forth Worth during the comment phase to the Public Hearing on the Draft Environmental Impact Statement (DEIS) in April 2003 and it was identified as the

alternative recommended for selection in the October 2004 Final Environmental Impact Statement (FEIS).

This Record of Decision (ROD) selecting Alternative C/A is prepared in compliance with FHWA's regulations (23 CFR § 771, et seq. and Technical Advisory 6640.8A), the Council on Environmental Quality (CEQ) guidelines (40 CFR §§ 1500 -1508) and the requirements of the National Environmental Policy Act of 1970 (42 USC § 4321 et seq. (NEPA)).

As identified in the FEIS, the project is needed to accommodate existing and future traffic demand between downtown Fort Worth and newly developed and developing areas in southwest Tarrant County with a financially viable, effective and more efficient transportation system. The purpose of the project is to improve regional mobility, increase people and goods carrying capacity and alleviate further overburdening of the local transportation system.

The selected alternative will provide a major link in the regional transportation network. Construction of the proposed project is part of the North Central Texas Council of Governments' (NCTCOG) Regional Transportation Plan and the City of Fort Worth's *Master Thoroughfare and Comprehensive Plans* The selected alternative will also provide a needed alternate route to the already congested urban arterials serving southwest Tarrant County.

This ROD is based upon analysis and comparison of reasonable alternatives (in addition to a No-Build alternative) described and evaluated in Chapter 3 of the FEIS. The FEIS presents a complete description of the alternatives considered and identifies Alternative C/A as the recommended alternative. Because all of the five Build Alternatives share a similar horizontal alignment over a significant portion of their lengths, the environmental consequences of implementing any of these are similar. An exception is that Alternatives B or D would potentially have adverse impacts on historic structures. Build Alternative C/A is the selected alternative based upon its ability to best meet the project's purpose and need, the consideration of engineering parameters, the assessment of anticipated environmental effects, extensive public input, resource agency input, and coordination and various modes of input from local governmental entities. Build Alternative C/A best meets the purpose and need of the project by improving regional mobility, increasing people and goods carrying capacity and alleviating further overburdening of the local transportation system while complementing local future land use plans and incorporating public input as far as is feasible and practicable.

The total project length of the selected alternative is approximately 15 miles. The entire facility is proposed on new alignment and will traverse a large portion of the City of Fort Worth (City) with major interchanges at IH 30 and IH 20/SH 183. The selected alternative is a divided tollroad. From the northern terminus at IH 30 to Altamesa Boulevard the proposed facility will ultimately be six lanes. From Altamesa Boulevard to the southern limit at FM 1187, the ultimate facility will be four lanes. Only a part of the ultimate six/four-lane facility is being proposed at this time. As currently proposed, the facility will vary from six lanes between IH 30 and Altamesa Boulevard to four lanes from Altamesa Boulevard to FM 1187. In addition, limited frontage road access will be provided where needed for local traffic circulation.

Alternatives Considered

Several transportation modes and tollroad alternatives were analyzed in previous planning studies, the DEIS and the FEIS. In addition to the No-Build alternative, five tollroad build alternatives were evaluated in detail. Although originally conceived of as a non-toll facility, due to financial constraints, a toll facility was identified as the only viable option to construct the project on a timely basis. The effects of operating this facility as tollroad were evaluated and considered in selecting the Build Alternative C/A. A detailed toll and traffic study was completed in December of 1997. The NTTA's participation creates a funding option to offset the lack of public funds and the estimated construction costs.

The alternatives and the evaluation process used to select the selected alternative are described in Chapter 3- Alternatives Analysis, of the FEIS. Due to planning efforts and development spanning more than 40 years, the horizontal locations of the Build Alternatives fall within the same horizontal corridor.

No-Build Alternative

Under the No-Build alternative, improvement along the SH 121 study corridor would primarily consist of maintenance activities or spot improvements that provide near-term service level improvements to existing facilities. Generally, the existing transportation network in the southwest portion of Fort Worth would be lacking major improvements in mobility. The No-Build alternative does not satisfy the purpose and need for the project. The No-Build alternative was used as a baseline for comparison of impacts to resources and was ultimately eliminated from consideration.

Alternative A

The typical section for Alternative A would consist of two to three travel lanes in each direction divided by a median. The median would vary from 48 to 100 feet (ft) in width. The alternative would have ten-foot inside and outside shoulders. The minimum right-of-way (ROW) for this alternative would be 220 ft with additional ROW needed at toll appurtenances, the interchanges and for widened medians and buffers.

This Alternative would relocate the existing Forest Park Boulevard to the west and connect the relocated Forest Park Boulevard with ramps that would traverse under IH 30 adjacent to the Fort Worth Western Railroad (FWWRR. In addition, a weave section on the IH 30 westbound frontage road would be provided to allow westbound traffic near Summit Avenue. Overton Ridge Boulevard and Dutch Branch Road would be reconstructed eight feet lower than existing.

Alternative B

The typical section for Alternative B of SH 121 would consist of two to three travel lanes in each direction divided by a median. The median would vary from 48 to 72 ft in width. The alternative would have ten-foot inside and outside shoulders. The minimum ROW for this alternative would be 220 ft with additional ROW needed at toll appurtenances and the interchanges.

The connection between SH 121 and Forest Park Boulevard would consist of one-lane flyover ramps over IH 30 that tie to Forest Park Boulevard near the Lancaster Avenue bridge. Stonegate Boulevard would be extended to the west at-grade, with SH 121 over. The diamond interchange at the Stonegate Boulevard extension would serve as access to and from Hulen Street and SH 121.

Alternative C

The typical section for Alternative C would consist of two to three travel lanes in each direction divided by a median. The median would vary from 48 to 100 ft in width. The alternative would have ten-foot inside and outside shoulders. The minimum ROW for this alternative would be 220 ft with additional ROW needed at toll appurtenances and the interchanges and for widened medians and buffers.

For this alternative, Forest Park Boulevard would not be relocated. Traffic from Summit Avenue would be able to access westbound IH 30 and southbound SH 121 via stacked ramps near the St. Paul Lutheran Church, which would eliminate the weave section on the westbound

frontage road. Overton Ridge Boulevard and Dutch Branch would not be lowered or reconstructed.

Alternative D

The typical section for Alternative D of SH 121 would consist of two to three lanes in each direction divided by a median. The median would vary from 48 to 72 ft in width. The alternative would have ten-foot inside and outside shoulders. The minimum ROW for this alternative would be 220 ft with additional ROW needed at toll appurtenances and the interchanges.

The connection to Forest Park Boulevard would consist of two lane flyover ramps that tie to Forest Park Boulevard near the Lancaster bridge, direct connections from Forest Park Boulevard north to IH 30 west and braided ramps adjacent to the St. Paul Lutheran Church. Alternative D would go over the Hulen Street bridge, a future development road and Stonegate Boulevard, which would be located closer to the river than in the other alternatives.

The Combination Alternative, Alternative C/A

Alternative C/A evolved from the City's desire to include the intent of the Alternative A interchange design at IH 30 with regard to the connections at Forest Park Boulevard and Summit Avenue. This alternative provides the main lanes and Stonegate Boulevard interchange north of the electrical transmission line and to maintain the Project Development Team (PDT) efforts where possible while avoiding ROW impacts to existing and ongoing development south of IH 20. The typical section for the Alternative C/A would consist of two to three travel lanes in each direction divided by a median. The median would vary from 48 to 100 ft in width. The alternative would have ten-foot inside and outside shoulders. The minimum ROW for this alternative would be 220 ft with additional ROW needed at toll appurtenances and the interchanges to widen medians and buffers.

A half diamond interchange would serve Forest Park Boulevard with a ramp from eastbound IH 30 to Summit Avenue. A full diamond interchange is proposed at Summit Avenue and IH 30. Access to Summit Avenue and Forest Park Boulevard in this alternative would be a split diamond with the ramps from and to the west at Forest Park Boulevard and ramps to and from the east at Summit Avenue, in addition to a ramp from westbound IH 30 to Forest Park Boulevard. Traffic from Summit Avenue would be able to access westbound IH 30 and southbound SH 121 via separate ramps off of the frontage road near the St. Paul Lutheran Church.

Stonegate Boulevard is proposed to be extended to the west and would cross under SH 121 with a diamond interchange north of the electrical transmission line, but south of the Union Pacific Railroad (UPRR). SH 121 then would cross under the future Arborlawn Drive with a diamond interchange. Overton Ridge would not be lowered or reconstructed. At Dutch Branch Road, the existing roadway would not be lowered or reconstructed.

Alternative C/A would cross under the future Oakbend Trail and existing Oakmont Boulevard as well as under a future reconstructed Altamesa/Dirks Road. The tollroad would pass over the existing Dutch Branch Road. A diamond interchange is planned for Oakmont Boulevard with a full diamond interchange at Altamesa/Dirks Road.

Public Involvement

Throughout the development of this project, there has been extensive public involvement to include the input of citizens, property owners and affected local governments regarding the proposed facility. Numerous public meetings have been conducted, several advisory groups have been formed and have provided input, three formal Public Hearings have been held and dozens of public meetings have been conducted. Continuing public involvement will be provided as outlined in Articles 4 and 5, Corridor Master Plan and Measures to Minimize Harm, respectively.

The SH 121 project was first conceived in the early 1960s. Since that time, the project's alignment and limits have changed based on a number of factors, one being public input. The first public hearing on SH 121 was conducted in May 1973. The project developed over the next 15 years as extensive study, research and alternatives analysis were completed. In November 1987 and in May 1988, two public meetings were conducted to discuss the alignment possibilities and project limits for SH 121. Funding difficulties stalled the project for the next few years.

In 1994, a SH 121 Task Force retained a consulting firm, whose duty was to find a solution to the funding concerns. Between June and October 1994 more than thirty meetings and briefings with elected officials occurred. Ultimately, the Task Force recommended that a toll facility would be the best viable option to fund and facilitate the development of SH 121. Public meetings presenting the progress of the SH 121 Project were held in January 1995 and in June 1998.

In February 1999 the Fort Worth Chamber of Commerce hosted two public meetings to hear citizen concerns. The Chamber then formed the Citizens' Advisory Committee (CAC) which first met March 17, 1999. The CAC reviewed the history of and concerns surrounding the SH 121 Project. The CAC met seven more times, and in October 1999 presented its recommendations to the Fort Worth City Council.

The Fort Worth City Council was briefed by City staff in February 2000, and in April 2000 the City Council formed the Peer Review Team (PRT) to examine the preliminary geometric design proposed by NTTA and TxDOT. Within the month, the PRT recommended further detailed study, prompting the City Council to form the Project Development Team (PDT) to study the SH 121/IH 30 interchange from the City's perspective and to develop additional alternatives in cooperation with the public. The PDT completed its work and recommended to the City Council in December 2000 that several interchange alternatives be considered. The City Council concurred and presented the findings to NTTA and TxDOT later that month.

NTTA and TxDOT developed an additional alternative to incorporate the PDT's plan and the necessary safety and design elements. Two public meetings in June 2001 presented to the public three alternatives for consideration and comment: Alternative A (PDT's recommendation), Alternative B (CAC's "modified" alternative) and Alternative C (the "combination" alternative). Comments received from the June 2001 meetings were considered and incorporated into the alternatives as appropriate, and a set of public meetings were held in November and December 2001.

A Public Hearing conducted on April 22, 2003 presented the proposed project and alternatives, and comments from that meeting led NTTA and TxDOT to develop the C/A Alternative. The C/A Alternative incorporates the interchange design at IH 30 and movement of the mainlanes and Stonegate Boulevard interchange north of an electrical transmission line.

NTTA and TxDOT diligently analyzed the project based on concerns expressed during the Public Hearing process. This resulted in revised studies based on updated data, an expanded discussion of secondary and cumulative impacts and an overall improvement in the readability of the document. As a result of this "hard look," NTTA and TxDOT recommended proceeding to the FEIS and the FHWA concurred.

During the period following issuance of the FEIS, an additional Public Hearing was held on December 13, 2004, and comments were again solicited. This additional comment period officially closed on December

31, 2004. This second Public Hearing and responses to the comments received are discussed further in Section 3.1.

In Resolution 3148, adopted December 7, 2004, the Fort Worth City Council declared its support for the development of a "Nature and Character Plan" that will include input from the Citizens' Advisory Group (CAG). The resolution also stated that the FEIS discussion of context-sensitive design is responsive to previous City comments and is identified as appropriate to minimize potentially adverse environmental impacts resulting from the project.

The design concept and scope of the proposed action is consistent with the area's financially constrained Metropolitan Transportation Plan, known as Mobility 2025-2004 Update and with the fiscal year 2000-2004 Transportation Improvement Program found to conform to the Clean Air Act Amendments of 1990 by the U.S. Department of Transportation on April 8, 2004. Additionally, the project comes from an operational Congestion Management System that meets all requirements of 23 CFR- Highways, Parts 450 and 500.

Comments on the FEIS and December 13, 2004 Public Hearing

A comment period was afforded after the FHWA approved the FEIS for distribution on October 27, 2004. The public was invited to a Public Hearing for the FEIS which was held on Monday, December 13, 2004 at the Fort Worth Convention Center. The hearing was widely publicized, with notices appearing in the following publications:

Fort Worth Star-Telegram, November 7 and 28, 2004

Alliance Regional Newspaper, November 12 and December 3, 2004

Burleson Star, November 7 and 28, 2004

Crowley Star Review, November 11 and December 2, 2004

Cleburne Times-Review, November 7 and 28, 2004

Joshua Star Tribune, November 11 and December 2, 2004, and

Fort Worth Business Press, November 10 and December 1, 2004.

The notice was also published in Spanish in *La Estrella* November 13, 2004 and December 4, 2004 and *La Semana* November 12, 2004 and December 3, 2004. A press release was faxed to local media on December 10, 2004. 27 oral statements and 41 written statements were received for the FEIS from the public and elected or local officials and agencies.

Comments made by citizens, elected or local officials and agencies included a number of issues, the majority of which had already been raised in the public comment period for the 2002 DEIS. The issues raised in the FEIS comment period included air quality, cumulative and secondary impacts, water quality, impacts to prairies, and constructive use. The comments received were not substantive or new. However new and/or additional information that was now available was provided as part of the responses. The types of comments received on each of these subjects are summarized below.

Each of these comments has been carefully and thoroughly addressed in the FEIS Public Hearing Comment and Response Report. In addition to providing thoroughly researched answers and explanation, the Public Hearing Comment and Response Report includes references to sections of the FEIS, to clarify responses as needed. The Public Hearing Comment and Response Report document is hereby incorporated by reference into this ROD and a copy is attached as Appendix A.

Air Quality

Comments and responses about impacts on air quality are summarized as comment numbers 2-1 through 2-8. Comments raised concerns about $PM_{2.5}$ concentrations, including project-level analysis, health effects, and current and future levels of $PM_{2.5}$, and air toxics generally. Additional explanation and data about air studies has been provided in the Public Hearing Comment and Response Report. Also, the discussion includes a summary of and response to each of the 19 health studies cited by commenters addressing health effects associated with living near areas with heavy traffic.

Cumulative and Secondary Impacts

Comment numbers 6-1 through 6-8 summarize concerns and provide responses about cumulative and secondary impacts. Among the concerns raised in this set of comments are possible induced land use changes in Overton Woods and a related special tax, mitigation, cumulative impacts of toll plazas and maintenance facilities, impacts to historic neighborhoods, alternate interchange configurations and increased land development and accompanying increased storm water runoff. Note that Comment 7-1 also raised questions regarding increased storm water runoff, where the commenter states that no analysis or determination has been included in the FEIS to demonstrate that the storm sewer system can handle additional runoff, and the commenter asks whether the project has detention ponds. A response to this comment is provided in response to Comment #7.1 of the Public Hearing Comment and Response Report.

