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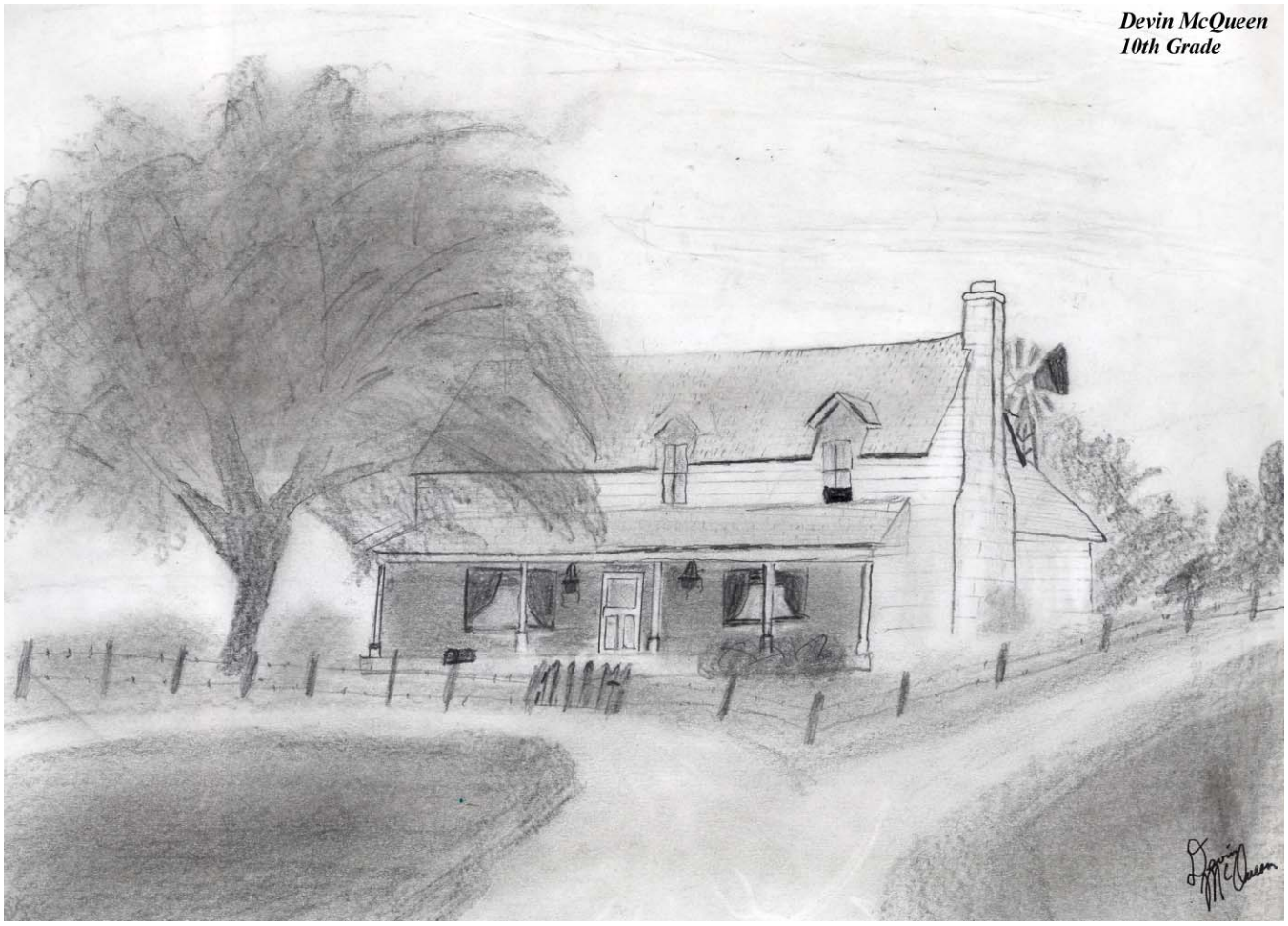

Devin McQueen
10th Grade

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

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

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Railroad Commission of Texas

Texas Department of Transportation

Texas Veterans Commission

Texas Water Development Board

Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

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

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

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.11

The Commission on State Emergency Communications (CSEC) proposes amendments to §251.11, concerning monitoring policies and procedures between CSEC and the Regional Planning Commissions.

Proposed amendments to §251.11 are to delete references to subcontracts, particularly addressing related subcontracts, in §251.11(c) to make clear that the subsection is specifically directed at interlocal agreements entered into by Regional Planning Commissions (RPCs). Non-interlocal contracts are addressed in CSEC Program Policy Statement 016.

FISCAL NOTE

Paul Mallett, executive director, has determined that for each year of the first five fiscal years (FY) that amended §251.11 is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended section.

PUBLIC BENEFIT

Mr. Mallett has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed amendment will be greater certainty amongst recipients of public funds regarding the obligation to monitor contracts.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedure Act, Government Code §2001.022.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Mr. Mallett has determined that there will be no adverse economic effect on small businesses and micro-businesses as the rules being amended affect only the relationship between CSEC and the Regional Planning Commissions. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by fax to (512) 305-6937, or email to patrick.tyler@csec.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.* All comments should include in the subject line "Comments to Proposed Amended Rule 251.11 - Monitoring Policies and Procedures."

STATEMENT OF AUTHORITY

The amendments are proposed pursuant to the Health and Safety Code §§771.051, 771.055, 771.056, 771.057, 771.061, 771.075, 771.0751, 771.078, 771.079.

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

§251.11. Monitoring Policies and Procedures.

(a) Purpose. The purpose of this rule is to provide policies and procedures to be used by the Commission in monitoring each Regional Planning Commission's (RPC) implementation and provisioning of E9-1-1 service.

(b) The Commission reserves the right to perform monitoring of the RPC and/or its performing local governments or PSAPs for compliance with applicable law, rules, policies and procedures. Monitoring activities shall provide the Commission with the information and data necessary to best assist RPCs and local governments in implementing and strengthening the 9-1-1 system in Texas.

(1) Monitoring Activity--Commission monitoring shall include the following:

(A) Evaluation of RPC policies and procedures for program quality and outcomes to ensure compliance with the Contract, as well as the objectives and standards set forth in all Commission Rules, Policies and Procedures, and especially relating to the rules contained in Chapter 251--Regional Plans;

(B) Determination of whether the RPC has demonstrated substantial compliance with oversight requirements, including:

(i) compliance with applicable provisions of the state's Uniform Grant Management Standards (UGMS);

(ii) competitive procurement procedures and documentation;

(iii) contract administration systems to ensure receipt of contracted deliverables;

(iv) ownership, transfer of ownership, and/or control of equipment acquired with 9-1-1 funds;

(v) maintenance of a current inventory of all 9-1-1 equipment;

(vi) maintenance of adequate and accurate fiscal records and documentation;

(vii) execution of interlocal agreements between RPC and participating local governments relating to the planning, development, operation, and provision of 9-1-1 service and the use of 9-1-1 funds, per the Contract, Article 4, Standard Interlocal Agreements with Local Governments.

(C) Examination of RPC 9-1-1 funds expended against the strategic plan component budgets and any limitations therein according to applicable law and rules.

(2) Monitoring Report and Response--The Commission will prepare a written report that describes the findings, and any possible violations, discovered during a monitoring review. Commission will complete a written monitoring report within 30 days of the conclusion of the initial monitoring activities, and will provide the RPC a copy of the report upon completion. Upon completion and receipt of the initial report, the following process shall apply:

(A) An RPC may provide a written response to the initial monitoring report within 30 days of receipt of the report. The response should be provided or approved by the RPC Executive Director and/or the Executive Committee.