Water Quality and Safety

Water quality comments and responses are included in comment numbers 28-1 through 28-3. Commenters raise questions about bank stabilization to prevent erosion, selection of building materials that will not harm the river or detract from its beauty, and whether reseeding for erosion control and flooding will be composed of 100% native seeds.

Impacts to Prairies

Comments related to prairies are summarized and addressed in the Public Hearing Comment and Response Report section titled "Impacts to River, Trees and Wildlife." In comment numbers 10-1 through 10-5, commenters indicate that the FEIS has not sufficiently examined issues related to wetlands, wildlife and jurisdictional waters, and that deferring examination of those issues is inappropriate and a hindrance to development. Another issue raised by commenters is that the SH 121 Project would cross the largest contiguous area of prairie in the entire Fort Worth prairie area, and that such prairie land is botanically and ecologically significant. Several suggestions are made about how to minimize loss of prairie. Finally, concerns are stated about protection of wildlife and their habitats, trees and the river and its environs and whether sufficient data was analyzed to ensure protection of each of these resources. Additional comments and responses about wetlands and the FEIS' consideration of them are contained in numbers 29-1 and 29-2.

Constructive Use

Comments and responses discussing constructive use are located in the following comment numbers and responses: 6-4, 16-5, 17-1, 17-3 and 31-1. The primary concern raised about constructive use relates to whether the FEIS properly considers potential constructive use based upon Section 4(f) considerations.

Corridor Master Plan

During the project approval process FHWA was informed that the City of Fort Worth, NTTA and TxDOT had executed a document styled "Amendment #2 to the Agreement Between the City of Fort Worth, the North Texas Tollway Authority, and the Texas Department of Transportation Concerning the Development of the Southwest Parkway" (the "Interlocal Agreement") specifying, among other things, certain design elements and amenities for the project as well as a master plan process.

Copies of the Interlocal Agreement are available for review and copying at the TxDOT Fort Worth District Office.

The parties to the Interlocal Agreement also have drafted a Corridor Master Plan (CMP) which ultimately may be used as a guideline for final project design elements that are reasonable and feasible without compromising the safety of the roadway. The CMP is expected to further define the appropriate nature and character elements, and the locations of those elements, including a master landscape plan.

While the CMP is outside the NEPA process and separate from the decision making and approval of the project, it is understood by FHWA that the signatories to the Agreement believe it will be a crucial element in the project's eventual final design and construction. But, the CMP process cannot alter or revise the geometrics of the Project or result in any other project modifications not evaluated during the NEPA process. Should any such modifications be adopted, FHWA will review them to determine if the FEIS needs to be reevaluated.

Measures to Minimize Harm

Section 101(b) of NEPA requires that Federal agencies incorporate into their project planning all practicable measures to mitigate adverse environmental impacts resulting from a proposed action. The following section summarizes concept-level mitigation measures that have been identified as appropriate to minimize adverse environmental impacts for the recommended alternative. Agency coordination and contacts with individual property owners will continue throughout the detailed design phase of the project. During that time, mitigation measures and measures developed as part of the CMP will be developed in more detail. Final mitigation and measures developed during the CMP process will be incorporated into the detailed engineering plans and specifications for this project. Mitigation measures are described in the FEIS for the recommended Alternative C/A for adverse impacts to resource categories to the degree that can be anticipated at this point in project development.

As a part of the CMP process component of the Interlocal Agreement, NTTA and TxDOT have also agreed to plant 4,700 trees within the project area, preserve as many trees as possible within the project limits in the Overton Woods neighborhood and around the Trinity River, and include the colors, wall texture designs, and railings as adopted by the CAG. TxDOT has agreed to implement Trinity River Vision enhancements including trailheads at Rosedale Street and pedestrian access across the old Vickery Bridge. In the agreement, Alamo Heights and Sunset Terrace also secured screening protections. More specific context sensitive design details will be detailed in the CMP.

The Selected Alternative (Alternative C/A) incorporates and adopts all practicable measures to minimize environmental harm that were identified in the FEIS. Mitigation measures adopted to minimize harm to the environment were discussed in detail in Chapter 8 of the FEIS. In addition to the commitments mentioned previously, the following measures will apply and be implemented.

Traffic Noise Barriers

A preliminary noise analysis in accordance with FHWA Regulation 23 CFR 772, Procedures for Abatement of Highway Traffic Noise and Construction Noise and TxDOT's 1996 Guidelines for Analysis and Abatement of Highway Traffic Noise was conducted for the proposed tollroad and presented in the FEIS.

Preliminary analyses indicate that a traffic noise barrier would be feasible and reasonable for affected residential receivers in the Mistletoe Heights, Fort Worth Country Day School and Hulen Bend Addition/Park Palisades areas; therefore, traffic noise barriers are proposed for incorporation into the project at these locations. Details of these proposed traffic noise barriers are shown in Section 5.11 of the FEIS. The final decision to construct noise barriers will be made upon completion of the more detailed project design and a public involvement process as described in the TxDOT Guidelines for Analysis and Abatement of Highway Traffic Noise.

Water Quality

Erosion Control

A National Pollutant Discharge Elimination System (NPDES) permit will be required for the construction of SH 121. A Stormwater Pollution Prevention Plan will be developed to offset erosion/sediment concerns during the construction and operation phases. Proper stabilization techniques will be employed to control erosion and sedimentation through Best Management Practices (BMPs). These techniques will be detailed in the Storm Water Pollution Prevention Plan. The final BMPs will be determined during design of the project and included in the plans, specifications, and estimates package for implementation during construction.

Jurisdictional Waters of the US, including Wetlands

During the final design phase of the proposed project, a further and more detailed on-the-ground jurisdictional water of the United States delineation and project impacts assessment will be completed along the selected alternative. This jurisdictional waters of the United States delineation will be in accordance with the procedure described in the 1987 United States Army Corps of Engineers (USACE) Wetland Delineation Manual.

In accordance with the Federal Clean Water Act Section 404(b)(1) guidelines, design of the project will include measures to avoid and minimize impacts to jurisdictional areas. Unavoidable impacts to jurisdictional areas will be compensated for during the Section 404 permitting process by providing mitigation for unavoidable losses (functions and values) of waters of the United States as required by any pertinent Section 404 permit administered by the USACE. The Section 404 permitting process will be conducted during preparation of the detailed design. Mitigation will be proposed at no less than a one-to-one ratio.

As a result of unavoidable impacts to jurisdictional waters associated with the construction of this project, Tier I Erosion Control, Post-Construction Total Suspended Solids (TSS) Control and Sedimentation Control devices will be required under the Texas Commission on Environmental Quality (TCEQ) Section 401 Water Quality Certification process and will be included in the design of the project.

Floodplains

A detailed floodplain evaluation will be conducted during the final design phase of the project in accordance with Executive Order 11988 and 23 CFR 650, Subpart A. All construction within floodplains will be in compliance with Executive Order 11988, Floodplain Management, dated May 24, 1977; Federal Emergency Management Agency (FEMA) regulations; and all Federal, State, and local regulations. If the hydraulic studies indicate the project would modify the contour of the floodplain, or increase the floodplain elevation above the Base Flood Elevation (BSE), coordination with FEMA would occur.

The structures carrying the Selected Alternative will be designed to avoid increase in the 100-year flood elevation. Abutments and piers will be placed so as to avoid or minimize encroachment on the 100-year floodplain.

Vegetation

Vegetation clearing and disturbance within the ROW will be limited to the minimum needed to construct and maintain the roadway. In accordance with Executive Order 13112 on Invasive Species and the Executive Memorandum on Beneficial Landscaping, landscaping will

be limited to seeding and replanting the ROW with native species of plants where possible. A mix of native grasses and native forbs will be used to re-vegetate the ROW within the 30 ft clear zone. Specific commitments to control invasive species will be developed during detailed project design.

Section 106 of the National Historic Preservation Act and Section 4(f) of the United States Department of Transportation Act of 1966

Historic Structures

There are no historic structures listed or eligible for listing in the National Register of Historic Places (NRHP) impacted by the C/A Alternative. A copy of the State Historic Preservation Officer's "no adverse effect" concurrence letter is included in Chapter 9- Agency Coordination and Comments of the FEIS.

Archeology Sites

An archeological site (41TR170 as designated by the Texas Historical Commission) has the potential to be directly impacted by the C/A Alternative near the project crossing of the Clear Fork of the Trinity River. Site 41TR170 was recommended as eligible for the NHRP and as a State Archeological Landmark (SAL) in the Section 106 archeological survey report submitted to TxDOT's Environmental Affairs Division (ENV) in August 1999. In a letter dated March 28, 2000, TxDOT requested Texas Historical Commission (THC) concurrence that site 41TR170 warranted comprehensive testing to determine its NRHPError! Bookmark not defined. eligibility. In a letter dated April 24, 2000, the THC concurred that site 41TR170 warranted testing. Formal testing of the site is in progress and is anticipated to be completed early Summer 2005.

Section 4(f) Properties

The project does not require any takings from any properties covered under the provisions of Section (4f).

Hazardous Materials

Impacts to hazardous waste sites will be minimized as much as possible. Precautions and remediation measures will be necessary during the construction phase to ensure that all means are utilized to identify and remove any hazardous waste encountered while work is proceeding.

Further investigation will be required at potentially hazardous waste sites impacted by the Selected Alternative such as three hazardous waste generator businesses designated as H-30, H-31, and H-32 on Exhibit 5.2 of the FEIS. Any structures that will be acquired will be surveyed for asbestos and PCB-containing materials before they are demolished. In addition, any known and/or encountered hazardous waste sites will be properly remediated according to appropriate State and Federal requirements.

Displacements

Displacements of homes and businesses have been avoided wherever possible. It is estimated that Alternative C/A will relocate approximately 82 businesses and three single-family residential structures. Relocation assistance will be provided in accordance with the Procedures for Purchase of Right-of-Way and the provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970, as amended, and Title VI of the Civil Rights Restoration Act of 1987.

Threatened and Endangered Species

Based on the mitigation plan developed during consultation with the U.S. Fish and Wildlife Service (FWS), the project corridor will be checked for the presence of suitable nesting/feeding habitat from April through August of 2005 for the endangered interior least tern. A detailed description of the survey procedures and requirements can be found in Section 5-15-Water Body Modifications and Wildlife Impacts and in Appendix F of the FEIS. A Biological Assessment was completed for the project to address any potentially occurring threatened and endangered species possibly affected by the recommended project. On June 12, 2002, the FWS provided a response that the project is not likely to adversely affect listed species.

Utilities

The specific and exact location of Utilities (power lines, water and sewer lines, etc.) within the proposed right-of-way will be identified by field survey during pre-final design. Relocations will be performed where necessary with as minimal disruption to service as possible.

Monitoring or Enforcement

The FHWA, TxDOT and NTTA have committed to monitor final design development and construction of this project to ensure that all mitigation commitments made in the FEIS and this ROD are implemented. The monitoring effort will ensure that identified minimization and mitigation measures are included in the plans and specification, and will document the implementation of each commitment. An Environmental Quality Coordinator will monitor construction of the project to ensure that minimization and mitigation measures included in the plans and specification are implemented. The Environmental Quality Coordinator will also monitor construction of the project to ensure that any permit requirements and environmental commitments that have been made are implemented.

Conclusion

Based on the analysis and evaluation contained in this project's FEIS and after careful consideration of the entire social, economic, and environmental factors and input from the public involvement process Alternative C/A is hereby adopted as the selected alternative for this project.

Signed on June 13, 2005, by Salvador Deocampo, District Engineer, Texas Division, Federal Highway Administration.

APPENDIX A

Public Hearing Comment and Response Report - SH 121 FEIS

Note: Due to the overlap and repetition of some comments, similar comments were consolidated and paraphrased to reduce duplication. As a result, the comments that appear in this report are often not the precise words found in the commenter's written comment, letter or verbal comment. This has been done to reduce duplication of similar comments that elicited a common response and in no way was intended to obscure the substance of a comment.

Comments on Access

Comment #1-1 (1 Commenter)

The Alamo Heights neighborhood will not have access to this road (SH 121) but it will route more traffic through our neighborhood.

Response

The homes in these neighborhoods are located north of West Vickery Boulevard behind commercial property. The proposed SH 121 would displace a number of commercial buildings on the south side of West Vickery Boulevard but those on the north would remain in place. The only access points to West Vickery Boulevard from the proposed SH 121 would be at Montgomery Street and south of the rail yards at Stonegate Boulevard and Hulen Street. Such indirect access would lessen the likelihood of secondary development along, or redevelopment of, West Vickery Boulevard. The neighborhoods would remain behind the row of commercial buildings between West Vickery

Boulevard and IH 30, somewhat protected from the existing transportation corridor through which the proposed SH 121 would pass. Alamo Heights will have access to SH 121 via the Montgomery Street interchange or via Hulen Street to the Stonegate Boulevard interchange. The homes in this neighborhood are located north of West Vickery Boulevard behind commercial property. Vickery Boulevard currently serves as a transportation corridor on the south side of Alamo Heights, and would continue to do so with the SH 121 project in place. Access to SH 121 to and from the north would be via Hulen Street and Montgomery Street. Because these two arterials would continue to function as the arterial roadways as they are today, it is unlikely that additional traffic would be routed through the Alamo Heights neighborhood due to the proposed facility.

Comments on Air Quality Impacts

Comment #2-1 (3 Commenters)

At least three models exist that would allow $PM_{2.5}$ concentrations to be measured on a project-level basis.

Response

According to the commenter there are at least three different models which can be used to measure project-level $PM_{2.5}$ concentrations. The three models mentioned not only fail to accurately measure $PM_{2.5}$ concentrations at the project-level as explained below, they also fail to provide an accurate measurement for five of the six criteria pollutants that are subject to the National Ambient Air Quality Standards (NAAQS).

The NAAQS were established by the Environmental Protection Agency (EPA) for these six criteria pollutants because these pollutants were identified as having the potential to impact air quality in urban areas. The criteria pollutants are ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, particulate matter (PM10 and $PM_{2.5}$), and lead. The NAAQS are set by determining the exposure levels where potential threats to human health and the environment occur. Nonattainment areas and any associated health risk from potential air pollutants are determined on a regional basis. The particulate matter NAAQS reflect values the EPA deems safe for both the general population and sensitive populations (young, old, pulmonary impaired). These standards also have a margin of safety built into them.

Particulate matter includes both "primary" PM, which is directly emitted into the air, and "secondary" PM, which forms indirectly from fuel combustion and other sources. Generally, coarse PM is made up of primary particles, while fine PM is dominated by secondary particles. Primary PM consists of carbon emitted from such sources as cars, trucks, heavy equipment, forest fires, and burning waste. Secondary PM forms in the atmosphere from gases. Some of these reactions require sunlight and/or water vapor.

Secondary PM includes: 1) sulfates formed from sulfur dioxide emissions from power plants and industrial facilities; 2) nitrates formed from nitrogen oxide emissions from cars, trucks, and power plants; and 3) carbon formed from reactive organic gas emissions from cars, trucks, industrial facilities, forest fires, and biogenic sources such as trees. For further reference see EPA's "The Particle Pollution Report: Current Understanding of Air Quality and Emissions through 2003."

EPA required states to conduct three years of extensive area-wide $PM_{2.5}$ monitoring before formal designations could occur. Texas completed this effort in 2002 and submitted the required information to EPA for its use in determining $PM_{2.5}$ nonattainment areas (February 13, 2004 letter from Governor Rick Perry to EPA Regional Administrator Richard Greene).

After a thorough review of this information EPA concurred that the entire State of Texas is in compliance with $PM_{2.5}$ standards (June 28, 2004 letter from Richard Greene to Governor Rick Perry). Final $PM_{2.5}$ designations were published in the January 5, 2005 issue of the Federal Register.