(B) The Commission Executive Director will report a summary of the RPC's final compliance assessment upon completion of all monitoring activities, reports and RPC responses, along with a recommendation for acceptance or disapproval. The Commission may act to accept the Executive Director's recommendation. The Commission will convey its acceptance of responses, resolutions or recommendations in writing to the RPC within five working days of any such action.

(C) The Commission may delay action pending requests for additional information or investigation, and any follow up actions deemed necessary for resolution. Any such requests shall be made in writing to the RPC within five working days. The RPC shall have 15 working days in which to provide additional information requested by the Commission. Commission Executive Director will present any additional information to the Commission at its next regularly scheduled meeting in conjunction with appropriate staff review and determination. Final resolution of monitoring findings shall be communicated to the RPC within five working days.

(D) The Commission may disallow specific expenditures of 9-1-1 funds, and may direct the RPC to repay the 9-1-1 fund of any disallowed expenditure. The Commission shall communicate any such disallowance to the RPC within five working days of Commission action.

(E) The RPC may appeal a decision to disallow expenditures by writing to the Executive Director of the Commission. A review board will make recommendations to the Commission Executive Director for approval, disapproval, or approval with modifications, of monitoring exceptions. The Commission will send the final written determination by the Executive Director to the RPC within 30 calendar days of the decision. Unless other repayment plans are made, the RPC must refund all funds due after a final determination is made by the Executive Director. Failure to comply with this provision will subject the RPC to the provisions of this subsection.

(3) Disallowance and Repayment--The RPC shall reimburse the 9-1-1 fund for any 9-1-1 surcharge funds and service fees (9-1-1 funds) expended by the RPC in noncompliance with applicable law and rules. Such reimbursement shall be made in accordance with the procedure established in subparagraphs (A) - (E) of this paragraph.

(A) The RPC shall provide a written proposal to the Commission for repayment within 30 days of notification of disallowance of any 9-1-1 fund expenditures. Repayment to the 9-1-1 fund shall be completed within a reasonable length of time as established by the Commission, not to exceed 5 years.

(B) The RPC shall provide detail, in writing, of its efforts to recover 9-1-1 funds from its participating local governments and/or vendors, in compliance with the MOU, Section 2.4.

(C) The repayment plan shall be reviewed and approved by the RPC Executive Committee, or Board, prior to being submitted to the Commission.

(D) Upon receipt of the RPC repayment plan, Commission staff shall present the plan and staff recommendations to the Commission at its next regularly scheduled meeting.

(E) The Commission may accept or reject any repayment plan proposal. In either case, the RPC shall be notified of the Commission's action with five working days. In the case of rejection, this paragraph shall be repeated until resolution is accomplished.

(4) Monitoring of Repayment--Commission staff shall closely monitor repayment of any disallowed fees through review of Financial Status Reports, submitted quarterly, to the Commission. Any discrepancies or irregularities shall be reported to the Commission's internal auditor and reported to the Commission.

(5) Repeated Problems or Findings and Sanctions--If subsequent annual monitoring review reveals repeated findings that have not been corrected from a prior year's monitoring report, the RPC shall be deemed to be in continued violation. In accordance with State law, the Commission may consider designating another administrative entity if it is determined that a continued violation by an RPC constitutes willful disregard of applicable law and rules, gross negligence, or failure to observe accepted standards of administration.

(c) RPC Monitoring of Interlocal Agreements and Performance. The RPC shall monitor, at least annually, the performance on each of its interlocal agreements.

(1) Local Monitoring Plan Development--Each RPC shall develop its own local-level monitoring plan that shall be incorporated into its Regional Strategic Plan. Local monitoring plans shall include, at a minimum, a schedule or timetable for monitoring all interlocal contracts for 9-1-1 funded activities, equipment, and or services. [~~but are not limited to, the following listed in subparagraphs (A)- (B) of this paragraph.~~]

[~~(A) A schedule or timetable for monitoring all interlocal contracts, 9-1-1 funded activities, equipment, PSAPs and subcontractors;~~]

[~~(B) Annual reviews of all subcontracts, especially addressing and/or addressing maintenance contracts;~~]

(2) Compliance with Contract Stipulations--The RPC shall monitor each interlocal contract for performance of contract deliverables, which shall include the stipulations contained in the Contract, Article 4, Standard Interlocal Agreements with Local Governments.

(3) Documentation--Local monitoring activities, findings, recommendations and responses shall be documented in writing and retained for at least 5 years.

(4) Reporting Procedures--The RPC shall establish reporting procedures to convey the monitoring data to the RPC Executive Director, Executive Committee and the Commission.

(5) Reports to the Commission--The Commission shall require, at a minimum, the following documentation and information listed in subparagraphs (A) - (C) of this paragraph.

(A) Certification or other assurance that interlocal agreements have been executed between the RPC and each of its performing Local Governments. Such certification shall be communicated to the Commission within the RPC's biannual strategic plan submission, or upon the Commission's request.

(B) Local Monitoring Plans shall be submitted to the Commission in conjunction with the regularly scheduled biannual 91-1 Strategic Plan submission. Revisions to any such document shall be submitted to the Commission in writing as they occur.

(C) Local monitoring findings shall be submitted to the Commission as they are completed and approved by the RPC Executive Director, according to the local schedule, and shall be submitted in conjunction to regular Commission performance reporting schedules. The Commission shall exercise its right to conduct monitoring activities as a result of the local monitoring reports.

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

Filed with the Office of the Secretary of State on October 13, 2010.

TRD-201005849
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 305-6930

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CHAPTER 252. ADMINISTRATION

1 TAC §252.9

The Commission on State Emergency Communications (CSEC) proposes new §252.9, concerning the liability protection of NG9-1-1 service providers. The proposed new section makes clear that the liability protection afforded in Health and Safety Code §771.053 extends to persons and entities providing Next Generation 9-1-1 (NG9-1-1).

BACKGROUND AND PURPOSE

The National Emergency Number Association (NENA) defines NG9-1-1 as:

The next evolutionary step in the development of the 9-1-1 emergency communications system known as E9-1-1 since the 1970s. NG9-1-1 is a system comprised of managed IP-based networks and elements that augment present-day E9-1-1 features and functions and add new capabilities. NG9-1-1 will eventually replace the present E9-1-1 system. NG9-1-1 is designed to provide access to emergency services from all sources, and to provide multimedia data capabilities for PSAPs and other emergency service organizations.

In general, IP-based networks and elements rely upon digital rather than the analog technologies used in providing traditional telecommunications services.

Health and Safety Code §771.053 codifies the liability protection first adopted in 1987 with the establishment of the state 9-1-1 program (HB 911). HB 911 provided liability protection to providers of telecommunications services involved in providing 9-1-1 service (including officers and employees) and manufacturers of equipment used in providing 9-1-1 service for "any claim, damage, or loss arising from the provision of 9-1-1 service" unless the proximate cause "constituted gross negligence, recklessness, or intentional misconduct." In 1993, House Bill 1544 modified §771.053 to delete "of telecommunications service" from the portion extending protection to officers and employees of service providers.

The legislative intent in deleting "of telecommunications services" was to provide liability protection to non-traditional *(i.e.,* non-telecommunications) providers of voice communications. Deleting from a portion of the section the term "telecommunications" made clear that to be protected, a service provider needed to be either "involved in providing 9-1-1 service" or an officer or employee of such a service provider. When HB 1544 was adopted, the effect was to extend liability protection to business service users with residential phone facilities who provide phone service via a leased or owned private telephone switch *(e.g.,* non-certificated, owners/landlords of apartments and other multi-dwelling residences that provide their tenants with phone service).