The models referenced by the commenter do not accurately measure project-level air toxics. One model referenced by the commenter as being able to measures $PM_{2.5}$ on a project-level basis is CALPUFF. But EPA has determined that: "…CALPUFF in its current configuration is suitable for regulatory use [only] for long range transport, and on a case-by-case basis for complex wind situations" (See Federal Register Vol. 68, No. 72 pp. 18441, April 15, 2003). It would not be appropriate to use CALPUFF for evaluating potential impact on nearby neighborhoods, when EPA recommends CALPUFF's use for "…sulfur dioxide and particulate matter ambient air quality standards and PSD incremental impact analysis involving…transport greater than 50km from one or several closely spaced sources…" According to EPA, this model is useful for modeling emissions from distant point sources, but not for modeling linear transportation sources.

The second model mentioned is the Industrial Source Complex Dispersion model or ISC3. This model is designed to support EPA's regulatory modeling programs for industrial sources. As described by EPA ISC3 can be used to assess pollutant concentrations from a wide variety of sources associated with an industrial complex. This model is not useful for modeling linear transportation sources.

Finally, the third model mentioned is CALINE3. This model is a dispersion model designed to determine certain types of air pollution concentrations at receptor locations downwind of "at-grade," "fill," "bridge," and "cut section" highways located in relatively uncomplicated terrain. A recent study sponsored by FHWA used CALINE in analyzing the correlation between $PM_{2.5}$ and traffic activity on a project-level basis in several major U.S. cities - New York City, Baltimore, Pittsburgh, Atlanta, Detroit, and Los Angeles. The report, "Correlating Particulate Matter Mobile Source Emissions to Ambient Air Quality" concluded that CALINE is not useful for determining project level PM emissions in urban areas and that only a weak correlation between $PM_{2.5}$ concentrations and traffic activity could be found at some of the sites, while no correlation at all could be found at other sites.

It must be noted that designation as a nonattainment area for PM is neither contemplated nor imminent for the Dallas/Fort Worth (DFW) area according to the Texas Commission on Environmental Quality (TCEQ). As EPA has not determined a suitable model to measure $PM_{2.5}$ concentrations on a project-level basis, the Federal Highway Administration regulations do not require evaluation of the potential impacts of $PM_{2.5}$ for this project.

In conclusion it is also noted that the EPA has identified certain air pollutants or air toxics as mobile source air toxics or MSATs. While the Clean Air Act identified 188 air toxics, also known as hazardous air pollutants, the agency selected 21 that it considered primary MSATs. From that group the EPA then selected six as the priority group of MSATs. These include benzene, formaldehyde, acetaldehyde, 1,3-butadiene, acrolein and diesel particulate/diesel exhaust organic gases. The EPA issued its final rule on *Control of Emissions of Hazardous Air Pollutants from Mobile Sources* in March 2001(66 FR 17230, March 29, 2001). But while the EPA has identified the MSATs, the agency has still not proposed to establish ambient standards for any of these pollutants. Therefore, there is no baseline from which to judge any of these emissions from a linear transportation project.

Comment #2-2 (2 Commenters)

The commenter noted that there is no discussion of the negative health effects of $PM_{2.5}$.

Response

EPA has set a health-based standard for both short-term and long-term exposure to $PM_{2.5}$. Section 109 of the federal Clean Air Act (42 U.S.C. 7409) directs the EPA Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants identified under section 108 of the Act. Section 109(b)(1) of the Act defines a primary standard as one "the attainment and maintenance of which in the judgment of the Administrator, based on [the] criteria and allowing an adequate margin of safety, are requisite to protect the public health." The margin of safety requirement was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting, as well as to provide a reasonable degree of protection against hazards that research has not yet identified. Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, by selecting primary standards that provide an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may be found to pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree. The Act does not require the Administrator to establish a primary NAAQS at a zero-risk level, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment.

EPA determined that during a short-term period [Federal Register July 18th, 1997, (Vol. 62, no.138 pp. 38651-38760)] (24-hour average) PM concentrations should not exceed 65 $\mu g/m^3$. The long-term standard is based on an annual average where PM concentrations should not exceed 15 $\mu g/m^3$. The EPA has yet to develop any national peer reviewed and approved guidance on how to conduct scientifically valid and reliable mobile source air toxics health assessments that use these toxicity factors. The Federal Highway Administration must rely on EPA to provide validated and scientifically reliable methods to conduct any such analyses. Also see response to comment #2-1.

Comment #2-3 (1 Commenter)

The commenter states that there is no information provided in the EIS identifying current $PM_{2.5}$ levels, nor are there included any predicted increases to determine the impact on the national standard.

Response

The TCEQ currently operates numerous $PM_{2.5}$ monitors throughout the DFW area, several of which are in Tarrant County. Current monitoring data from TCEQ indicates that all monitors in the DFW area, and across the state, continue to remain in compliance with the $PM_{2.5}$ standard. More detailed information about the location and data from the individual sites in the DFW area or across the state can be found on the TCEQ website at http://www.tnrcc.state.tx.us/cgi-bin/monops/particulates.

EPA's "The Particle Pollution Report: Current Understanding of Air Quality and Emissions through 2003" discusses the continuing downward trend of emissions of both PM10 and $PM_{2.5}$. $PM_{2.5}$ levels in 2003 were the lowest they have been since nationwide $PM_{2.5}$ monitoring began in 1999. Programs such as EPA's Acid Rain Program have contributed to these reductions. As Federal diesel fuel and engine standards continue to be implemented, this downward trend in PM emissions is expected to continue. $PM_{2.5}$ is addressed in Subsection 5.10.1, Mesoscale Analysis, of the FEIS.

See also Responses to Comments 2-1 and 2-2.

Comment #2-4 (2 Commenters)

The commenter includes a report by Dr. Michael Kleinman, which examines negative health effects associated with proximity to roadways. The commenter claims that this report was ignored and that the FEIS stated that there is no meaningful way to evaluate the negative health effects of air toxic emissions.

Response

Please see Response to Comment #2-2.

Dr. Kleinman's report was considered and all of the published studies cited therein as is summarized below. These studies were reviewed in the following three contexts.

When the State Highway 121 Project is completed, the technology of the vehicular mix utilizing the SH 121 facility would be substantially different than it was at the time of the studies cited by the commenters, and substantially different than the technology today. Therefore, it can be anticipated that emissions would be cleaner in the future.

Second, the vehicular fuels utilized at the time of the studies cited by the commenters are substantially different from those in use today, and substantially different from the mix that would be in use when the 121 Project is completed. The EPA has projected that the reductions in MSATs emissions via several existing and new control program and technology-oriented vehicle standards will be considerable. *Control of Emissions of Hazardous Air Pollutants from Mobile Sources* (66 FR 17230, March 29, 2001). The agency also stated that there will be a 67 to 76 percent drop in benzene, acetaldehyde and 1,3-butadiene between 1990 and 2020. For highway-related diesel particulate matter, the agency projects a 90 percent reduction by 2020.

Third, with regard to the studies from other countries, the emissions profile and gasoline/diesel mix of the vehicular fleet in the United States is today, and likely would continue to be in the future, substantially different differ from any other place in the world.

The following is a synopsis of a review of the studies cited by the commenter.

A. Excerpts from U.S. EPA Air Quality Criteria for Particulate Matter (Third external Review Draft, April 2002): Volume II: Epidemiology of Human Health Effects from Ambient Particulate Matter.

These reports are extensive and conclude that PM emissions can be harmful to human health. The reports, however, do not indicate that PM emissions are steadily increasing in urban areas in the United States. In fact there are other published studies that report PM emissions decreasing. EPA's own "Air Quality Trends" reports on PM and the EPA's "The Particle Pollution Report" both indicate improvements in PM levels across the U.S.

B. Sonoma Technology, Inc. Assessment of Health Benefits of Improving Air Quality in Houston, Texas.

This study is based on data collected from the late 1990s. The report concludes that there are substantial health benefits of reducing PM emissions. One of the strategies the report recommends pursuing is the use of cleaner diesel fuel. The EPA, since the study, has promulgated rules (discussed in the Response to Comment 2-1) improving on- and off-road diesel fuel and applying equally stringent emission standards for on- and off-highway diesel-powered equipment. The EPA rules would be in effect for vehicles utilizing SH 121.

C. Expert Report of Dr. Michael Kleinman

Dr. Kleinman reports that there is an association between adverse health effects and living near roadways with heavy traffic. The studies cited by Dr. Kleinman, however, all look to historical trends that do not reflect current circumstances. These studies do not speculate on what

effect long-term downward trends in PM and air toxic emissions in the United States may have on future populations.

The EPA, in contrast, does attempt to quantify the level of decreased cancer risk and other acute and chronic impacts anticipated emissions decreases might have on a future U.S. population. The EPA finds almost universally positive benefits on future urban populations. See RIA for Tier II, HDDV standards, Off-road proposed standards; Regulatory Impact Analysis (Chapter II: Health and Welfare Concerns and Emissions Benefits from Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements EPA420-R-00-026 January 2001); and Regulatory Impact Analysis from Control of Air Pollution from New Motor Vehicles: Tier II/Gasoline Sulfur EPA 420-R-99-023, December 22, 1999, National Air Quality and Trends Report; and Texas Commission on Environmental Quality VMT offset SIP, 1997).

D. Summaries of health studies reporting on health effects associated with living near areas with heavy traffic.

1. Bruekreef, et al.

This study was conducted in the Netherlands during 1995. The differences between the fuel used for motor transport between the United States and Western Europe are substantial. The European fleet uses substantially more diesel fuel and the U.S. vehicle fleet includes substantially more gasoline-powered vehicles. The U.S. Department of Energy (DOE) statistics for the output of refined products by country provides a rough estimate of the differences. In 2000, the United States used diesel fuel for about 33 percent of its surface transportation needs. Western Europe, in contrast, used about 60 percent diesel fuel for its surface transportation needs or roughly twice as much. The Netherlands specifically used 57 percent diesel fuel for surface transportation. As another indicator of the relative popularity of diesel power in Europe, the Diesel Technology Forum estimated that just light-duty diesel sales in Europe were 14 percent of the light-duty market in 1990, those sales climbed to 22 percent in 1995, and today represents 33 percent. The U.S. market for light-duty diesels is less than one percent of total vehicle sales. See Demand for Diesels the European Experience, The Diesel Technology Forum 2001. Thus, the relevance of the study to SH 121 is problematic.

2. Buckeridge, et al.

This study looked at hospital admissions between 1990 and 1992 in Southeast Toronto, Canada. Although Canada has automotive technology similar to the United States, Canada does not completely match the stringency of U.S. standards. The usefulness of the study is limited, moreover, because of the time the data was collected, where it was collected, and the differences in technologies and fuel used in Canada in early 1990s versus what would be used in the United States after 2010.

3. Mukala, et al.

This study looked at traffic-related health impacts to schoolchildren in Helsinki, Finland during 1991. As in the studies considered above, it is inherently problematic to assess the potential impacts to a 2009 U.S. population on the basis of data regarding an early 1990s Western European vehicle and fuel mix.

4. Steerenberg, et al.

The authors evaluated the impact of traffic-related pollutants (nitric oxide, nitrogen dioxide, carbon monoxide and black smoke) on respiratory symptoms in Germany based on data collected during the late 1990s. The study is not reflective of what emissions may be seen along a future roadway in the United States, with a heavily-regulated U.S. fleet of cars and trucks and the low sulfur U.S. gasoline and diesel fuel that would be in use by 2009.

5. Vliet, et al.

This study was also study conducted in Western Europe (the Netherlands) in the 1990s. As in the studies considered above, it is inherently problematic to assess the potential impacts to a 2009 U.S. population on the basis of data regarding an early 1990s Western European vehicle and fuel mix.

6. Wjst, et al.

This study was conducted in Munich, Germany in the late 1980s and early 1990s. Germany's diesel fuel use is on average higher than that of other Western European countries, with roughly two-thirds of its surface transportation fleet fueled by diesel. As in the studies considered above, it is inherently problematic to assess the potential impacts to a 2009 U.S. population on the basis of data regarding an early 1990s Western European vehicle and fuel mix.

7. Dejmek et al.

This study was conducted in Northern Bohemia based on data collected during the years 1994-1998. Emissions of particulates, and other pollutants were assumed to come from "chemical industry, surface mining, and large coal power plants." The study is not relevant to the proposed SH 121, because the species of PM emissions studied (coal plant emissions, industrial emissions, and crustal material from mining operations) are substantially different from potential emissions from mobile sources. The levels of PM emissions experienced by this population were considerably higher, and of much longer term, then would be anticipated for a population living near a modern highway in the United States in 2009.

8. Dejmek et al.

This was a follow-up to the previous study of the same population looking more closely at poly cyclicaromatic hydrocarbons sometimes found in association with particulate matter. Again, this study suffers from the same deficiencies as the previous study with regard to its predictive power in determining the health effects on a 2009 U.S. vehicle and fuel mix.

9. Ritz, et al.

This study was conducted in California between 1987 and 1993. The study concludes that "…certain fetal heart phenotypes may be susceptible to the adverse effects of two ambient pollutants, carbon monoxide and ozone." The analysis regarding SH 121 specifically concluded there would be no violations of the carbon monoxide or ozone NAAQS. This study is not relevant because the proposed SH 121 project is not estimated to increase either of these pollutants.

10. Edwards, et al.

This study was conducted in Birmingham, England based on data collected between 1988 and 1991. The study looked at the relationship between proximity to major roadways and hospital admissions for asthma in children younger than five years. As discussed above, the differences between the fuel used for motor transport between the United States and Western Europe were, and are likely to remain, substantially different. The United States uses substantially more gasoline-fueled vehicles than Europe, where they use substantially more diesel fuel. The DOE statistics for the output of refined products by country provide a rough estimate of the differences. In 2000, the United States used diesel fuel for about 33 percent of its surface transportation needs. Western Europe, in contrast, used about 60 percent diesel fuel for its surface transportation needs or roughly twice as much. The United Kingdom specifically used 50 percent diesel fuel for surface transportation. Regarding asthma, the American Lung Association reported in March of 2003 for the U.S., the "…mortality and hospital discharge estimates [for asthma] continue to decline. The number of deaths due to asthma in

2000 was approximately four percent lower than the number of deaths seen in 1999. The hospital discharge rate has declined 14 percent since it peaked…in 1995". This study is not relevant to the SH 121 project.

11. Guo, et al.

This study was conducted in Taiwan, China in the 1990s. Asia/Oceania is very similar to Western Europe in its vehicle/fuel mix. Sixty percent to two-thirds of surface transportation uses diesel fuel. In Taiwan specifically, about 50 percent of the fuel used for transportation is diesel fuel. The U.S. uses less, at about one-third of all surface transportation. As in the studies considered above, it is inherently problematic to assess the potential impacts to a 2009 U.S. population on the basis of data regarding an early 1990s Asia/Oceania vehicle and fuel mix.

12. Studnicka, et al.

This four-year study was conducted in Lower Austria in the early 1990s regarding asthma and other respiratory symptoms. The study does not reflect a comparable traffic mix (gasoline versus diesel vehicles) or an appropriate vehicle mix (2009 U.S.-certified technologies), nor does the study mirror the fuels that would be used in the United States. All of these factors make this study of little utility in considering potential impacts associated with a future SH 121.

13. Wyler, et al.

This study was conducted in Basel, Switzerland in the late 1990s. The study concludes: "These results suggest that living on busy roads is associated with a higher risk for a sensitization to pollen and could possibly be interpreted as an indication for interactions between pollen and air pollutants". As a study primarily of the effects of pollen, it is of limited utility is assessing the health impacts of PM emissions. As in the studies considered above, it is inherently problematic to assess the potential impacts to a 2009 U.S. population on the basis of data regarding an early 1990s Western European vehicle and fuel mix.

14. A la Tertre, et al.

This study looked at hospital admissions in Barcelona, Spain, Birmingham and London, England, Milan, Italy, Amsterdam, Netherlands, Paris, France, Rome, Italy, and Stockholm, Sweden in the 1990s. The study concludes that cardiac conditions may be associated with exposure to diesel exhaust. As in the studies considered above, it is inherently problematic to assess the potential impacts to a 2009 U.S. population on the basis of data regarding an early 1990s Western European vehicle and fuel mix.

15. Hoek, et al.

This study was conducted in the Netherlands in 1986. As in the studies considered above, it is inherently problematic to assess the potential impacts to a 2009 U.S. population on the basis of data regarding an early 1990s Western European vehicle and fuel mix.

16. Knox, et al.

This study looked at childhood cancers in Great Britain between 1953 and 1980. Great Britain used very large amounts of coal in the years after the Second World War. These coal-sourced PM emissions are somewhat different than those produced by a modern gasoline and diesel-powered vehicle fleet. As in the studies considered above, it is inherently problematic to assess the potential impacts to a 2009 U.S. population on the basis of data regarding an early 1990s Western Europe vehicle and fuel mix.

17. Pearson, et al.

This study was conducted in Denver in 1980 and looked at exposure to benzene. Since the 1990 Clean Air Act Amendments, benzene reduction from mobile sources has achieved remarkable success in the United States, especially in reformulated gasoline (RFG) areas like Houston. Houston has used RFG since 1995. The EPA in their Air Quality Trends Report on air toxics indicates that: "Measurements (of benzene) taken at these sites show, on average, a 47 percent drop in benzene levels from 1994 to 2000. During this period, EPA phased in new (so-called "Tier 1") car emission standards; required many cities to begin using cleaner burning gasoline; and set standards that required substantial reductions in benzene and other pollutants emitted from oil refineries and chemical processes. The EPA estimates that, nationwide, benzene emissions from all sources dropped 20 percent from 1990 to 1996." With Tier II standards and the EPA's new on-road HDDV standards, this reduction trend in ambient levels of benzene is expected to continue. Thus, the relevance of the study to SH 121 is problematic.

18. Raaschou-Nielsen, et al.

This study was conducted in Denmark based on data collected between 1968 and 1991. As in the studies considered above, it is inherently problematic to assess the potential impacts to a 2009 U.S. population on the basis of data regarding an early 1990s Western European vehicle and fuel mix.

19. U.S. Health Assessment Document for Diesel Exhaust.

This study suffers from a fundamental infirmity in that it was based on a review of outmoded technology: "The assessment's health hazard conclusions are based on exposure to exhaust from diesel engines built prior to the mid-1990s." The report elaborates: "As new diesel engines with cleaner exhaust emission replace existing engines, the applicability of the conclusions in this Heath Assessment Document will need to be reevaluated." The study further articulates its own limitations: "A notable uncertainty of this assessment is whether the health hazards identified from studies using emissions from older engines can be applied to present-day environmental emissions...[or the future SH 121 vehicle and fuel mix]...as some physical and chemical characteristics of the emissions from certain sources have changed over time." As the study's authors suggest, the study might have very little relevance at the time the SH 121 is completed.

One of the conclusions of this study was: "The assessment concludes that long-term (i.e. chronic) inhalation exposure is likely to pose a lung cancer hazard to humans...." However, the study does not consider whether levels of exposure in 2009, anticipated to be lower than today's levels, would produce the same effects.

The study, moreover, found toxic effects at levels higher and in some cases much higher than actual exposure levels near freeways: "...the national average diesel exhaust exposure from on-road engines.... 0.5 to 0.8 micrograms per cubic meter of inhaled air in many rural and urban areas...For localized urban areas...may range up to 4.0 micrograms per cubic meter..." One reference exposure level looked at for chronic effects in the study were 5.0 micrograms per cubic meter. These authors, however, had to employ higher exposure levels, in some cases 10 times higher, in order to find long-term health impacts, and caution that: "Other uncertainties include the assumptions that health effects observed at high doses may be applicable to low doses, and that toxicological findings in laboratory animals generally are predictive of human responses". The study was based upon outmoded technology and the relevance of the study to SH 121 is problematic.

Additional FHWA research regarding air quality is currently in the planning stages. However, it is impossible to determine and analyze the impacts of MSATs on individual projects at this time. FHWA will continue to study this issue and as soon as the EPA has approved a viable method to assess health impacts from MSATs, FHWA will adopt and employ that methodology on projects where project-level impacts are considered a potential public health risk.

Comment #2-5 (1 Commenter)

The commenter claims that based upon all of the studies provided there will be additional health risks to those living nearby.

Response

FHWA has performed or is currently managing, several research projects many of which are based on an Air Toxics Research Workplan that provides a roadmap for agency research efforts. These efforts include:

Air Toxics Supersite Study (Traffic and Ambient Concentration Study). This study is designed to determine whether the contribution of vehicle-emitted air toxic compound concentrations to ambient air concentrations can be measured. The study is being conducted in conjunction with a particulate matter study to determine whether air toxic compounds (and PM) are local air quality impacts or regional concerns.

Air Toxics Monitoring and Modeling Study. This study is designed to determine the reliability of emission models in predicting ambient measured air toxic concentrations. This is an important component of air toxics research since models are typically used for developing emission inventories and the resulting mitigation programs designed to limit emissions. Accurate forecasting of future emissions is essential to programs implemented to reduce toxic emissions.

Kansas City Study. This study is designed to determine the distribution of PM emissions in a randomly selected fleet as well as identify the percent of high emitters in the fleet. The Kansas City Study was initiated to conduct exhaust emissions testing on 480 light-duty, gasoline vehicles in the Kansas City Metropolitan Area (KCMA). This project will also characterize gaseous and PM toxics exhaust emissions from a portion of these light-duty vehicles. Data obtained from this program will be used to evaluate and update emission models, evaluate existing emission inventories, and assess the relevance of previous emissions studies.

Detroit Exposure Aerosol Research Study (DEARS). This study is designed to improve the ambient air-monitoring network to elucidate the extent to which air toxics are a potential human health concern. Detroit was selected based on the presence of major industrial and mobile sources. Homes within the study will be selected to evaluate the impact of these sources on exposures and to determine high-end exposure. These data will be used to further evaluate and refine human exposure models that characterize the magnitude of exposure along with its uncertainty and variability. In addition, the methods developed and applied in this study can be used as a prototype for other community-based air toxic programs.

Multiple Air Toxics Exposure Study Science and Uncertainty Review (MATES-II). This study is designed to evaluate the scientific techniques of a Southern California study to determine whether these techniques would be appropriate for use today, and the scientific uncertainties associated with the 1998 study. There are two phases to the study. The first examines the transportation side (activity, emissions and concentrations), while the second looks at the toxicity and exposure assessments conducted as part of MATES-II. FHWA wants to better understand how the results were obtained and how relevant they are to transportation planning.

Knowledge Gaps and Research Needs in Linking Mobile Source Air Toxics (MSAT) To Potential Public Health Risks. This study, to be conducted by the independent Health Effects Institute (HEI), is designed to better understand the fundamental science and relationships between transportation vehicle emissions, potential and actual human health impacts, determine the technical strength of published studies, and identify data quality gaps and data gaps. The final study report will summarize concentration and dose-response relationships, toxic effects, and their relation to actual human health impacts that could result from real-world exposures to the extent possible. Researchers will be asked to evaluate the quality of study findings for use in risk assessments and the quality of such data on risk assessment numerical findings. Research cooperators can then synthesize their technical findings to identify knowledge gaps and research needed to determine the strength of linkages between mobile source air toxics, potential public health risks as expressed in epidemiology or risk assessment studies, and frank health effects with clearly definable cause and effect relationships. Researchers will be asked to identify the chemical and physical composition of MSAT, identify variability in MSAT, and identify the strength of relationships between MSAT related pollutants and their potential health effects.

Additional FHWA research regarding air quality is currently in the planning stages. However, it is impossible to determine and analyze the impacts of mobile source air toxins (MSATs) on individual projects at this time. FHWA will continue to study this issue and as soon as the EPA has approved a viable method to assess health impacts from MSATs, FHWA will adopt and employ that methodology on projects where project-level impacts are considered a potential public health risk.

Please see response to Comments #2-1 through #2-4.

Comment #2-6 (2 Commenters)

The Environmental Impact Statement predicts explosive growth due to the project, yet it also predicts that air quality will improve. This prediction is incorrect. Residents along proposed SH 121 are not going to be commuting short distances right in their own area, and as a result net nitrous oxide emissions will increase.

Response

The term "explosive growth" is not used in the FEIS. In Section 2.1 (Purpose and Need) of the FEIS, population growth is discussed in the context of NCTCOG's *2030 Demographic Forecast* (April 2003). Likewise, growth and traffic demand is discussed in Section 2.2, and Section 5.10 of the FEIS within the framework of NCTCOG's *2025 Mobility Update* report. The FEIS does not predict that air quality will improve as a result of the proposed SH 121.

Emissions, including nitrous oxides, from area residents who do not commute short distances in their own area could not be evaluated for this project. Also, see response to Comment #2-1.

Comment #2-7 (3 Commenters)

NAAQS will accelerate dramatically in the Alamo Heights neighborhood. Will there be consistent (air quality) testing in this area?

Response

TCEQ is the responsible agency for installing and monitoring the air quality. In addition, EPA and TCEQ are the responsible agencies for regulating and determining locations for monitoring stations. The City maintains an air quality monitoring station for the TCEQ located north of the project area at the Haws Athletic Center, 600 Congress Street. The station has been operational since April of 2001 under EPA site number 48-439-1006.

Also, please see response to Comment #2-1 and 2-6. The TCEQ website (http://www.tnrcc.state.tx.us/gis/metadata/airmon_met.html) contains the locations of the various air monitoring stations throughout the state.

Comment #2-8 (3 Commenters)

Concerning the proposed 12-lane tollway and toll plaza at Vickery Boulevard, a 25 ft "green space" is not enough to protect residents from

pollution. The area needs a protective and attractive barrier to deflect fumes. Pollution would be intolerable with no physical barrier.

Response

Exhaust fumes are manifested in a gaseous state. As such, any barriers proposed for the project would not deflect exhaust fumes away from residential areas. The primary purpose of any proposed barriers for the project would be as abatement for noise impacts.

Comments on Alignment

Comment #3-1 (4 Commenters)

The northern terminus of the facility is inconsistently described in the FEIS. Occasionally it's referred to as beginning at I 30, sometimes at Forest Park, sometimes at Summit Avenue.

Response

The SH 121 northern terminus is on IH 30 near Summit Avenue as depicted on Exhibit 3.3 in the FEIS.

Comments on Project History

Comment #4-1 (1 Commenter)

Commenting on the history of the project, commenter suggests an inordinate amount of time has passed due to periods of inactivity on the part of city government and TxDOT and due to groups of people complaining about the project. Suggests that the project would impact everyone along proposed SH 121 but needs to be built.

Response

Comment noted and considered.

Comments on Arborlawn

Comment #5-1 (1 Commenter)

The agreement Overton Woods reached with City on configuration of Aborlawn/Bellaire is not included in the FEIS.

Response

We understand the commenter to be referring to the Arborlawn interchange rather than a Bellaire interchange to the proposed project. The configuration of the recommended alternative at the Arborlawn Interchange with SH 121 is in accordance with the City's February 25, 2003 resolution (#2923). In addition, the location of the Arborlawn/Bellaire intersection is in accordance with the City's plan.

As stated in the FEIS, access to Bellaire will be provided through the Arborlawn interchange.

Comments on Cumulative and Secondary Impacts

Comment #6-1 (1 Commenter)

Secondary and cumulative effects of the induced land use changes at Overton Woods are ignored because the project area is undeveloped. In order to pay its share of the roadway, the City of Fort Worth agreed to a special tax area to produce a growth of some $800 million in valuation in areas currently vacant in order to pay for SH 121. This contradicts FEIS theory of no induced land use.

Response

Development of areas is controlled by zoning laws enacted by local governmental authorities- here the City of Fort Worth. The vacant land that now provides the Overton Woods neighborhood's western border (adjacent to SH 121 proposed ROW) is already zoned for future residential development. Fort Worth city-planned roadways in the area include Arborlawn Boulevard and Bellaire Drive extension. These roadways are proposed for construction with or without the proposed SH 121, to allow development of the now-vacant area. In addition, a buffer of approximately 80 feet is proposed for either side of the proposed facility in this area. Therefore, secondary effects to the neighborhood would not be attributable to the proposed SH 121 tollroad. Cumulative effects would consist of additional residential housing construction adjacent to the existing housing, which is consistent with past actions. Again, the future zoning of the now-vacant land is the prerogative of the local government and was agreed upon by the City and neighborhood representatives on February 11, 2004 with independent utility. This was in the Fort Worth *Comprehensive Plan* and its thoroughfare plan and is reflected in the FEIS within Section 5.27.

The FEIS accounted for the development in the current undeveloped areas between Bryant-Irvin and Hulen as shown in Exhibit 5.9. The development of this area was included in the traffic (Table 3-5), economic (Section 5.7), and secondary and cumulative effect (Section 5.27) analyses for the project.

Future traffic projections were based on the North Central Texas Council of Government (NCTCOG) regional travel demand model, which includes future developments and roadways. Along with SH 121, developmental roadways have been proposed that would provide east west connection across the now vacant land between Bryant-Irvin and Hulen. The general locations and description of the proposed roadways were shown in the FEIS in Table 5-30 and Exhibits 3.2 through 3.6. These improvements are not dependent on the proposed SH 121 and would be constructed with or without SH 121 to provide additional transportation options for expected growth within the southwest region of Tarrant County.

Continued urbanization of the area is anticipated and would be guided by the Fort Worth *Comprehensive Plan*. The secondary and cumulative effects from development within the corridor could be both beneficial and adverse. Beneficial effects include new economic opportunities, housing alternatives, employment, services, and recreational resources. As development occurs, the need for additional infrastructure and services (transportation, utilities, fire, police, and emergency medical services) would increase. Potentially adverse cumulative effects include the loss of habitat, the potential for water quality effects, and the conversion of agricultural land associated with the continued suburbanization within the proposed project area. Efforts to minimize adverse effects are subject to the existing land use and development controls of the local jurisdictions, as well as State and Federal regulation, throughout the study area. The City of Fort Worth has included the proposed SH 121 roadway in their*Comprehensive Plan* to help plan for future growth and minimize its effects.

Comment #6-2 (1 Commenter)

Secondary and cumulative impacts should be mitigated by the use of noise barriers, buffers and low-mast lighting along the eastern side of SH 121 between the Trinity River and IH 20. Traffic control devices should be used to mitigate the cumulative and secondary effects of increased traffic.

Response

Amenities are defined as constructed or ecological features, traits, or characteristics that enhance and add to the value or desirability of the location, the feature of which is not entirely essential to the function of the project. Amenities can conserve and enhance areas, sites, and structures of special architectural or historic value; protect and enhance visual character and design quality along the city corridors and entranceways; protect and preserve natural amenities including trees and green space as well as preserve substantial vegetation and scenic views, and incorporates native trees and shrubbery into landscape plans.

Mitigation includes: Avoiding the impact altogether; Minimizing impact by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the impacted environment; reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and compensating for the impact by replacing or providing substitute resources or environments.

On December 30 2004, the City of Fort Worth, the NTTA, and TxDOT entered into an agreement that identified the NTTA's System-Wide design guidelines, and the City of Fort Worth's Nature and Character Plan as accurate reflections of the desired nature and character elements of the project. The detailed design and development of these elements would be achieved through the Corridor Master Plan (CMP) process scheduled to begin in March of 2005. The parties have agreed that NTTA will prepare the CMP prior to the preparation of the plans, specifications, and estimates for the project. The parties will conduct a Master Plan development process to further define the appropriate nature and character elements, and the locations of those elements, including a master landscape plan.