HB 1544 recognized that new technology and equipment allowed non-traditional, non-certificated entities to be directly involved in providing end users with the ability to originate and receive voice communications. When HB 1544 was passed, IP-based technologies and equipment, including NG9-1-1, was not commercially available or widely deployed. Today, IP-based telephony is used by a range of providers from cable television companies to Vonage to provide voice services. As a result, the internet *(i.e.,* a broadband connection) has become a ubiquitous means by which a caller can originate and receive voice communications.

In 2008, Congress passed the NET 911 Act (New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620 (2008) (codified at 47 U.S.C. §615a and §615b). Section 201(a) of the NET 911 Act extends state-law liability protection afforded local exchange companies to IP-enabled voice service providers. IP-enabled voice service is defined in §101(3) of the Act to mean "interconnected VoIP service" as defined by the Federal Communications Commission (FCC):

A service that:

(1) Enables real-time, two-way voice communications;

(2) Requires a broadband connection from the user's location;

(3) Requires Internet protocol-compatible customer premises equipment (CPE); and

(4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

The FCC's definition is implicitly premised on a relationship between the IP-enabled provider and an end user customer. Some of the entities working to develop and deploy NG9-1-1 may not fall within the FCC's definition because they do not have a con-

nection with end users. Assuming they do, whether liability protection is afforded such an entity when it acts as a provider of NG9-1-1 remains uncertain.

CSEC proposes new §252.9 to make clear the Legislature and Congress' intent to extend state law liability protection to those persons and entities involved in providing NG9-1-1, irrespective of the regulatory classification of the entity for purposes unrelated to 9-1-1 service.

FISCAL NOTE

Paul Mallett, executive director, has determined that for each year of the first five fiscal years that §252.9 is in effect there will be no fiscal implications to the state or local governments as a result of enforcing or administering the proposed section. Adoption of the new section serves to ensure a competitive marketplace for NG9-1-1, which may result in lower costs to the state and local governments.

PUBLIC BENEFIT

Mr. Mallett has determined that for each year of the first five years the section is in effect, the expected public benefit is to expand the features and capabilities of 9-1-1 service through the development and deployment of NG9-1-1. Such expansion to possibly include 9-1-1 service via text messaging and providing additional and more critical information as part of 9-1-1 service. Mr. Mallett has also determined that for each year of the first five years the proposed section is in effect there are no probable economic costs to persons required to comply with the section.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedure Act, Government Code §2001.022.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Mr. Mallett has determined that there will be no adverse economic effect on small businesses or micro-businesses. Accordingly, CSEC has not prepared the economic impact statement or regulatory flexibility analysis that would otherwise be required.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by fax to (512) 305-6937, or email to patrick.tyler@csec.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.* All comments should include in the subject line "Comments to Proposed Rule 252.9 - Liability Protection of NG9-1-1 Service Providers."

STATEMENT OF AUTHORITY

The new section is proposed under Health and Safety Code §771.051(a)(1), (2), (8) and (9), and §771.053(a).

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

§252.9. Liability Protection of NG9-1-1 Service Providers.

(a) Purpose. The purpose of this section is to make clear that the protection from liability provided by Health and Safety Code §771.053(a) extends to and includes service providers involved in developing and deploying Next Generation 9-1-1 (NG9-1-1).

(b) NG9-1-1 Service Providers. NG9-1-1 service provider refers to a person or entity involved in providing 9-1-1 service that utilizes in whole or in part NG9-1-1.

(c) Liability Protection. NG9-1-1 service providers are protected from liability for any claim, damage, or loss arising from the provisioning of 9-1-1 service to the same extent as a service provider of telecommunications service involved in or a manufacturer of equipment used in providing 9-1-1 service under Health and Safety Code §771.053(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 October 13, 2010.

TRD-201005850
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 305-6930

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE
SUBCHAPTER G. STAR+PLUS

1 TAC §§353.601, 353.603, 353.605, 353.607

The Texas Health and Human Services Commission (HHSC) proposes to amend §353.601, concerning General Provisions, §353.603, concerning Member Participation, §353.605, concerning Participating Providers and adds new §353.607, concerning STAR+PLUS Handbook, relating to the Medicaid managed care STAR+PLUS program.

Background and Justification

The STAR+PLUS program is a combination 1915(b) and 1915(c) Medicaid waiver administered by HHSC. Several program functions are delegated to other state entities or contractors including the Department of Aging and Disability Services, managed care organizations, and the Texas Medicaid & Healthcare Partnership.

HHSC proposes to amend the Medicaid managed care rules §§353.601, 353.603, and 353.605 related to the STAR+PLUS program to reflect the current program description and member participation guidelines and to update the geographic locations where the program is available. In addition, HHSC proposes to

add new §353.607 specifying that the STAR+PLUS Handbook includes policies and procedures to be used by all health and human services agencies and their contractors and providers in the delivery of 1915(b) and/or 1915(c) STAR+PLUS waiver services to eligible members.

Section-by-Section Summary

Proposed amended §353.601(a) aligns the general program description with current practice and updates outdated terminology.

Proposed amended §353.601(b) updates outdated terminology and Texas Administrative Code references and updates the authority under which the program operates to include 1915(c) waiver authority.

Proposed amended §353.601(c) updates outdated terminology.

Proposed amended §353.601(d) updates the geographic locations in which the program is available and updates outdated terminology.

Proposed amended §353.603 updates the eligibility criteria for participation in the 1915(c) STAR+PLUS waiver. The section also describes mandatory and voluntary enrollment in STAR+PLUS. This section also changes the rule title from client to member to more accurately describe the participants in this program.

Proposed amended §353.605 updates the requirements for providers to participate in the STAR+PLUS program.

Proposed new §353.607 authorizes the *STAR+PLUS Handbook* to serve as the policies and procedures manual to be used by all agencies and providers in the delivery of 1915(b) and/or 1915(c) STAR+PLUS waiver services.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed new rule and amendments are in effect, there will be no fiscal impact to state government. The proposed new rule and amendments will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the proposed new rule and amendments as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed new rule and amendments. There is no anticipated negative impact on local employment.

Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed new rule and amendments are in effect, the public will benefit from the adoption of the new rule and amendments. The anticipated public benefit of enforcing the proposed new rule and amendments will be a more updated description of the STAR+PLUS program and uniform policies and procedures for the operation of the STAR+PLUS program.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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

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

Public Comment

Written comments on the proposal may be submitted to DJ Johnson, STAR+PLUS Program Specialist, Medicaid/CHIP Division, Health and Human Services Commission, at P.O. Box 13247, Mail Code H390, Austin, Texas 78711; by fax to (512) 491-1969; or by e-mail to david.johnson@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for November 4, 2010 from 10:00 a.m. to 11:00 a.m. in the Health and Human Services Building H, Lone Star Conference Room, located at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh Van Kirk at (512) 491-2813.

Statutory Authority

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

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

§353.601. General Provisions.

(a) The Texas Health and Human Services Commission administers the [~~Department of Human Services (DHS) will implement a pilot Medicaid managed care project, known as~~] STAR+PLUS program[~~,~~] for the delivery of Medicaid-covered acute and long-term [~~long term care~~] services and supports. Covered services include [~~Services to be included are~~] all Medicaid State Plan [~~covered~~] primary and acute care services and all long-term services and supports [~~community care and nursing facility services~~] covered by Medicaid.

(b) The STAR+PLUS program operates [~~will operate~~] under the authority of 1915(b) and 1915(c) [~~(c)~~] waivers. Rules governing the operation of the STAR+PLUS program will be in accordance with Subchapter E of this chapter (relating to Standards for Medicaid Managed Care) [~~25 TAC §§30.21-30.31 (Medicaid Managed Care)~~].