The Master Plan process will include a workshop to consider the "Trinity River Vision Master Plan" with respect to the design of the Trinity River bridges. The City may invite the Tarrant Regional Water District to attend and participate in the workshop. The Master Plan process shall build upon, and add the necessary detail to the substantial progress previously achieved by the Parties toward finalizing the project design elements.

Design amenity components of the CMP may include:

Smooth-Bottom effect at various proposed bridges in association with the project that would entail concrete box beams or other such structure to achieve a "smooth-bottom effect" as opposed to standard bridge beams.

Ornamental steel picket railing, planter walls, and adapted concrete railing at various interchanges and crossing elements.

Separated bridge spans and pedestrian access will be provided at certain locations.

A screen wall along the boundary of the Sunset Terrace neighborhood provided that consensus can be achieved among the affected parties and residents.

Details regarding a master landscape plan to include the provision of up to 4,700 trees within the roadway interchange areas of the project will be established during the Master Plan process.

A landscaped buffer along an area between the Alamo Heights neighborhood and the proposed toll plaza.

Retaining walls are proposed in various locations along the project in an effort to reduce the footprint and preserve certain existing trees.

While the CMP is outside the NEPA process, it is considered a crucial element in the construction planning by the signatories to the agreement.

Also please see response to Comment #16-1.

Comment #6-3 (9 Commenters)

The Environmental Impact Statement has failed to adequately recognize the cumulative impacts of both the maintenance facility and the toll plaza in terms of the noise, the vehicle exhaust, and the light pollution that will occur in the Alamo Heights neighborhood. Mitigation through a decorative masonry wall is needed. Landscaping enhancements to separate the neighborhood from the toll road is not adequate to resolve the cumulative impacts.

The cumulative impacts to the historic neighborhoods of Sunset Terrace and Mistletoe Heights and all of those road systems should be recognized and mitigation should be provided in the Final Environmental Impact Statement. Final Environmental Impact Statement has not adequately measured the cumulative impacts of noise, light and vehicle exhaust pollution to those neighborhoods.

Response

Noise, light, and vehicle exhaust pollution referred to by the commenters would be classified as direct impacts and are addressed in various sections of the FEIS. Discussion of Secondary and Cumulative Effects begins in Section 5.27 of the FEIS.

The project will support the Streams & Valleys program by committing to painting and lighting under IH 30, split bridge spans, a trailhead in the vicinity of Rosedale and allowing pedestrian access on Old Vickery Bridge.

Also please see response to Comment #6-2.

Comment #6-4 (3 Commenters)

There's no consideration for constructive use or for cumulative impacts.

Response

Section 4(f) refers to the original section within the Department of Transportation (DOT) Act of 1966 which set the requirement for consideration of park and recreational lands, wildlife and waterfowl refuges, and historic sites in transportation project development. The law, now codified in two places (49 U.S.C. 303 and 23 U.S.C. 138), is implemented by the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) through regulations found at 23 CFR 771.135. In discussing 4(f), "use" may mean either a direct use or constructive use. A direct use occurs when land is permanently incorporated into a transportation facility or when there is a temporary occupancy of land that is adverse to a 4(f) resource. Constructive use occurs when a project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are "substantially impaired."

The proposed SH 121 project does not constitute a constructive use of the potential historic district as the project's proximity impacts are not so severe that the protected activities, features, or attributes that qualify as a resource for protection under section 4(f) are substantially impaired. The NEPA process demonstrated that existing conditions would not significantly change for the historic properties. Protected activities, features or attributes would not be substantially diminished by the proposed project.

Issues of traffic, noise, and light pollution were evaluated and the THC concurred that no adverse effect to historic properties would occur as a result of the project. Therefore, project activities do not constitute a constructive use of any 4(f) properties. (See coordination letter to THC dated September 9, 2002 located in Appendix F of the FEIS.)

TxDOT reaffirmed that the subject project poses no adverse effect to historic properties in a letter to the THC dated October 6, 2004. The THC concurred with a no adverse effect to historic properties determination on October 20, 2004. Please see coordination letter to THC dated October 6, 2004 located in Appendix F of the FEIS. The FEIS includes a discussion of Secondary and Cumulative Effects in Section 5.27.

Comment #6-5 (1 Commenter)

There is no data contained in the FEIS to indicate that an adequate study of cumulative effects on historic neighborhoods at the northern terminus was accomplished.

Response

The cumulative effects on neighborhoods and historic properties were included in Section 5.27 of the FEIS. Coordination with THC resulted in a determination of no effect on historic neighborhoods and properties. THC reaffirmed the project posed no adverse effect to historic properties specific to the C/A alternative (see October 6, 2004, letter signed by THC on October 20, 2004, in Appendix F of the FEIS).

Comment #6-6 (1 Commenter)

Negative secondary and cumulative effects of the road on Overton Woods will be reduced with the configuration of a single interchange at Stonegate.

Response

Through the public involvement process, the City of Fort Worth recommended and adopted the Locally Preferred Alternative (City Council Resolution #2923). This resolution included the extension of Arborlawn from its current location west to Bryant-Irvin Road with a diamond interchange at SH 121. The Stonegate interchange was also included in the City's Resolution and was recommended initially in the Citizen's Advisory Committee recommendations.

Elimination of the Arborlawn interchange may or may not reduce secondary and cumulative effects; this was not an alternative presented in the FEIS and therefore was not studied. The elimination of the interchange could change traffic patterns, which can only be ascertained through computer travel demand modeling. These changes in travel patterns could benefit some communities but cause more noise and traffic impacts to others.

Comment #6-7 (1 Commenter)

A full analysis of secondary impacts was not included in the FEIS.

Response

Please see section 5.27 of the FEIS. The FEIS includes a discussion of Secondary and Cumulative Effects in Section 5.27. In addition, please see response to comment #6-1.

Comment #6-8 (1 Commenter)

Land development will increase development which will increase storm water [run-off]. These impacts must be disclosed in the FEIS.

Response

The proposed SH 121 roadway could potentially have a secondary affect on surface waters and water quality as the new roadway would improve access to now undeveloped land. Continued urbanization of the proposed SH 121 area south of West Vickery Boulevard is anticipated, guided by the Fort Worth *Comprehensive Plan.* Potential effects could include the loss of habitat and wetlands and decrease in water quality effects associated with the continued suburbanization within the proposed project area. Efforts to minimize adverse effects of suburbanization, which are already well underway, are subject to the existing land use and development controls of the local jurisdictions, as well as State and Federal regulation including Section 401 and Section 404 of the Clean Water Act. The City of Fort Worth has included the proposed SH 121 roadway in their *Comprehensive Plan* to help plan for future growth and minimize its effects. Please see section 5.27 of the FEIS.

Comments on Drainage issues

Comment #7-1 (2 Commenters)

The FEIS fails to analyze the ability of the storm sewer system to handle an additional volume of runoff as a result of the new road system. Are there detention ponds associated with the project?

Response

As the FEIS states on page 5-74, several locations have been identified where the project study corridor crosses Federal Emergency Management Agency (FEMA) floodplains and floodways. Three of these crossings involve bridge structures that would be constructed over the Clear Fork Trinity River. In each case, SH 121 east of University Drive, Hulen Street, and SH 121 west of Hulen Street, the operating assumption was that the bridge piers would be placed outside the 100-year floodplain and therefore no impact to the 100-year water surface elevations are expected. Further, although the main span of the bridges would only span the 100-year floodplain, bridge piers would be within the 500-year conveyance area. Additional flow area would be available due to additional bridge spans on either side of the main span at both crossings of the river.

FEMA & Corridor Development Certificate (CDC) requirements state that flood elevations cannot be raised by more than one foot. Because of the additional spans on the three Clear Fork Trinity River bridges and the potential for earthwork to increase the conveyance area of the bridge, it is not anticipated that flood elevations would be raised by more than one foot due to the SH 121 project.

Preliminary analysis was performed on the existing storm drain system's ability to convey the anticipated runoff in the Vickery corridor from Montgomery Street to Hulen Street. Currently, storm water is conveyed in an existing underground storm drain system beneath the UP rail yard. The assumption made during the preliminary drainage analysis in this area was that the proposed peak discharge from the project ROW would be no greater than the current peak discharge. Increases in peak discharge that could be produced due to an increase in impervious area of the new project paving could be managed by storage in box culverts, detention basins, and other techniques. Final design and sizing of these features will be performed during the detailed design phase.

In the area of the Arborlawn Drive interchange, preliminary drainage analyses determined cross-drainage structures were needed. It was verified that a combination of box culverts and ditch flow could be used to convey storm water north to the Trinity River. Based on public involvement and City staff requests to lower the roadway as much as possible, a subsurface storm drain system would be used to convey storm water to the Clear Fork Trinity River.

In areas south of IH 20, there are several locations where cross-drainage would be affected by the project. Culverts would be used with additional strategies to control the time release of runoff in addition to controlling flow velocities. If appurtenances such as storage or baffling are required, those elements would be incorporated in the detailed design phase.

An engineering analysis of the design constraints and potential drainage effects of the project has been completed. Given the stage of engineering development of the project at this time, it has been determined that the project schematic design is adequate to account for the increased runoff that would be produced by the project. In all cases, applicable regulations and policies will be adhered to, such as those required by NTTA, TxDOT, and the City of Fort Worth. Additionally, all applicable FEMA, CDC and USACE requirements will be met as the detailed project design is developed.

The need for detention ponds will be determined in the final design of the project and will be in accordance with TxDOT standard design specifications that consider drainage issues and adhere to FEMA and City regulations.

Comments on Geometric Concerns

Comment #8-1 (5 Commenters)

Concerned that there will be a 30 ft bridge adjacent to Park Palisades and that the ROW line is zero ft from the Park Palisades boundary. There would be no room for a berm to reduce noise and visual impacts to park Palisades. Also concerned about the size of the median adjacent to Park Palisades. Request that the highway be moved as far to the west in the right of way as possible, lower Dutch Branch Road and move the intersection of Dirks and Altamesa and State Highway 121 to the south.

Response

The roadway ROW boundary is immediately adjacent to Park Palisades at Dutch Branch and would be a maximum of 17 feet higher than the natural ground at the east roadway ROW line. The widened median is in response to the City's Resolution #2923. It is feasible to move the roadway west approximately 52 feet with the City's approval. The FEIS addresses noise mitigation for this location, with a proposed wall ranging from 8 and 12 feet. This wall could potentially provide the additional benefit as a visual screen. The City's resolution did not include lowering Dutch Branch Road. A plan would be presented for consideration by the City to move Dirks/Altamesa to the south. These concerns will be addressed in the CMP. A discussion about the CMP is located in response to Comment #6-2.

Comment #8-2 (2 Commenters)

Limit the speed limit to 50 miles an hour, which would reduce air and noise pollution. Prohibiting truck traffic along SH 121 could also reduce air and noise pollution. Installation of additional landscaping along the road and at intersections, design bridges, walls and railings to be context sensitive, use the lowest profile possible, clear a right of way to accommodate no more than two lanes each way and install low mass cutoff lighting in order to mitigate for the effects of noise, light, and visual pollution.

Response

Comment noted and considered. These issues will be addressed in the CMP process. A discussion concerning the CMP is located in the Response to Comment #6-2.

Comment #8-3 (1 Commenter)

Will be virtually impossible for people who live west of Bryant-Irvin to get across to Hulen on Oakmont or on Overton Ridge.

Response

Access from either side of SH 121 via Oakmont or Overton Ridge would not change except for an additional intersection on each roadway.

Comment #8-4 (1 Commenter)

FEIS does not include any study on the impact of the facility to the Summit Avenue intersection.

Response

Access to and from Summit is not changing. Access to Forest Park Boulevard from westbound IH30 would require passing through the Summit intersection, per the City's resolution #2923. Summit Avenue is within the project study corridor and was included in the environmental analysis of the FEIS.

Comment #8-5 (1 Commenter)

Drop 121 below ground level between Dirks Road and Oakmont Boulevard. Use excavated earth to form sound barriers. Plant trees on top of barriers to help reduce noise level. Project would save $25,000 per house with free dirt.

Response

As the City's PDT discovered, it is not feasible due to drainage reasons to lower SH 121 below grade in the Dutch Branch area enough to allow Dutch Branch to go over SH 121. SH 121 is below grade for approximately half the distance from Oakmont to Dirks.

Comment #8-6 (1 Commenter)

Concerned that a vast amount of money will be spent on a road I have to pay for but which will shorten my drive time from Summit to Bryant Irving/SH 183 by only 3 minutes.

Response

Comment noted and considered.

Comment #8-7 (1 Commenter)

Dutch Branch overpass should incorporate step walls to mitigate the impact of the roadway.

Response

Comment noted and considered.

Step walls are considered an aesthetic element. Aesthetic elements will be detailed in the CMP to be developed in the spring of 2005.

Also, please see response to Comment #6-2.

Comments on Hike and Bike Trail

Comment #9-1 (2 Commenters)

Include parking areas under the bridges near University Drive and Stonegate Boulevard to enhance the use of the trail heads.

Response

Parking areas for trail heads will be addressed in the CMP to be developed in the spring of 2005.

Comment #9-2 (2 Commenters)

Ensure that all the people using the trail have safe detours to continue the greenbelt so that the greenbelt trail system stays in use all the time during construction.

Response

In order to ensure the safety of the public, trail users would be detoured during construction activities, i.e., moving support beams above the trail, at these locations. Detour of the trail at these locations would be temporary and of short duration. Users of the trail would be detoured only when the area is operating as a construction zone. When construction activities at each location pose no potential harm to trail users the trail would be re-opened for use at that location. No property ownership transfers for any portion of the bike trail or for any property controlled by Tarrant Regional Water District (TRWD) would occur. No portion of the bike trail or property controlled by TRWD would be retained for long-term use by NTTA or TxDOT. Exhibit 4.6 of the FEIS illustrates these detours.

NTTA and TxDOT proposes to provide a reasonable and safe detour route for the trail users during the construction at the previous described locations, pursuant to 23 U.S.C. 109 (m). The temporary trail detour would not result in temporary or permanent adverse changes to the activities, features, or attributes, which are essential to the purpose or functions of the trail. NTTA and TxDOT would coordinate the route and operation of the temporary detour with the TRWD. Prior to construction, NTTA and TxDOT would secure an agreement with the City and the TRWD concerning the temporary detour at the previous-described locations.

Comment #9-3 (1 Commenter)

FEIS fails to recognize hike and bike trails that run along river.

Response

The Hike and Bike trail portion that exists along the river under the existing roads is not parkland, and the bike trails are depicted on Exhibit 4.6. TxDOT has permanent easement for the bridges at the Trinity River as discussed in the FEIS in Section 4.1.

Concerns about Impacts to River, Trees and Wildlife

Comment #10-1 (4 Commenters)

Concerned that the FEIS statement that wetlands, wildlife and jurisdictional water issues are premature and will be dealt with at a subsequent stage of project design is out of sync with the planning stage of development at the Rall Ranch property. States that it is extremely difficult for Rall Ranch to go forward with its design and construction of facilities when FHWA, TxDOT and NTTA have not rendered a final environmental plan that applies to Rall Ranch property and must be considered in property development. Suggests that fundamental fairness to the landowner dictates that the environmental impacts on the subject property as well as the effects on the habitat downstream should be analyzed sooner rather than later. Rall Ranch Properties requests that the specific environmental concerns related to this act be addressed specifically at this time.

Response

Wetlands are addressed in Chapter 4 Affected Environment, Section 5.14 Jurisdictional Waters of the US and Wetland Impacts and in Section 5.27 Secondary and Cumulative Effects Analysis of the FEIS. An additional and further detailed assessment (wetland delineations) and ordinary high water mark determinations would be performed for the recommended alternative at the appropriate phase of the project design and development process. Coordination with the USACE has resulted in correspondence indicating that the project would proceed with the delineation and permitting process during the design phase of the proposed project.

Estimated impacts of the proposed project to Section 404 of the Clean Water Act (CWA) jurisdictional waters of the United States, including wetlands, were estimated for all four Build alternatives. These estimations were based on preliminary engineering and using a worst-case scenario of impacts to jurisdictional areas. The method for determining the boundary of jurisdictional areas included the use of off-site data sources such as 1992 National Wetlands Inventory (NWI) maps, aerial photography as well as limited visual on-the-ground inspection. The use of off-site data sources for making this determination is an accepted industry-wide practice as described in the 1987 Corps of Engineers (USACE) Wetland Delineation Manual.

During the design phase of the proposed project, a detailed on-the-ground jurisdictional water of the United States delineation and project impacts assessment would be completed along the selected alternative. This jurisdictional waters of the United States delineation would be in accordance with the procedure described in the 1987 USACE Wetland Delineation Manual.

In accordance with CWA 404 (b)(1) guidelines, design of the proposed project would include measures to avoid and minimize impacts to jurisdictional areas. Unavoidable impacts to jurisdictional areas would be compensated for during the Section 404 permitting process by providing compensatory mitigation for unavoidable losses of waters (functions and values) of the United States as required by any pertinent Section 404 permit administered by the USACE. Mitigation would be proposed at no less than a one-to-one ratio.

As a result of impacts to jurisdictional waters associated with the construction of this project, Tier I Erosion Control, Post-Construction Total Suspended Solids (TSS) Control and Sedimentation Control devices would be required under the TCEQ Section 401 Water Quality Certification process.

An on-the-ground routine delineation of jurisdictional waters was conducted by a consultant on behalf of the Rall Ranch for 88 acres of Rall Ranch property. Approximately half of these acres are within the proposed SH 121 ROW. The Rall Ranch property delineation of jurisdictional waters was conducted in accordance to the accepted 1987 U.S. Army Corps of Engineers Delineation Manual.

For the purposes of the environmental studies of the proposed SH 121 project, secondary and off-site sources were used to identify jurisdictional waters within the proposed ROW. Secondary and off-site sources utilized include National Wetland Inventory maps, current aerial photographs and visual observations. The use of secondary sources and off-site sources is an accepted industry-wide practice at this stage of planning for the proposed project. TxDOT utilized these sources to estimate jurisdictional areas within the proposed ROW along the entire proposed project. Only a small component of the entire project area is currently part of the Rall Ranch property.

The potential jurisdictional impacts would have similar impacts for each alternative (see tables 5.20 to 5.23 of the FEIS). The decision makers had sufficient information to understand and evaluate the jurisdictional impacts for each of the alternatives.

Discussions of direct water resources impacts are found in Section 8.11, of the FEIS.

Comment #10-2 (2 Commenter)

SH 121 Project would cross the largest contiguous area of prairie in the entire Fort Worth Prairie area. Prairie traversed by SH 121 is botanically and ecologically significant. In order to minimize loss of prairie, the following is requested: perform a survey to determine if virgin prairie exists in the project area; adjust ROW accordingly to avoid any virgin prairie; eliminate all roads and intersections between the AT&SF RR and Floyd Road; compensate for any impacts by planting three acres of native forbs and grasses; reseed with native forbs and grasses after any soil disturbance.

Response

In accordance with Executive Order (EO) 13112 on Invasive Species and the Executive Memorandum on Beneficial Landscaping, landscaping would be limited to seeding and replanting the ROW with native species of plants where possible. A mix of native grasses and native forbs would be used to re-vegetate the ROW

We understand the commenter to mean native prairie remnants when he uses the term virgin prairie. Members of the TxDOT Fort Worth District Environmental staff accompanied by two board members of the Native Prairies Association of Texas (NPAT) conducted a field survey of the proposed project area specific to the areas mapped by Commenter 53 as prairie on February 10, 2005. The purpose of the field survey was to determine the presence or absence of native prairie remnants along the proposed project alignment. The two board members of NPAT determined that no native prairie remnants are present within the proposed right-of-way or near the proposed project alignment.

Minimization of impact to vegetation and restoration of disturbed areas will be detailed in the CMP to be developed in the spring of 2005.

Comment #10-3 (2 Commenters)

Would like to protect the wildlife and their habitats, including any waterfowl refuge, during construction, and relocate them, if necessary,

outside the right of way. Protect trees located outside the right of way and, when possible, where the median is wide enough, inside the median and replace all trees removed within the right of way and those damaged outside the right of way with large hardwood specimens along the project.

Response

Each of the Build alternatives would affect each of the four tree zones identified in the FEIS to a varying degree; however, the species dominance and characteristics would remain consistent for each alternative. During construction, the contractor would minimize the amount of native vegetation disturbed. During final project design mature woody vegetation and/or unusually large specimens might not require clearing if they are beyond the safety clear zone or in areas where guard fencing is proposed. No habitat types requiring mitigation per the provision (4)(A)(ii) of the TxDOT- TPWD Memorandum of Understanding (MOU) would be impacted by the recommended project. The project has been coordinated with the U.S. Fish and Wildlife Service (USFWS) and the Texas Parks and Wildlife Department (TPWD).

In the Interlocal Agreement, NTTA and TxDOT, with concurrence from the City, have agreed to plant 4,700 trees within the project area and preserve as many trees as possible within the project limits in the Overton Woods neighborhood and around the Trinity River. Impacts to trees, vegetation and wildlife habitat are also discussed in Section 5.15 and Section 5.20 of the FEIS. Potential cumulative impacts to wildlife are discussed in Section 8.16 of the FEIS.

Comment #10-4 (3 Commenters)

Would like to maintain a clear span of the river so we don't have columns going down into the water or into the slopes of the river.

Response

The bridges would be designed to align with the approved typical sections and, where medians exist, the bridges would generally be separated. Further discussion is ongoing to determine the extent and limits of the bridges over the Trinity River. Bridges will at least span the floodway. TRWD will be included in the CMP process.

Comment #10-5 (1 Commenter)

The statement on 8.15 that, "no impact on endangered/threatened species is likely to occur" is based on insufficient data. The threatened/endangered migrating bird, skunk and snakes were not detected because no one actually was able to look for them where they live.

Response

TxDOT and NTTA are required to consider impacts to Federal and State protected species in Tarrant County (Rev. 8/26/99). All listed threatened and endangered species were addressed in the FEIS. Pursuant to Section 7(c) of the Endangered Species Act, a Biological Assessment (BA) is required for Federal actions considered to be "major construction activities". On letter dated June 5, 2002, TxDOT provided a BA to the USFWS pursuant to 50 CFR 402.01 and requested review and concurrence that the project is not likely to affect any Federally listed species. The FWS, based on the BA and review of their files, on letter dated June 12, 2002, concurred with the determination that the project is not likely to adversely affect these (Federal and State protected species in Tarrant County) listed species. In addition, the existing vegetation and trees within the PSC do not provide special habitat value for endangered or threaten species.

Comments on Water District Coordination

Comment #11-1 (2 Commenters)

Would like a design professional designated by the Water District to work with the project design team on the design of bridge structures so that the Water District can be assured that the SH 121 project adheres to each design request.

Response

This will be reviewed in the upcoming CMP process. The TRWD will be invited to participate in the CMP process.

Comments on Landscaping Issues

Comment #12-1 (2 Commenter)

Include special landscaping near bridge areas and select plants that are suitable for the light.

Response

Please see response to Comment #6-2.

Comments on Light Impacts

Comment #13-1 (6 Commenters)

Suggest that high-mast lighting including five high mass lights, three west of Summit Avenue Bridge and two east, be removed. Lighting should be lowered or directed away from residential neighborhoods.

Response

With regard to the proposed SH 121 construction connection near Summit Avenue, the existing high-mast lighting would be removed to construct the proposed project and is proposed to be replaced with low-mast lighting as a result of coordination with the City and public groups. More information is provided in Subsection 8.28 of the FEIS.

Comments on Mass Transit (alternative modes of transportation)

Comment #14-1 (1 Commenter)

Mass transit is a better alternative to freeways. Allotted funds should be diverted to the war effort.

Response

Comment noted and considered. The suggested transfer of funds is not within the authority of TxDOT or NTTA.

Rail alternatives, as well as other forms of mass transit within the proposed corridor were fully considered. Adequate adjacent rail components currently exist and are included in the NCTCOG's *Mobility 2025-2004 Update*. This plan identifies the Fort Worth and Western Railroad. The route of the railroad generally follows the proposed route of SH 121 from the Forest Park IH 30 area to just west of FM 1187. Please see Section 3.6.1 *Rail/Transit-Oriented Strategies* in the FEIS.

Comments on Mitigation

Comment #15-1 (2 Commenter)

Would like to incorporate color, public art or other elements to mitigate a dark, enclosed feeling for all the people using the trail under the bridges at University Drive, I-30 and under the Rosedale/Vickery bridge.

Response

Please see response to Comment #6-2.

Comment #15-2 (2 Commenters)

FEIS does not sufficiently address the highway's impacts on the Alamo Heights neighborhood. As mitigation for these impacts, the Record of Decision should include commitments to provide a decorative screen wall complete with extensive landscaping for the entire toll plaza complex from Montgomery to Hulen Street.

Response

Please see response to Comment #6-2.

The ROD for the project will make reference to the CMP. The issues mentioned above will be addressed in the CMP process.

Comment #15-3 (4 Commenters)

The FEIS lacks adequate design specifics to address its impact. The Record of Decision for this project should include commitment on mitigation measures such as noise, walls, lighting and landscape for the Mistletoe Heights neighborhood.

Response

A summary of mitigation measures are discussed in Chapter 8 of the FEIS. Mitigation measures are discussed in a Record of Decision. Also, please see response to Comment #6-2.

Comment #15-4 (2 Commenters)

Mitigation needed in Alamo Heights for noise lighting. Recommend a screening wall with a landscaped buffer with public art and trees.

Response

Please see response to Comment #6-2.

Comment #15-5 (5 Commenters)

Recommends placing toll plaza below grade, building a landscaped wall from Hulen to Montgomery, and placing a maintenance building somewhere else as mitigation for Alamo Heights.

Response

Please see response to Comment #6-2.

The mainlane toll plaza along Vickery Boulevard is designed to be as low as practicable. Allowing for adequate drainage limits the amount the toll plaza area can be lowered below existing grade.

NTTA has committed to constructing a visual screen along the toll plaza area through the interlocal agreement amendment #2.

Comment #15-6 (1 Commenter)

Would like to see a justification in the next report for the toll booths at Arborlawn that are required and to design this with the lowest profile possible with no additional height added as an architectural feature.

Response

Please see response to Comment #6-2. The mainlane toll plaza would be designed to be as low as practicable. Allowing for adequate drainage limits the amount the toll plaza area can be lowered below existing grade.

NTTA has committed to constructing a visual screen along the toll plaza area through the interlocal agreement amendment #2.

Comments on Noise Impacts

Comment #16-1 (1 Commenter)

Fort Worth Country Day School feels that the noise attenuation factors that are applicable to its facilities have not been adequately addressed. Traffic noise levels are provided for only two of four receivers. Noise abatement measures are not addressed or delineated. Both inside and outdoor noise levels need to be considered. The report shows a sound wall barrier of 12 to 16 feet height from ground level, but there is no present calculation provided as to the main lane elevation of the new road of the height from the pavement to the top of the wall. There is no explanation as to why the wall is 1,000 feet long.

Response

A preliminary noise analysis was conducted and included in the DEIS. An updated analysis compliant with FHWA Regulation 23 CFR 772, *Procedures for Abatement of Highway Traffic Noise and Construction Noise* and *TxDOT's 1996 Guidelines for Analysis and Abatement of Highway Traffic Noise* is included in the FEIS.

Following the Public Hearing on the DEIS in 2002, additional modeling has been conducted along the project corridor at 30 receiver sites. Primary consideration was given to exterior areas (Category A, B or C) where frequent human activity occurs. However, interior areas (Category E) are used if exterior areas are physically shielded from the roadway, or if there is little or no human activity in exterior areas adjacent to the roadway.

A noise analysis has been conducted at this school. A total of six (6) receivers have been modeled at the school. Three receivers were modeled as exterior receivers (Category B) and three receivers were modeled as interior receivers (Category E). The results of the analysis indicate that a noise impact would occur in three of the receiver locations. Noise abatement measures at these three locations appear to be both feasible and reasonable at this time. A more detailed analysis for the recommended alternative C/A is included in the FEIS.

As for the Fort Worth Country Day School, a 12,14, and 16ft combination wall is proposed along the ROW to benefit 11 receivers. The cost per benefited receiver is estimated as $21,281. The wall is determined to be reasonable and feasible, since it provides at least 5 dBA reduction and it costs no more than $25,000 per benefited receiver.

The traffic noise analysis for the FEIS actually included four receivers at Country Day School. However, two receivers at the Kindergarten were inadvertently omitted from the Noise Level Table (Table 5-7) due to a typographical error. Noise levels for these two missing receivers are identical to the noise levels for the two receivers included in the table; therefore, all four receivers would be impacted. Although two receivers are missing from the table, all four receivers were considered in the overall assessment of noise impacts and noise abatement at Country Day School -- the proposed noise barrier was designed (height and length) to benefit all four receivers.

Noise levels for inside (interior) receiver locations at Country Day School were evaluated for the DEIS and the results indicated these receivers would not be impacted. Comments resulting from the DEIS included concerns that exterior noise levels were not determined at Country Day School. In response to these concerns, and based on a follow-up visit to Country Day School by the consultant (noise analyst), members of the TxDOT Fort Worth District staff and the Noise Specialist from TxDOT's Environmental Affairs Division, four representative worse case exterior receiver locations at Country Day School were added to the traffic noise analysis for the FEIS -- the results indicated all four receivers would be impacted. These impacts all resulted from the increase in predicted noise levels rather than the predicted noise levels themselves that were all below the Noise Abatement Criteria (impact) level. The interior receivers at Country Day School were not included in the FEIS because they were not impacted and, therefore, did not represent worse case locations.

As reflected in the FEIS, before a noise abatement measure such as a noise barrier can be incorporated into the project, it must be both feasible and reasonable. In order to be feasible, the noise barrier should reduce noise levels by at least five decibels and to be reasonable the cost should not exceed $25,000 for each benefited receiver. The FHWA approved Traffic Noise Model (TNM) software was used to design a noise barrier (height, length and location) at Country Day School that would be both feasible and reasonable. The height of the proposed noise barrier varies from 12 to 16 feet because the proposed roadway

and adjacent terrain are not straight and flat -- variations in the roadway/adjacent terrain resulted in associated variations in the height of the proposed noise barrier. The length of the proposed noise barrier was based primarily on the location of impacted receivers -- the purpose of any noise barrier is to reduce noise levels at impacted receivers. The height and length of the proposed noise barrier were also designed to ensure the total cost would remain at or below $25,000 for each receiver that benefited from a noise level reduction of at least five decibels.

Comment #16-2 (3 Commenters)

There is no supporting data in the DEIS or the FEIS to indicate at what times of day air and noise modeling tests were done, when the models were done, if they actually followed the regulations to take those tests at a time at the highest and loudest use. Also a barrier wall for Sunset Terrace was not addressed at all in the FEIS. The sound study, in fact, said that there were no receptors -- eligible receptors in the neighborhood.

Response

As for the Sunset Terrace area, various walls were considered along the ROW to benefit receivers. It was determined that no receivers were benefited since the various walls evaluated would not provide at least 5 dBA reduction.

As with all TxDOT highway projects and in accordance with TxDOT's FHWA approved Noise Guidelines, noise impacts for this project were based on predicted (future) noise levels. Future noise levels can only be determined by computer modeling. The FHWA Traffic Noise Model (TNM) software was used for this project and, as stated in the FEIS, "The model [TNM] considers the number, type and speed of vehicles; highway alignment and grade; cuts, fills and natural berms; surrounding terrain features; and the location of activity areas likely to be impacted by the associated traffic noise." Also, to reflect worse case (highest and loudest) noise levels, traffic volumes for the year 2025 were used in the analysis.