(c) Through competitive procurement, managed care [~~health maintenance~~] organizations (MCOs) are [~~will be~~] selected to provide the Medicaid-covered acute care services and long-term [~~long term care~~] services and supports.

(d) The STAR+PLUS program serves members [~~pilot project will serve clients~~] whose primary residence is in one of the following

STAR+PLUS MCO service areas: [~~Harris County and will begin no earlier than November 1, 1997.~~]

(1) Bexar, which consists of Bexar, Atascosa, Comal, Guadalupe, Kendall, Medina, and Wilson counties;

(2) Harris, which consists of Harris County;

(3) Harris Contiguous, which consists of Brazoria, Fort Bend, Galveston, Montgomery, and Waller counties;

(4) Nueces, which consists of Nueces, Aransas, Bee, Calhoun, Jim Wells, Kleberg, Refugio, San Patricio, and Victoria counties;

(5) Travis, which consists of Travis, Bastrop, Burnet, Caldwell, Hays, Lee, and Williamson counties;

(6) Dallas, which consists of Dallas, Collin, Ellis, Hunt, Kaufman, Navarro, and Rockwall counties;

(7) Tarrant, which consists of Tarrant, Denton, Hood, Johnson, Parker, and Wise counties; or

(8) Other service areas and counties as authorized by a waiver amendment approved by the Centers for Medicare and Medicaid Services.

§353.603. Member [~~Client~~] Participation.

(a) Except as provided in subsections (b) and (d) of this section, enrollment in the STAR+PLUS program is *mandatory* for Medicaid recipients who live in a STAR+PLUS service area and meet one or more of the following criteria:

(1) Have a physical or mental disability and qualify for Supplemental Security Income (SSI) benefits or for Medicaid due to low income;

(2) Qualify for 1915(c) Nursing Facility waiver services;

(3) Are age 21 or older and receive Medicaid because they are in a Social Security Exclusion program and meet financial criteria for 1915(c) Nursing Facility waiver services; and/or

(4) Are age 21 or older and are receiving SSI.

(b) Enrollment in the STAR+PLUS program is *voluntary* for children under age 21 receiving SSI.

(c) Medicaid recipients will have a choice among at least two managed care organizations (MCOs).

(d) The following Medicaid recipients *cannot* participate in the STAR+PLUS program:

(1) Residents of nursing facilities;

(2) STAR+PLUS members who have been in a nursing facility for more than four consecutive months;

(3) Clients receiving Medicaid 1915(c) waiver services, other than Community-Based Alternatives services;

(4) Residents of intermediate care facilities for persons with mental retardation (ICFs/MR);

(5) Consumers not eligible for full Medicaid benefits, such as Frail Elderly program members, Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, Qualified Disabled Working Individuals, and undocumented aliens; and

(6) Children in the conservatorship of the Texas Department of Family and Protective Services.

(e) Dual eligible clients.

(1) Enrollment in Medicare does not affect eligibility for the STAR+PLUS program.

(2) Individuals who are covered by both Medicare and Medicaid (also known as "dual eligibles") and participate in the STAR+PLUS program will continue to receive acute care services through their Medicare provider. The STAR+PLUS program does not change the way they receive Medicare services.

(f) An individual is eligible for 1915(c) STAR+PLUS waiver services if the individual:

(1) is 21 years of age or older;

(2) has been determined by the Texas Health and Human Services Commission to be financially eligible for Medicaid;

(3) is enrolled in the STAR+PLUS program;

(4) meets the level-of-care/medical necessity criteria for nursing facility placement according to applicable state and federal regulations, and as verified by an annual assessment;

(5) has an approved individual service plan with an estimated annual cost that does not exceed the applicable individual cost ceiling and service limits;

(6) chooses STAR+PLUS waiver services as an alternative to institutional care as described in the Code of Federal Regulations, Title 42, §441.302(d); and

(7) resides:

(A) in their own home;

(B) in a licensed assisted living facility contracted with the applicant's/member's MCO to provide STAR+PLUS waiver services; or

(C) in an adult foster care home contracted with the member's MCO to provide STAR+PLUS waiver services.

(g) An individual may apply for 1915(c) STAR+PLUS waiver services when the individual is in a nursing facility and is seeking a return to the community.

[~~(a) All supplemental security income (SSI) and SSI-related clients and clients who qualify for Medicaid benefits as medical assistance only (MAO) clients must receive their Medicaid services through the STAR+PLUS pilot. Clients will have a choice among at least two Health Maintenance Organizations.~~]

[~~(b) SSI or SSI-related clients who are receiving services from the following programs are excluded from participation in STAR+PLUS:~~]

[~~(1) Frail Elderly waiver;~~]

[~~(2) Community Living Assistance and Support Services (CLASS) waiver;~~]

[~~(3) Deaf Blind Multiple Disabled waiver;~~]

[~~(4) Mental Health/Mental Retardation (MHMR) Home and Community-based Services (HCS) waiver and Home and Community based Services-OBRA (HCS-OBRA) waiver;~~]

[~~(5) Medically Dependent Children Program (MDCP) waiver;~~]

[~~(6) clients receiving services in residential MHMR facilities;~~]

[~~(7) clients who qualify for Medicaid based on residency in a nursing facility (Medical Assistance Only);~~]

[(8) members of a managed care organization after four months of residency in a nursing home; and]

[(9) clients who are in a nursing facility prior to managed care enrollment.]

[(c) SSI clients under 21 years of age, SSI clients receiving ongoing rehabilitative services through the local mental health authority, and SSI clients on the waiting list to receive MHMR HCS waiver services will have the option of STAR+PLUS participation or choosing the Primary Care Case Management Program for their acute care services and remaining fee-for-service for their long term care services.]

§353.605. Participating Providers.

Acute and long-term services and supports providers are [Providers who traditionally have served Medicaid clients will be] given the opportunity to contract with managed care organizations (MCOs) [participate in Health Maintenance Organizations] provided they meet licensing standards, the MCO's [quality and] credentialing standards, agree to the MCO's contract provisions, and agree to the MCO's payment arrangements.

§353.607. STAR+PLUS Handbook.

The *STAR+PLUS Handbook* includes policies and procedures to be used by all health and human services agencies and their contractors and providers in the delivery of 1915(b) and/or 1915(c) STAR+PLUS waiver services to eligible members. The *STAR+PLUS Handbook* can be found on the Texas Health and Human Services Commission website.

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

Filed with the Office of the Secretary of State on October 15, 2010.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §354.1452

The Texas Health and Human Services Commission (HHSC) proposes to add new §354.1452, concerning Out of Business Medicaid Providers.

Background and Justification

In April 2007, HHSC's Medicaid/CHIP Division (MCD) requested that HHSC Internal Audit complete an audit of the accounts receivable managed through the Medicaid Claims/Primary Care Case Management Administrator contract. The final report, released on September 26, 2008, included a recommendation that MCD identify when a Medicaid provider is out of business and publish that information in rule.

Pursuant to federal law, a state is required to refund the federal share of a Medicaid overpayment following the discovery that a provider has been overpaid. To the extent a state is unable to collect the overpayment because the provider is bankrupt or the provider is out of business, the state is relieved of the requirement to refund the overpayment. The new rule clarifies the process HHSC follows to demonstrate that a provider is out of business and the debt is uncollectible.

Section-by-Section Summary

Proposed new subsection (a) describes the purpose of the new rule.

Proposed new subsection (b) defines the terms "overpayment" and "provider" as they relate to the new rule.

Proposed new subsection (c) indicates HHSC may locate a provider or recover overpayments through methods permitted under state law, including referrals to the Office of the Texas Attorney General.