The FEIS addresses noise levels for all five receivers in Sunset Terrace and indicates that one of the receivers would be impacted; therefore, noise abatement (including a noise barrier) was evaluated for all of the receivers in Sunset Terrace -- even for those that were not impacted. The FEIS also indicates that a noise barrier would not be feasible and reasonable for the receivers in Sunset Terrace.

For discussion on air, please see response to Comment #2-5, Comment #16-1and section 5.10 of the FEIS.

Comment #16-3 (2 Commenters)

The FEIS does not make adequate use of the extensive citizen contributions that were made through the entire public design team process, the PDT process and the current CAC. Report fails to acknowledge and make use of the PDT conclusion regarding noise. The PDT solved the noise barrier issue by suggesting that providing access was less of an issue than building noise barriers. Also, any sort of barrier that's used or any sort of mitigation that's used to minimize the noise impact should be on the roadway [i.e. the responsibility of the project], not on the surrounding neighborhood that has to come along and solve the problem created by [the roadway]. Regarding the history of the project, it was suggested it would be appropriate to acknowledge the extensive citizens' groups contribution to the project in the ROD.

Response

In order to avoid noise impacts that might result from future development of properties adjacent to the project, local officials responsible for land use control programs should ensure, to the maximum extent possible, that no new activities are planned or constructed along or within the predicted 2025 noise impact contours. FHWA, TxDOT and NTTA are not responsible for providing noise abatement for new development adjacent to the project after approval of the project. Please see Section 5.11 of Volume 1 of the FEIS.

The history of the project was provided as background information and was not intended to be an exhaustive description of project contributors. The ROD is a decision-making document and should not include an exhaustive history of the project; documentation of citizen involvement has been included in various sections of the FEIS.

Also, please see response to Comment #6-2 and Comment #16-1.

Comment #16-4 (2 Commenters)

Questions the locations of noise receivers. Noise research is supposed to be done in the noisiest, highest impact area, during rush hour traffic.

Response

Based on an actual visit to Sunset Terrace by the consultant (noise analyst), members of the TxDOT Fort Worth District staff and the Noise Specialist from TxDOT's Environmental Affairs Division in Austin, the receivers were located (as with all TxDOT highway projects and in accordance with TxDOT's FHWA approved Noise Guidelines) at individual residences where frequent human activity (outdoor/indoor) would occur, including first-row residences closest to the proposed project.

Also please see Response to Comment #16-1.

Comment #16-5 (3 Commenters)

Noise mitigation walls appropriate for a designated historic district must be constructed to avoid increase in auditory pollution.

Response

The proposed SH 121 project does not constitute a constructive use of the potential historic district as the project's proximity impacts are not so severe that the protected activities, features, or attributes that qualify as a resource for protection under section 4(f) are substantially impaired. The NEPA process demonstrated that existing conditions would not significantly change for the historic properties. Protected activities, features or attributes would not be substantially diminished by the proposed project.

Please see response to Comment #6-2, Comment #16-1, and #17-1.

Comment #16-6 (1 Commenter)

Even though the FEIS states that the predicted noise increases would be more than 10 decibels and that abatement issues would be considered, yet those measures are not addressed, even in a cursory manner, not specifically -- not specifically delineated. It [attenuation] doesn't meet the standards of the acoustical performance criteria design requirements and guidelines for schools as it is required to do. The school [Fort Worth Country Day School] appreciates the fact that it's been categorically removed from E [interior] to B [exterior], however, it feels it should be involved in the determination of noise attenuation to its property with the State.

Response

The FEIS includes a discussion on abatement measures for all impacted receivers, including the Country Day School. Also, as documented in Section 5.11 of the FEIS, a noise barrier for the Country Day School was determined to be feasible and reasonable and is proposed for incorporation into the project.

The analysis of noise abatement, and the associated proposal that includes a noise barrier at Country Day School, was accomplished in

accordance with TxDOT's FHWA approved Noise Guidelines. Specifically, the proposed noise barrier at Country Day School was designed to meet the minimum required noise reduction [standard] of five decibels.

As indicated in the FEIS, the final decision to construct the proposed noise barrier would be made following consultation with the affected property owners. TxDOT will conduct a Noise Workshop with the owner(s) of Country Day School that will involve a detailed discussion of all aspects of the proposed noise barrier, including: location, dimensions, type/method of construction, materials and appearance.

Comments on NRHP eligibility and Section 4(f) eligibility for Historic Sites

Comment #17-1 (8 Commenters)

Document fails to take into consideration neighborhoods eligible for historic significance 4(f) implications in terms of potential constructive use based the impact of the noise and lighting. A more complete analysis and discussion of Section 4(f) is needed.

Response

During the environmental studies and investigation, neighborhoods such as Mistletoe Heights and Sunset Terrace were studied to determine their eligibility under NRHP rules and regulations. In accordance to coordination procedures with THC and FHWA, it was determined that there is no Section 4(f) takings and no adverse affects to these areas. No direct takings from these properties are required for the proposed project; therefore, a 4(f) statement is not required. The NEPA process demonstrated that existing conditions would not significantly change for the historic properties, with their protected activities, features or attributes not substantially diminished by the proposed project.

In correspondence dated August 9, 2002, the THC specifically expressed concern for traffic, noise and light impacts on historic neighborhoods, requesting that TxDOT, "consider minimizing or avoiding increases in traffic, noise and light pollution in these historic areas" and that TxDOT, "consider public input as part of the ongoing testimony process." The no adverse effect determination was conditional on the provision that "public testimony and design alternatives are given consideration." In correspondence dated September 9, 2002, TxDOT reassured the THC that public concern for traffic, noise and light pollution have been accommodated through the design process, citing abated traffic projections for neighborhood thoroughfares, FHWA noise abatement criteria (NAC) and lighting design alternatives. The THC acknowledged this correspondence on September 18, 2002.

The proposed SH 121 project does not constitute a constructive use of the potential historic district as the project's proximity impacts are not so severe that the protected activities, features, or attributes that qualify as a resource for protection under section 4(f) are substantially impaired. The NEPA process demonstrated that existing conditions would not significantly change for the historic properties. Protected activities, features or attributes would not be substantially diminished by the proposed project.

Section 4(f) is codified in two places (49 U.S.C. 303 and 23 U.S.C. 138), and is implemented by the FHWA and the FTA through regulations found at 23 CFR 771.135.

On February 14, 2005 FHWA provided a response to a letter from the Department of Interior (DOI) dated January 28, 2005. FHWA summarized their position as the agency responsible to make Section 4(f) determinations. FHWA provided background on how Section 4(f) decisions are determined and further information on the coordination accomplished between TxDOT and the THC regarding the SH 121 project.

Please see response to #6-2 and #6-4.

Comment #17-2 (2 Commenters)

Suggests that the evaluation of historic resources within the area of potential effect was based on data that is nearly 20 years old. May be other properties that could be listed on the national register. Would like all properties eligible for listing on the national register to be included in the Final Environmental Impact Statement. Also concerned that the amount of consideration given to the proper mitigation to avoid adverse effect on the Sunset Terrace neighborhood. Historic Fort Worth requests to be included in the mitigation process for any Section 4-F evaluation.

Response

Archival research and a reconnaissance survey were conducted to identify historic-age sites (pre-1952) within the project's APE in 2002. An APE of 150 ft and the year of 1952 are established during preliminary coordination with the THC. A total of 257 residential, commercial and industrial properties, bridges, railroad structures and a botanic garden were identified and evaluated for National Register eligibility. Specific information pertaining to historic buildings including mapped location, photo documentation and the potential impact of each alternative is included in a Historic Buildings Report on file at the TxDOT Fort Worth District Headquarters.

Also please refer to Subsections 4.4.3, 4.4.4 and 5.21.3 of the FEIS.

Comment #17-3 (2 Commenters)

FEIS completely avoids specific comments made during the comments on the Draft EIS concerning the constructive use of potentially eligible listings for the national registered neighborhoods.

Response

Please see response to Comment #6-2 and response to Comment #17-1.

Comment #17-4 (4 Commenters)

Only 5098 Sunset Terrace is listed as NRHP eligible. Entire neighborhood [Sunset Terrace] is eligible and it does not show up anywhere in the FEIS. Sunset Terrace has several historic sites that are national register eligible.

Response

The elements of the Sunset Terrace neighborhood coordinated by TxDOT as individual properties were determined NRHP-eligible collectively as a potential historic district, so impacts evaluated for individual components were applicable to the neighborhood as a whole. Please also see response to #6-2 and #17-1.

Comment #17-5 (3 Commenters)

Indian campground in project area requires historical preservation and protection. Suggest campground be made a state or federal national park with a museum to house any artifacts recovered from the site. Coordination regarding the investigation of this site was requested.

Response

The prehistoric site in question (41TR170) was discovered during a March 1999 TxDOT survey of the project area. Based on TxDOT findings, the site is recommended as potentially eligible for listing in the NRHP and as a State Archeological Landmark (SAL). TxDOT has committed to further testing of the site in coordination with the THC to determine the site's formal NRHP and SAL eligibility status. The testing would be the responsibility of TxDOT and would be completed

after the ROD but prior to any construction in the area. All Section 106 requirements would be fulfilled prior to the beginning of construction for this project.

A Texas Antiquities Permit would be acquired for any test excavations performed at site 41TR170. The site may contain up to five separate components with the most significant component buried at 1.3 m below ground surface. The goal of testing site 41TR170 is to determine its eligibility for inclusion in the National Register of Historic Places or for designation as a SAL. On the basis of data from survey, there is no reason to believe that human burials are present at the site. However, in the unlikely event that human burials are encountered TxDOT would implement an approved treatment plan for the discovery of human remains.

In the event a potential archeological resource is encountered during construction, construction activities would cease and the resource would be evaluated per the TxDOT / THC MOU. The entity responsible for complying with the MOU would be the one within whose physical jurisdiction (as defined by the Interlocal Agreement among the City, NTTA and TxDOT) the impact to the potential resource would occur. All Section 106 requirements would be fulfilled prior to the beginning of construction for this project.

TxDOT sent a letter dated May 10, 2000 to known tribal entities that may have an interest in the project. Additional coordination with the tribes was initiated on January 31, 2005. One response was received from the Tonkawa Tribal Council dated May 22, 2000 indicating they did not posses any specific information regarding burial or sacred sites in the project area. Coordination letters are located in Appendix F of the FEIS.

Coordination with the City will be an on-going process throughout the investigation of this site.

Comment #17-6 (1 Commenter)

Significant archeological findings of a Native American camping site in the path of the project was omitted from the DEIS to the public's detriment.

Response

Archeological site 41TR170 was specifically addressed on pages IV-27, V-136, V-137, and V-149 of the DEIS as well Section 5.21 of the FEIS. Please see the response to #17-6 for more information.

Comments on Request to Document and Continue Public Process with Citizens Groups

Comment #18-1 (8 Commenters)

Representing the Fort Worth League of Neighborhood Associations supports alleviation of adverse impacts on neighborhoods. Requests that the FEIS capture the long involved public participation process. Urges continued citizen input through the Citizens Advisory Group for both the design and the construction phases. Requests to know why numerous impacts were not considered in this report (EIS)?

Response

The alternatives section addresses the analysis of the key project issues as identified in the public involvement process. The FEIS considered all public involvement to date of publication and incorporated public involvement into the project development process. TxDOT utilized a systematic and interdisciplinary approach to evaluating the various alternatives considered for the proposed SH 121. The study constitutes a culmination of the most desirable attributes of the other alternatives and fulfills the purpose and need of the proposed action. The alternatives section of the FEIS addresses the analysis of the key project issues as identified in the public involvement process. In addition, the Citizen's Advisory Committee (CAC) and PDT design concepts will be addressed in the final design via the CMP.

The Project History in the FEIS was provided as background information in this decision-making document. This section of the FEIS was not intended to be a detailed history of the project. The FEIS process was conducted in accordance with relevant transportation regulations and document potential environmental, social, and economic effects as well as potential mitigation for the project.

Also, please see response to Comment #6-2.

Comment #18-2 (2 Commenters)

NTTA plans to build a maintenance facility and possibly a public storefront to sell their toll tags in the Alamo Heights area. Feel that not enough information has been shared about this facility to allow Alamo Heights Neighborhood Association to evaluate it. The ROD should commit TxDOT and the NTTA to work with the City and citizens groups in developing the final design for the project.

Response

Suggestions from citizen's groups and the City of Fort Worth have been and would continue to be analyzed and considered for incorporation into the final design. NTTA and TxDOT will include as much of the PDT recommendations as is feasible and practicable. The PDT and all other recommendations are included as part of the FEIS and project administrative record. Also, please see response to Comment 18-1 and response to Comment #6-2.

Comments on Planning, Purpose and Need

Comment #19-1 (1 Commenter)

Regional planning fails to address current developments downtown and in southwest Fort Worth. A great majority of the studies presented in the FEIS date from 40 years ago or more.

Response

As stated on page 2-7 of the FEIS, NCTCOG, together with the RTC serves as the MPO for the DFW region. The local transportation planning process is quite extensive and all of the studies and their materials were considered in this environmental process. Since the early 1970s, there have been seven transportation plans published by NCTCOG. *Mobility 2025- 2004 Update*, published in 2004 is based on regional transportation needs identified through the process of forecasting future travel demand, evaluating system alternatives and selecting those options which best meet the mobility needs of the region. Each of the subsequent plans contain updated traffic data. A series of travel forecasts were performed including commuter and light rail alternatives, High Occupancy Vehicle (HOV) and express lanes, freeways, tollroads and arterial street improvements. In addition, a system of bicycle and pedestrian facilities was developed. Throughout the planning process, close coordination among local governments, NTTA, TxDOT and transit authorities was maintained.

Comments on ROW Acquisition Procedures

~**Comment #20-1** (1 Commenter)

Concerned that commercial service properties on south side of Vickery and other areas along the project that have long provided service to the community and livelihood to owners and employees will be wiped out. The length of time this project has been in the planning stage has kept business owners in limbo in regards to their property.

Response

ROW acquisition would begin after environmental clearance of this FEIS is obtained from FHWA.

Property rights needed for the expansion of the Texas highway system are acquired under the guidelines of the Uniform relocation Assistance and Real Property Acquisitions Act of 1970. The State's authority to acquire property for the transportation system is found in the Fifth Amendment to the Constitution of the United States. This authority can be used only when there is a demonstrated public need for the property and the property owners are compensated with just compensation. Just compensation is defined as the fair market value of the property needed plus an amount for damages that might accrue to the remaining property as a result of severing the acquired right of way from the whole property.

Comment on the Segmentation of SH 121

Comment #21-1 (2 Commenters)

Final EIS does not address the total project. It continues segmentation.

Response

SH 121, from FM 1187 in Tarrant County to US 67 in Johnson County is a separate project and has logical termini and section(s) of independent utility as required. For this project the termini selected are FM 1187, which is a roadway included on the NHS. To be included on the National Highway System a roadway must be considered important to the nation's economy, defense and mobility. The appropriate NEPA document, an Environmental Assessment (EA), was accomplished by TxDOT for SH 121 from FM 1187 in Tarrant County to US 67 in Johnson County. A Public Hearing for the south portion of SH 121 was held in Cleburne on February 13, 2003 and a Finding of No Significant Impact (FONSI) was signed by FHWA on March 20, 2004. The relationship of the SH 121 project in Johnson County is discussed in the secondary and cumulative impacts section of the FEIS.

The FEIS addressed the proposed project from IH 30 to FM 1187 in Tarrant County. These termini roads are on the NHS and, therefore, the FEIS is based on logical termini and meets the requirement of independent utility as required for an independently utilized facility.

Comments in Support of the PDT and other Alternatives

Comment #22-1 (1 Commenter)

Request that TxDOT, NTTA, and the City continue to work with citizens groups through the construction stage of the SH 121 project.