Proposed new subsection (d) specifies the methods HHSC may use to locate a provider or a provider's assets, or recover provider overpayments.

Proposed new subsection (e) identifies how HHSC determines a provider is out of business and an overpayment is uncollectable under state law, and authorizes HHSC to execute appropriate documentation to submit to CMS. It also specifies that the HHSC determination that a provider is out of business is not binding for other state agencies.

Proposed new subsection (f) specifies that a determination of a provider being out of business is subject to informal review by HHSC, which can revise or reverse a determination based on information provided to or obtained by HHSC.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect, there will be no fiscal impact to state government. The proposed new rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the proposed new rule as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of enforcing the proposed new rule will be to make public the guidelines the Texas Medicaid program uses to determine whether a provider is out of business and to reclaim the federal share of an overpayment when providers are determined to be out of business and their overpayments are not collectible.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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

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

Public Comment

Written comments on the proposal may be submitted to Valerie Jones, Accounts Receivable Specialist, Medicaid/CHIP Division, Health and Human Services Commission, at P.O. Box 13247, Mail Code H390 Austin, Texas 78711; by fax to (512) 249-3725; or by e-mail to valerie.jones@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for November 3, 2010 from 1:00 p.m. to 2:00 p.m. in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

Statutory Authority

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

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

§354.1452. Out of Business Medicaid Providers.

(a) Purpose. This rule describes the guidelines the Health and Human Services Commission (HHSC) follows in determining whether a Medicaid provider is out of business according to state law.

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

(1) Overpayment--An amount paid by the Medicaid agency to a provider that is in excess of the amount that is allowable for services furnished under the Medicaid program whether obtained through error, misunderstanding, abuse, or fraud.

(2) Provider--Has the meaning assigned under §371.1601 of this title (relating to Definitions).

(c) Recovery of Overpayment. HHSC may attempt to locate a provider or recover a provider overpayment through any method permitted under state law, including referral to the Office of the Attorney General of Texas (OAG).

(d) In attempting to locate a provider or assets, or recover a provider overpayment, HHSC may:

(1) Attempt to contact the Medicaid provider at his or her last known mailing address or telephone numbers;

(2) Determine whether a provider is continuing to participate in the Texas Medicaid program;

(3) Verify corporate or partnership status through the Office of the Secretary of State;

(4) Verify current franchise status through the Comptroller of Public Accounts;

(5) Verify property tax information using the local tax appraisal district database or other databases;

(6) Review a provider's license status with any appropriate licensing authority;

(7) Review a provider's criminal history records;

(8) Review business or going-concern status using other reliable government and private data sources; and/or

(9) Pursue other reasonable collection activity permitted under state law.

(e) Out of Business Determination. Based on its review of relevant business information, HHSC may:

(1) Determine that a provider is out of business. This determination:

(A) Will be based on the totality of the circumstances and includes a review of information collected under subsections (c) and (d) of this section.

(B) Is not binding for any other state agency; and

(C) Is not considered to be a sanction and does not entitle the provider to an appeal.

(2) Determine that an overpayment is uncollectible under state law; and

(3) Execute an appropriate affidavit or certification establishing that the provider is out of business and that an overpayment is uncollectible under state law. Such affidavit or certification and supporting documentation will be made available to the Centers for Medicare and Medicaid Services (CMS).

(f) Informal Review. The determination is subject to informal review by HHSC. HHSC may revise a determination made under subsection (e) of this section based on reliable information obtained by HHSC or presented by the provider to HHSC. HHSC may notify CMS if the determination is revised.

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

Filed with the Office of the Secretary of State on October 15, 2010.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.501

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.501, concerning Reimbursement Methodology for the Program for All-Inclusive Care for the Elderly (PACE).

Background and Justification

HHSC proposes to amend the rule related to the PACE reimbursement methodology. The amendments add language allowing appropriate actuarial adjustments to the PACE upper payment limit (UPL) methodology to account for statistical outliers, small populations, programmatic changes, catastrophic events, or other economic changes. The proposed amendments also allow other data to be used, as necessary, to calculate an appropriate UPL.

In addition, the proposed amendments modify the factor used in determining PACE payment amounts. Currently, to arrive at a payment rate for a PACE contract type (Medicaid services only; Medicare and Medicaid services; services to qualified Medicare beneficiaries), the UPL for each contract type is multiplied by a factor of 0.95. Under the proposed amendment, the factor may not be greater than 0.95. The change to the factor is intended to generate higher levels of managed care savings. The managed care savings factor will be applied to the PACE UPL to ensure that the payment levels do not exceed the PACE UPL.

Section-by-Section Summary

Proposed amended subsection (c)(8) adds language to allow for appropriate actuarial adjustments to be made as necessary. Subsection (c)(8) also provides for the use of alternative data sources when necessary to calculate an appropriate Upper Payment Limit (UPL).

Proposed amended subsection (e) adds language to indicate that the factor used to determine the payment amount may not exceed 0.95, assuring that payment levels do not exceed the UPL amount.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect, there will be no fiscal impact to state government. The proposed rule amendment will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

HHSC has determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

David Palmer, Chief Actuary, has determined that, for each of the first five years the amendment is in effect, the public will benefit from the adoption of the rule amendment. The anticipated public benefit of the proposal is that the rule will allow for appropriate actuarial adjustments for statistical outliers, small populations, programmatic changes, catastrophic events or other economic changes to be made during the upper payment limit (UPL) calculation. The amendment also provides for higher levels of managed care savings to be applied to the payment rates and assures that payment limits will not exceed the UPL.

Takings Impact Assessment

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

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Written comments on the proposal may be submitted to William Warburton at HHSC Rate Analysis Division, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200 by fax to (512) 491-1998 or by e-mail to william.warburton@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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

§355.501. Reimbursement Methodology for Program for All-Inclusive Care for the Elderly (PACE).

(a) General specifications. The Texas Health and Human Services Commission (HHSC) determines the upper payment limits and reimbursement rates for each PACE contractor. HHSC applies the general principles of cost determination as specified in §355.101 of this title (related to Introduction).

(b) Frequency of reimbursement determination. The upper payment limits and reimbursement rates are determined coincident with the state's biennium.

(c) Upper payment limit determination. There are three upper payment limits calculated for each PACE contract: one for clients eligible only for Medicaid services (Medicaid-only clients), one for clients eligible for both Medicare and Medicaid services (dual-eligible clients), and one for clients eligible for only Medicare services as Qualified Medicare Beneficiaries (QMBs). An average monthly historical cost per client receiving nursing facility and Community Based Alternatives (CBA) services under the fee-for-service payment system

is calculated for the counties served by each PACE contract for the upper payment limits for Medicaid-only clients and for dual-eligible clients.

(1) The upper payment limits for Medicaid-only and for dual-eligible clients for the biennium are calculated for the base period using historical fee-for-service claims data and member-month data from the most recent state fiscal year of complete claims available prior to the state's biennium.

(2) The historical costs are derived from fee-for-service claims data for clients receiving nursing facility services or CBA services in the counties served by each PACE contract. This applies to clients who:

(A) are age 55 and older;

(B) have Medicare coverage and who do not have Medicare coverage; and

(C) are not receiving services under the STAR+PLUS managed care program.

(3) The historical costs include:

(A) acute care services, including inpatient, outpatient, professional, and other acute care services;

(B) prescriptions;

(C) medical transportation;

(D) nursing facility services;

(E) hospice services;

(F) long-term care specialized services, such as physical therapy, occupational therapy, and speech therapy;

(G) CBA services;

(H) Primary Home Care (including Family Care) services; and

(I) Day Activity and Health Services.