Response

Please see response to Comment 18-1 and response to Comment #6-2.

Comments on Tollroad vs. Parkway Concept

Comment #23-1 (1 Commenter)

Representing the Overton Woods Homeowners Association would still like to see the road slower, lower and greener.

Response

The purpose of the project is to improve regional mobility, increase people and goods carrying capacity and alleviate further overburdening of the local transportation system. Consideration has been given to CAC/PDT suggestions and recommendations.

Also, please see response to Comment #6-2 and Comment #8-5.

Comment #23-2 (1 Commenter)

FEIS fails to differentiate between parkway impacts and freeway impacts.

Response

The purpose of the proposed project is to improve regional mobility, increase people and goods carrying capacity and alleviate further overburdening of the local transportation system between the Central Business District (CBD) of Fort Worth, including the existing regional transportation network and newly developed and developing areas in southwest Tarrant County. Each of the build alternatives evaluated were those that meet the Purpose and Need of the project.

The FEIS does not differentiate between a parkway and a freeway because the environmental impact analysis would consider the same traffic projection numbers, roadway typical sections, and environmental constraints along the proposed project regardless of whether the roadway is referred to as a parkway or freeway. Therefore, the environmental impacts would not be different between a parkway and a freeway.

Based on the commenter's previous discussion regarding alternative analysis, we understand the commenter's concerns to be project design context sensitivity. Context sensitivity will be addressed in the CMP process. For a discussion of the CMP see response to Comment 6-2.

Comments on Traffic Studies

Comment #24-1 (2 Commenters)

Public was not given the right to examine and comment on the traffic projections because traffic data presented in the Final EIS was collected and analyzed years before the draft was written. Traffic analysis indicates this highway will encourage speed people straight into a traffic jam, but they will just get to it more quickly.

Response

The traffic for this study has been provided by the NCTCOG and the latest traffic available is being utilized for the project. The level of service (LOS) on SH 121 throughout the project and specifically at the north end is at an acceptable level.

Part of the purpose of the project is to improve regional mobility and alleviate local traffic congestion by providing a direct route between southwest Tarrant County and the Fort Worth CBD. As stated on page II-27 of the DEIS, studies have shown that the project would provide the typical user an average travel distance saving of 1 to 3 miles and an average travel time saving of five to ten minutes between the CBD and various points within the project study corridor (PSC). Traffic demand is also discussed in subsection 2.2.3 of the FEIS.

Percent Vehicle Hours of Delay, represents the average delay of all motorists, expressed as a percentage of the total travel time on a given section of highway. The Southwest Fort Worth Subarea study compared the Percent Vehicle Hours of Delay for the project Subarea between the No Build and the Build scenarios, the following was found:

Traffic impact studies are discussed in Section 2.2 Supporting Documentation- Purpose and Need, of the FEIS. A summary of Build Alternatives can be found in subsection 3.3.6 of the FEIS. Traffic data compiled by NCTCOG is available for public inspection upon request.

Comment #24-2 (1 Commenter)

Traffic impact studies comparing proposed locations of different interchanges between the West Fork and I-20 are not included.

Response

Traffic impact studies are discussed in Section 2.2 Supporting Documentation- Purpose and Need, of the FEIS and cover the entire limits of the project. A summary of Build Alternatives can be found in subsection 3.3.6 of the FEIS.

Decision to compare traffic studies was made based upon the City's Locally preferred alternative, the comprehensive plan, and the local thoroughfare plan. Both the City's comprehensive plan and the City of Fort Worth Local thoroughfare plan are developed with extensive public involvement.

Comments on Urban Sprawl

Comment #25-1 (1 Commenter)

TxDOT's main purpose appears to be to get outlying residents into and out of a city they do not support.

Response

The purpose of the proposed project is to improve regional mobility, increase people and goods carrying capacity and alleviate further overburdening of the local transportation system between the Central Business District (CBD) of Fort Worth, including the existing regional transportation network and newly developed and developing areas in southwest Tarrant County.

Comments on Census Data

Comment #26-1 (3 Commenters)

Suggests that NTTA/TxDOT's decision to not add a wall barrier to the Alamo Heights area is based on census data such as income and percent minority.

Response

The decision to recommend or not recommend abatement procedures such as noise walls is not based on data, US Census or otherwise, pertaining to race, income, ethnic origin, sex or age.

Please see response to Comment #15-1, Comment #16-1 and Comment #16-2.

The traffic noise analysis for the proposed action determined where noise impacts would occur and where noise abatement would likely be feasible and reasonable. The analysis included a prediction of future noise levels that were derived, in part, from future increases in highway traffic due to both existing land uses and future development likely to occur in the study area.

In accordance to agreements made by TxDOT, NTTA, and the City of Fort Worth, NTTA would provide a twenty-five foot-wide landscaped buffer between its toll plaza and the Alamo Heights neighborhood extending from Concrete Street to Hopkins Street.

Comments on Visual Considerations

Comment #27-1 (2 Commenters)

States that it's very important that all bridge structures over the river preserve the view of the river by having some open bridge railing design that would not obstruct the view of the greenbelt from the new highway. Suggests splitting the bridge structures between directional lanes to provide maximum air and light from the median area.

Response

The bridges would be designed to align with the approved typical sections and, where medians exist, the bridges would generally be separated. Bridge railings would be designed in accordance with the required standards, with special railings considered as part of the amenities package for the project.

Bridge rail will be discussed as part of the upcoming corridor master planning process. Any bridge rail used on the SH 121 mainlanes, including over the river, will need to be FHWA crash-tested and approved for high-speed (over 45 mph) traffic.

Mainlane bridges over the river will be separate structures to allow air and light to penetrate the median section. Additionally, SH 121 over the river west of Hulen Street has a widened median per the City's resolution 2923, so the separation will be approximately 100'.

Also, please see response to Comment #6-2.

Comments on Water Quality and Safety

Comment #28-1 (2 Commenters)

Stabilize the bank areas underneath the crossings to prevent erosion and select materials that are compatible with the aesthetics and natural conditions of the river.

Response

Coordination with the USACE concerning permits for this project would be conducted during the detailed design of the project. In addition, Texas Commission on Environmental Quality (TCEQ) Section 401 of the CWA Best Management Practices (BMP) for erosion control would be implemented in association with any Section 404 permits.

Specific design efforts to stabilize the bank would be developed in the latter stages of the design process.

Also, please see response to Comment #6-2.

Comment #28-2 (1 Commenter)

FEIS is unclear whether seed mixture for reseeding erosion control will be 100 percent native seeds.

Response

Comment noted and considered. This project will use NTTA specifications that comply with Executive Order (EO) 13112. In accordance with EO 13112 on Invasive Species and the Executive Memorandum on Beneficial Landscaping, landscaping would be limited to seeding and replanting the ROW with native species of plants where possible. A mix of native grasses and native forbs would be used to re-vegetate the ROW. Seeding specification would be in compliance with EO 13112.

Comment #28-3 (1 Commenter)

Referencing Table 5-24 of the FEIS, further studies need to be made in regard to flooding which can negatively affect property values.

Response

An engineering analysis of the design constraints and potential drainage effects of the project has been completed. More detailed hydraulic studies would be performed during the Plans, Specifications and Estimates (PS&E) stages and would follow current NTTA, TxDOT, FHWA and City design criteria and standards. The facility would allow proper conveyance of the 100-year frequency flood (inundation of the roadway being acceptable) without causing substantial damage to the roadway, streams or other property.

Preliminary studies indicate that stream crossings and storm water runoff from the facility would not result in exceeding the 100-year floodplain elevation. No major changes to streams and floodplains elevations are anticipated. The USACE and FEMA would be notified of any substantial change, when and if appropriate base hydraulic studies indicate a substantial change to the floodplain elevation.

Comment noted and considered. Further studies will be performed. More explanation is provided on page 5-85 of the FEIS.

Comments on Wetlands and Validity of FEIS Wetland Section

Comment #29-1 (6 Commenters)

Document fails to take into consideration wetlands issues. None of the wetland areas have been documented or analyzed in the EIS. The public has had no opportunity during this comment period to look at anything in the EIS that described wetlands.

Response

Wetlands are addressed in Chapter 4 Affected Environment, Section 5.14 Jurisdictional Waters of the US and Wetland Impacts and in Section 5.27 Secondary and Cumulative Effects Analysis of the FEIS. More detailed assessment (wetland delineations) and ordinary high water mark determinations would be performed for the recommended alternative at the appropriate phase of the project development and design process. Coordination with the USACE has resulted in correspondence that the project would proceed with the delineation and permitting process during the design phase of the proposed project.

According to the City of Fort Worth Floodplain Administrator and investigation of USGS topographic maps, Summer Creek is not present within the proposed project area. We assume that the commenter is referring to one of the unnamed intermittent tributaries to the Clear Fort of the Trinity River.

Estimated impacts of the proposed project to Section 404 of the Clean Water Act (CWA) jurisdictional waters of the United States, including wetlands, were estimated for all four Build alternatives. These estimations were based on preliminary engineering and using a worst-case scenario of impacts to jurisdictional areas. The method for determining the boundary of jurisdictional areas included the use of off-site data sources such as 1992 National Wetlands Inventory (NWI) maps, aerial photography as well as limited visual on-the-ground inspection. The use of off-site data sources for making this determination is an accepted industry-wide practice as described in the 1987 Corps of Engineers (USACE) Wetland Delineation Manual.

During the design phase of the proposed project, a detailed on-the-ground jurisdictional water of the United States delineation and project impacts assessment would be completed along the entire proposed project's Recommended alternative. This jurisdictional waters of the United States delineation would be in accordance with the procedure described in the 1987 USACE Wetland Delineation Manual.

In accordance with CWA 404 (b)(1) guidelines, design of the proposed project would include measures to avoid and minimize impacts to jurisdictional areas. Unavoidable impacts to jurisdictional areas would be compensated for during the Section 404 permitting process by providing compensatory mitigation for unavoidable losses of waters (functions and values) of the United States as required by any pertinent Section 404 permit administered by the USACE. Mitigation would be proposed at no less than a one-to-one ratio.

Coordination with the USACE concerning permits for this project would continue during the detailed design of the project. In addition, Texas Commission on Environmental Quality Section 401 of the CWA Best Management Practices (BMP) for erosion control would be implemented in association with any Section 404 permits.

As a result of impacts to jurisdictional waters associated with the construction of this project, Tier I Erosion Control, Post-Construction Total Suspended Solids (TSS) Control and Sedimentation Control devices would be required under the TCEQ Section 401 Quality Certification process.

Discussions of direct water resources impacts are found in Section 8.11, of the FEIS. The public has had an opportunity during the comment period that ended December 31, 2004 to examine the information concerning wetlands presented in Chapter 4, Section 5.14, and Section 5.27 of the FEIS and to comment on this information.

See also Response to Comment #10-1

Comment #29-2 (1 Commenter)

Recommend that a professional wetland scientist be employed as a construction monitor for the project.

Response

Comment noted and considered. During construction of the project, an Environmental Quality Coordinator would inspect the project to ensure compliance with all USACE and TCEQ regulations and best management practices would be employed.

Other Comments and Issues

Comment #30-1 (5 Commenter)

Questions concerning impact of noise, light, air pollution and aesthetic damage to our neighborhood have not been sufficiently addressed. A separate detailed and binding agreement between the City of Fort Worth, TxDOT and NTTA should be created to guarantee that important mitigation measures concerning landscaping, appropriate lighting and sensitively designed noise barriers, become reality.

Response

Please see response to Comment #6-2.

Comment #30-2 (1 Commenter)

It is our (Streams and Valleys) understanding that 1) TRWD will be included in the bridge design process, 2) TxDOT has agreed to provide lighting and paint under all bridges on the project , 3) TxDOT will provide and construct parking under the Rosedale Bridge, 4) bridges should span the river, and 5) bridge should use separated bridge spans."

Response

Please see response to Comment #6-2, Comment #9-1, and Comment #27-1.

Comment #30-3 (1 Commenter)

Streams and Valleys with the Trinity River Vision is concerned not only with function, but also with quality of life. Please look carefully at any project that may have a negative impact on quality of life.

Response

Comment noted and considered. This will be addressed by the CMP process.

Comment #30-4 (1 Commenter)

Vol II of the FEIS indicates Ron Hays made comment #16-6. (Mr. Hays) did not make that comment. Please respond to the comment (Mr. Hays) actually made.

Response

Two other commenters contributed to Comment #16-6 not Mr. Hays. However all four of Mr. Hay's comments concerning potential impacts to the Park Palisades neighborhood were addressed in Volume 2 of the FEIS (please see the responses to 8-1, 8-2, 8-3, and 20-1 in the FEIS)

Comment #30-5 (1 Commenter)

Request that a Supplemental EIS be created for the project.

Response

According to 23CFR 771.130, an FEIS shall be supplemented whenever the FHWA determines that changes to the proposed action would result in significant environmental impacts that were not evaluated in the FEIS; or new information or circumstances relevant to environmental concerns and bearings on proposed action or its impacts would result in significant environmental impacts not evaluated in the FEIS.

It has been determined that there are no changes to the project that would result in significant environmental impacts not previously considered in the DEIS nor is there new information relevant to environmental concerns that would result in significant impacts not evaluated in the DEIS. As a result of this "hard look" NTTA and TxDOT recommended proceeding to this Final Environmental Impact Statement (FEIS). The FHWA has concurred with this approach.

Comment #30-6 (1 Commenter)

The cost effectiveness of the project relative to Congestion Mitigation and air quality improvement is not addressed in the no-build analysis. The effects of construction equipment operations on air quality have not been evaluated.

Response

The No Build does not evaluate cost effectiveness relative to congestion mitigation and air quality improvement.

The control of particulate matter emanating from various construction activities will be in accordance with TCEQ regulations. To minimize exhaust emissions, contractors will be required to use emission control devices and limit unnecessary idling of construction vehicles. Included in this project's contract would be the TxDOT standard specification for construction that requires the contractor to be familiar and comply with all Federal, State, and local laws, ordinances, and regulations that affect the conduct of work.

Comment #30-7 (2 Commenters)

Exhibit 4.1 in the FEIS shows the area along University Drive between the river and I-30 as Industrial and it is actually commercial. Exhibit 4.2 in the FEIS shows the area in blue as high-density residential when it is low-density residential.

Response

Comment noted. The map was developed from information provided by the City of Fort Worth's 2004 Comprehensive Plan.

Comments on Section 4(f) Issues (Public Recreation Areas)

Comment #31-1 (2 Commenters)

Harrold Park is a public park and should be eligible for Section 4(f).

Response

There is no physical taking of Harrold Park.

No direct takings from these properties are required for the proposed project; therefore, a 4(f) statement is not required. The NEPA process demonstrated that existing conditions would not significantly change for the historic properties, because their protected activities, features or attributes are not substantially diminished by the proposed project. Moreover, the proposed SH 121 project does not constitute a constructive use of any eligible Sec 4(f) property as the project's proximity impacts do not substantially impair the activities, features, or attributes that may qualify as protected resources for under section 4(f).

As stated in Section 5.9 of the FEIS, Section 4(f) states that land from a publicly owned park, recreation area, wildlife/waterfowl refuge or historic site can be used for a transportation project only if there is no feasible and prudent alternative to the use of the resource and all possible planning has been taken to minimize harm to the resource. ROW for SH 121 would not be required from publicly owned parks, recreation areas, wildlife and waterfowl refuge of National, State, or local significance. The recommended alternative therefore would not require takings from publicly owned parks, recreation lands, wildlife and waterfowl refuge lands, or historic properties.

General Comments in Support for the Project

Comment #32-1 (6 Commenters)

Comments expressing support for the project.

Response

Comments noted.

TRD-200502576
Joanne Wright
Assistant General Counsel
Texas Department of Transportation
Filed: June 22, 2005

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40 TAC §3.704.....950, 1820

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