(4) Effective on and after January 1, 2006, the historical prescription costs from subparagraph (B) of this paragraph that are used in the calculation of the upper payment limit, and as such the associated payment rate, for dual-eligible clients for each PACE contract will exclude the costs of any drug that is in a category covered by Medicare Part D.

(5) To determine an average monthly historical cost for the counties served by each PACE contract, the total historical fee-for-service claims data for the counties served by each PACE contract are divided by the number of member months for the counties served by each PACE contract.

(6) A per member month amount is added to the average monthly historical cost per client. The per member month amount is added for:

(A) processing claims, based on the state's cost to process claims under the fee-for-service payment system; and

(B) case management, based on the state's cost to provide case management under the fee-for-service payment system for CBA clients.

(7) The sum of the average monthly historical cost per client for each PACE contract and the amounts from paragraph (5) of this subsection are projected from the claims data base period identified in paragraph (1) of this subsection to the rate period to account for anticipated changes in costs for each PACE contract. The methodology used for trending historical costs for calculating PACE UPLs and rates is comparable to that used for trending fee-for-service costs.

(8) The PACE Upper Payment Limit (UPL) method may be adjusted to account for statistical outliers, small populations, programmatic changes, catastrophic events, or other economic changes, as determined by HHSC to be actuarially appropriate. Data from sources other than those described in paragraphs (1) and (2) of this subsection may be used, if deemed by HHSC necessary to calculate an appropriate UPL. For example, HHSC may consider comparable data from other timeperiods.

(d) The upper payment limit for QMBs is determined on a statewide basis using the average cost incurred by Medicaid for Medicare co-insurance and deductibles.

(e) Payment rate determination. There are three reimbursement rates calculated for each PACE contract: one for clients eligible for Medicaid services, one for clients eligible for both Medicare and Medicaid services, and one for clients eligible for only Medicare services as Qualified Medicare Beneficiaries (QMBs). The payment rates for the three client categories for each PACE contract are determined by multiplying the upper payment limits calculated for each PACE contract by a factor no greater than 0.95. The factor may be reduced as necessary to establish a rate consistent with available funds.

(f) Reporting of cost. HHSC may require the PACE contractor to submit financial and statistical information on a cost report or in a survey format designated by HHSC. Cost report completion is governed by the requirements specified in Subchapter A of this chapter (relating to Cost Determination Process). HHSC may also require the PACE contractor to submit audited financial 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.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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CHAPTER 360. MEDICAID BUY-IN PROGRAM

1 TAC §360.117

The Texas Health and Human Services Commission (HHSC) proposes to amend §360.117, concerning Cost Sharing for Medicaid Buy-in (MBI) recipients.

Background and Justification

The Medicaid Buy-in (MBI) program was established to provide Medicaid services to persons with a disability who are working in Texas and who meet the income guidelines. This program for working Texans with a disability is a separate program from the Medicaid Buy-in for Children (MBIC) program, which will serve persons under age 19 with a disability that meet the program eligibility requirements.

The proposed rule amendment implements new federal law related to cost sharing exemptions for certain MBI recipients and aligns the MBI program cost sharing policy with the MBIC program cost sharing policy. At this time, the only cost sharing required under the MBI program are monthly premium payments to HHSC. HHSC does not currently exempt any MBI group from monthly premium payments.

Section 5006(a)(1) of the American Recovery and Reinvestment Act (ARRA) of 2009 requires that certain cost sharing protections be given to American Indians and Alaska Natives. The proposed rule amendment exempts these two groups of recipients enrolled in the MBI program from paying premiums or other cost sharing charges for the duration of enrollment in MBI.

In addition, recipients enrolled in the MBI program who reside in a federally declared disaster area will be exempt from paying premiums for three months beginning with the month in which the disaster is declared. A recipient residing in a federally declared disaster area will only be exempt from paying monthly premiums or other cost sharing charges once per disaster. This new policy for MBI recipients reflects the policy used in the MBIC program.

Section-by-Section Summary

Proposed amended subsection (a) adds language explaining that persons enrolled in MBI may be exempt from paying monthly premiums as described in subsection (h).

Proposed new subsection (h) exempts American Indians and Alaska Natives from paying premiums or other cost sharing charges for the duration of their enrollment in MBI, and exempts MBI enrollees residing in a federally declared disaster area from paying premiums for three months beginning with the month in which the disaster is declared.

Fiscal Note

Greta Rymal, Deputy Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Mr. Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be appropriate application of cost sharing exemptions for certain groups in the MBI program.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Michelle Erwin, Senior Policy Analyst, at 11209 Metric Boulevard, Austin, Texas 78758, by fax to (512) 491-1953, or by e-mail to michelle.erwin@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for November 4, 2010 from 9:00 a.m. to 10:00 a.m. in the Health and Human Services Building H, Lone Star Conference Room, located at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

Statutory Authority

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

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

§360.117. Cost Sharing.

(a) Monthly premiums. As a condition of establishing initial MBI eligibility and to remain eligible, a person must pay monthly premiums, as explained in this section, based on the amount of the person's countable earned and countable unearned income. A person may be exempt from paying monthly premiums as described in subsection (h) of this section.

(b) Countable earned income. For purposes of this section, countable earned income is as defined in 20 CFR §416.1110 and §416.1111, minus:

(1) earned income that is excluded by federal law, as explained in 20 CFR §416.1112(b); and

(2) mandatory payroll deductions for federal income tax, FICA, and retirement withholding.

(c) Countable unearned income. For purposes of this section, countable unearned income means unearned income, as defined in 20 CFR §§416.1120 - 416.1123, minus the exclusions and exemptions explained in 20 CFR §416.1124.

(d) Calculation of monthly premium. The monthly premium amount equals the amount of a person's countable unearned income for the month that exceeds the Supplemental Security Income (SSI) federal benefit rate for an individual, plus:

(1) $20 when monthly countable earned income is above 150% of the federal poverty level (FPL) up to and including 185% of the FPL;

(2) $25 when monthly countable earned income is above 185% of the FPL up to and including 200% of the FPL;

(3) $30 when monthly countable earned income is above 200% of the FPL up to and including 250% of the FPL; or

(4) $40 when monthly countable earned income is above 250% of the FPL.

(e) Upper limit on monthly premiums. The upper limit for the total monthly premium per person is $500. If the unearned income premium amount plus the earned income premium amount equals or exceeds $500, then the total monthly premium remains at $500.

(f) Payment of monthly premiums to establish initial eligibility. If the calculation explained in subsection (d) of this section results in an amount greater than $0, HHSC sends the person a written notice of the person's potential eligibility as described in this subsection. The initial eligibility period begins with the earliest benefit month and continues through the end of the latest benefit month identified on the written notice of the person's potential eligibility. This subsection explains the procedures that are followed and the requirements the person must meet to establish eligibility under this section for any or all of the months within the initial eligibility period. The steps are as follows:

(1) HHSC determines that the person is potentially eligible if the person meets all eligibility requirements for MBI other than the requirements of this section.

(2) HHSC sends the person a written notice (the notice) of the person's potential eligibility. The notice identifies the earliest month of potential eligibility and the amount of the monthly premiums due for each month in the initial eligibility period.

(3) The notice also includes:

(A) the total amount in monthly premiums that must be paid to obtain MBI coverage for the entire initial eligibility period; and

(B) the deadline by which payment must be submitted.

(4) The person chooses whether to pay the monthly premiums for either the entire initial eligibility period or for only a portion of the initial eligibility period (according to the months during which the person desires MBI coverage).

(5) The person submits to HHSC, by the deadline stated in the notice, either the total amount due as explained in the notice or a lesser amount if the person is not seeking coverage for the entire initial eligibility period.

(6) If the person submits payment of less than the total amount due to obtain MBI coverage for the entire initial eligibility period, HHSC applies the amount submitted first to satisfy the monthly premium for the month following the month of the notice, then to each prior month of potential eligibility, in reverse chronological order. After this, if any amount remaining is less than the premium for a full month's coverage, HHSC refunds that amount to the person.

(7) HHSC notifies the person of MBI eligibility and of the beginning date of MBI coverage, based on the amount submitted by the person under paragraph (5) of this subsection.

(8) If no amount is submitted by the deadline stated in the notice, or if the amount submitted is less than one month's premium such that it is refunded to the person as explained in paragraph (6) of this subsection, HHSC denies the person MBI eligibility. A person denied under this paragraph must file a new application for MBI before eligibility can be established.

(g) Payment of monthly premiums after initial eligibility. Monthly premiums after a person establishes initial eligibility under subsection (f) of this section are due and payable to HHSC no later than the last calendar day of each month, and are applied to the following month's eligibility and coverage of MBI benefits. If a monthly premium payment that is due is not received by HHSC by the end of the month, after written notice, HHSC may terminate the person's MBI eligibility.

(h) HHSC exempts certain MBI recipients from paying premiums as follows:

(1) An MBI recipient who is an American Indian or Alaska Native as defined in 25 U.S.C. §§1603(c), 1603(f), 1679(b) or who has been determined eligible, as an Indian, pursuant to 42 CFR §136.12 or Title V of the Indian Health Care Improvement Act to receive health care services is exempt from paying monthly premiums or other cost sharing charges for the duration of enrollment in MBI.

(2) An MBI recipient residing in a federally declared disaster area is exempt from paying monthly premiums for three months beginning with the month in which the disaster is declared. A recipient will only be exempt from paying monthly premiums once per disaster.

This 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-201005882
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 424-6900

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §9.1, concerning Definitions and Interpretations; Severability; §9.11, concerning Notice and Initiation of Proceedings; §9.32, concerning Telephone Hearings; and §9.72, concerning Administrative Record.

In general, the purpose of the amendments is to implement changes resulting from the commission's review of Chapter 9 under Texas Government Code, §2001.039. The changes provide better clarity for litigants in the contested case hearings process. The notice of intention to review 7 TAC Chapter 9 was published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8410). The agency did not receive any comments on the notice of intention to review.

The amendments are technical in nature and provide clarification, reflect current practice, improve grammar and word choice, provide a more precise legal citation, and remove obsolete language and references. The individual purposes of the amendments to each section are provided in the following paragraphs.

The purpose of the amendments to §9.1, concerning Definitions and Interpretations; Severability is to clarify the language within certain definitions outlined in subsection (b). In the definition of "Administrative law judge" contained in paragraph (1), the proposed amendments reflect the fact that a hearings officer may be employed through a contract by an individual agency. The definitions of "Applicant," "Protestant," and "Respondent," found in paragraphs (4), (5), and (6), respectively, are being amended to incorporate the different types of authorizations granted by the different finance agencies. Currently, these definitions include the terms "license, permit, or other action." The amendments add language to include a "registration" or "registrant," and a "charter" or "charter holder." In addition, regarding applicants, the following phrase has been added to §9.1(b)(4): "or to amend its authority under an existing license, registration, charter, or permit."

The purpose of the amendments to §9.11, concerning Notice and Initiation of Proceedings is to provide more inclusive language concerning various authorizations granted by the finance agencies, improve grammar, and revise a legal citation. As in §9.1(b), the proposed amendments to §9.11(a) also integrate terminology to include holders of registrations and charters. The changes are found in the third and fourth sentences of subsection (a). In conjunction with the added terminology, the beginning of the third sentence has been revised to improve grammatical structure. Additionally, in §9.11(b)(5)(C), a more precise citation to the Government Code has been provided.

The purpose of the amendments to §9.32, concerning Telephone Hearings, is to provide a more accurate word choice. In the last sentence of subsection (a), the verb "insure" has been replaced with the verb "ensure" to better reflect the context of the sentence.

The purpose of the amendments to §9.72, concerning Administrative Record, is to remove obsolete language. In the first sentence, the "General Services Commission" is being replaced with the "Office of the Attorney General," which is the agency currently responsible for the cost rates. In addition, the last sentence is being deleted, as the administrative law judge no longer prepares or certifies the record on behalf of an agency.

Leslie L. Pettijohn, Executive Director for the commission and Consumer Credit Commissioner, has determined that for each year of the first five years that the proposed amendments are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rules.

Commissioner Pettijohn has also determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amendments will be that the rules will conform to current practice, will be more easily understood by parties to the finance agencies' contested case proceedings, and will help ensure the integrity and stability of the administrative hearing process. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

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

SUBCHAPTER A. GENERAL

7 TAC §9.1

The amendments are proposed pursuant to Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are also proposed under specific rulemaking authority contained in the substantive statutes administered by the finance agencies under the jurisdiction of the commission, including Finance Code, §§11.301, 11.302, 11.304, 11.306, 14.157, 31.003, 66.002, 96.002, 151.102, 154.051, 156.102, 180.061, 181.003, 201.003, 342.551, 351.007, 352.003, 348.513, 371.006, 394.214, and 396.051, Health and Safety Code, §711.012(a) and §712.008, and Tax Code, §32.06.

The statutory provisions affected by the proposed amendments are contained in Finance Code, Chapters 11 - 14, 31, 35, 61, 66, 91, 96, 121, 151, 154, 156, 180, 181, 185, 201, 301, 341, 342, 348, 351, 352, 371, 394, 396, Health and Safety Code, Chapters 711 and 712, and Tax Code, §32.06 and §32.065.

§9.1. Definitions and Interpretation; Severability.

(a) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in Government Code, §2001.003, and the definitions in subsection (b) of this section govern the interpretation of this chapter. If any section of this chapter is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this chapter.

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

(1) Administrative law judge--The hearings officer employed by or contracted by an agency [~~the finance commission~~] to conduct administrative hearings for the finance commission, the department of banking, the department of savings and mortgage lending, and the office of consumer credit commissioner.

(2) Agency--The finance commission, the department of banking, the department of savings and mortgage lending, or the office of consumer credit commissioner.

(3) Agency head(s)--Finance commission members, the banking commissioner, the savings and mortgage lending commissioner, or the consumer credit commissioner, or a designee if authorized by law.

(4) Applicant--A party seeking a license, registration, charter, or permit, or to amend its authority under an existing license, registration, charter or permit, or other action from an agency.

(5) Protestant--A party opposing an application for a license, registration, charter, permit, or other action filed with an agency who has paid any filing fees required by an applicable law.

(6) Respondent--A permittee, licensee, registrant, charter holder, or other party against whom a disciplinary proceeding is directed by an agency.

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005923
Leslie L. Pettijohn
Executive Director
Finance Commission of Texas
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 936-7621

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SUBCHAPTER B. CONTESTED CASE HEARINGS

7 TAC §9.11, §9.32

The amendments are proposed pursuant to Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are also proposed under specific rulemaking authority contained in the substantive statutes administered by the finance agencies under the jurisdiction of the commission, including Finance Code, §§11.301, 11.302, 11.304, 11.306, 14.157, 31.003, 66.002, 96.002, 151.102, 154.051, 156.102, 180.061, 181.003, 201.003, 342.551, 351.007, 352.003, 348.513, 371.006, 394.214, and 396.051, Health and Safety Code, §711.012(a) and §712.008, and Tax Code, §32.06.

The statutory provisions affected by the proposed amendments are contained in Finance Code, Chapters 11 - 14, 31, 35, 61, 66, 91, 96, 121, 151, 154, 156, 180, 181, 185, 201, 301, 341, 342, 348, 351, 352, 371, 394, 396, Health and Safety Code, Chapters 711 and 712, and Tax Code, §32.06 and §32.065.

§9.11. Notice and Initiation of Proceedings.

(a) An action subject to this chapter is initiated by the publication or service of such documents or notices as are required to be published or served under the substantive law governing the particular proceeding. Unless other law authorizing a different notice period is applicable to the particular proceeding, all hearings in contested cases must be preceded by at least 10 days notice, as required by Government Code, §2001.051. Applicants and holders of licenses, registrations, charters, and permits [~~Licensees and permittees and applicants for licenses and permits~~] shall keep the agency informed as to their correct current mailing addresses and may be served with initial process by registered or certified mail, return receipt requested, to the address furnished the agency. Service of initial process on parties other than licensees, registrants, charter holders, permittees, or applicants (unless applicable law provides otherwise), must be made in the manner provided in the Texas Rules of Civil Procedure for initiating a civil suit.

(b) Notice of a disciplinary proceeding that is required to be preceded by a hearing must be signed by the agency head or administrative law judge and must contain:

(1) an order to appear at a specified time, date, and place;

(2) a statement of the nature of the administrative action to be commenced and the authority under which the administrative action is conducted;

(3) a description in plain language of the specific act(s) or omission(s) asserted as grounds for the contemplated administrative action;

(4) a description of the remedies sought, including the penalties or consequences sought to be imposed;

(5) a disclosure that the respondent is entitled to:

(A) be represented by an attorney of respondent's choice;

(B) directly or through an attorney contest the admissibility of evidence and cross-examine the witnesses against the respondent; and

(C) respond and present evidence and argument in respondent's behalf pursuant to Government Code, §2001.051(2) [~~§2001.051(b)~~] and §2001.087;

(6) a disclosure that the failure of respondent to appear at the hearing will be considered a waiver of respondent's rights under paragraph (5) of this subsection;

(7) a copy of this chapter included as an attachment;

(8) the name, title, address, and phone number of the person handling the administrative action for the agency and to whom the respondent or the respondent's attorney should direct inquiries regarding additional information, detail, or further discussion or negotiation in connection with the administrative action; and

(9) such other information as may be required under the substantive law governing the particular proceeding.

(c) Notice of an action that is not required to be preceded by a hearing, but that requires a party to be advised of a right to hearing before the action becomes final, must contain a notice that a written request for a hearing under the Administrative Procedure Act must be delivered to the agency by a specific date certain or the administrative action will become final. The notice must explain fully how a hearing may be requested and contain such other information as may be required under the substantive law governing the particular proceeding.

(d) In a case in which restitution is sought, the notice of hearing (or an amended or supplemental notice or pleading served a sufficient time before the hearing to provide respondent with fair notice of the claim and a reasonable opportunity to defend) shall contain, in plain language, pertinent information regarding why the agency seeks restitution, for whom it is sought, the aggregate amount of restitution anticipated, and a citation to the specific statutory provision under which the restitution claim is made. A claim for restitution, like any other notice or pleading under these rules, is subject to a motion for more definite statement.

§9.32. Telephone Hearings.

(a) Sua sponte or on motion of any party and a showing of good cause, after reasonable notice to all parties to allow them to object and argue against the procedure, the administrative law judge may conduct all or part of a hearing by telephone or other electronic means. In determining whether to allow testimony by telephone or other electronic means, the administrative law judge shall consider all relevant factors including whether the motion is opposed, the cost and feasibility of the witness being present at the hearing instead of appearing by telephone or other electronic means, the nature and duration of the expected testimony, the nature of any exhibits expected to be introduced through the witness, whether there is a good reason that the witness is unavailable

to testify in person, and the extent to which the demeanor and credibility of the witness are likely to be significant factors in weighing the witness' testimony. In deciding a motion under this section, the administrative law judge shall ensure [~~insure~~] that substantive and procedural rights of all parties are respected.

(b) Documentary evidence to be offered during a telephone hearing must be delivered by the proponent to all parties and to the administrative law judge prior to hearing.

(c) In a telephone hearing, the administrative law judge may consider the following as a failure to appear if the conditions exist for more than 20 minutes after the scheduled time for hearing:

(1) failure to answer the telephone;

(2) failure to free the telephone for a hearing; or

(3) failure to be ready to proceed with the hearing as scheduled.

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005924
Leslie L. Pettijohn
Executive Director
Finance Commission of Texas
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 936-7621

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SUBCHAPTER D. COURT APPEALS

7 TAC §9.72

The amendments are proposed pursuant to Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are also proposed under specific rulemaking authority contained in the substantive statutes administered by the finance agencies under the jurisdiction of the commission, including Finance Code, §§11.301, 11.302, 11.304, 11.306, 14.157, 31.003, 66.002, 96.002, 151.102, 154.051, 156.102, 180.061, 181.003, 201.003, 342.551, 351.007, 352.003, 348.513, 371.006, 394.214, and 396.051, Health and Safety Code, §711.012(a) and §712.008, and Tax Code, §32.06.

The statutory provisions affected by the proposed amendments are contained in Finance Code, Chapters 11 - 14, 31, 35, 61, 66, 91, 96, 121, 151, 154, 156, 180, 181, 185, 201, 301, 341, 342, 348, 351, 352, 371, 394, 396, Health and Safety Code, Chapters 711 and 712, and Tax Code, §32.06 and §32.065.

§9.72. Administrative Record.

The party appealing an agency order to the courts must pay the agency the cost of preparing the copy of the record that is to be transmitted to the reviewing court at rates approved by the Office of the Attorney General [~~General Services Commission~~]. If more than one party appeals the agency's order, the cost of the preparation of the record may be divided equally among the appealing parties or as agreed by the parties. [~~The administrative law judge shall prepare and certify the record on behalf of the agency and is responsible for filing it in the reviewing court.~~]

This 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
Executive Director
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PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 51. CHARTER APPLICATIONS

7 TAC §51.1

The Finance Commission of Texas (the "Commission") proposes an amendment to §51.1, concerning the form and content of applications to incorporate.

In general, the purpose of the amendment is to conform the rule to the Department's current practice and to add clarification.

Douglas B. Foster, Savings and Mortgage Lending 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 Foster 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 amendment will be that the Department's rule will conform to current practice, will be more easily understood by savings associations required to comply with the rules, and will be more easily enforced. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

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

The amendment is proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendment are contained in Texas Finance Code, Chapter 62.

§51.1. Form and Content of Application to [~~To~~] Incorporate; Requirements for Capital Stock and Paid-in Surplus or Savings Liability and Expense Fund; Payment before Opening for Business.

(a) (No change.)

(b) No application to incorporate a new association shall be approved unless the application and evidence produced at hearing satisfy the commissioner that the proposed association has received subscrip-

tions for capital stock and paid-in surplus in the case of a capital stock association, or pledges for savings liability and expense fund in the case of a mutual association, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the Federal Deposit Insurance Corporation, if applicable, or the amount required of a national bank. [~~in the minimum amount of $3 million, with at least 80% of the total subscriptions being allocated to the capital stock account or the savings liability account, as applicable.~~]

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

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

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TRD-201005913
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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CHAPTER 53. ADDITIONAL OFFICES

7 TAC §53.5

The Finance Commission of Texas (the "Commission") proposes an amendment to §53.5, concerning loan offices and administrative offices.

In general, the purpose of the amendment is to conform the rule to the Department's current practice and to add clarification.

Douglas B. Foster, Savings and Mortgage Lending 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 Foster 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 amendment will be that the Department's rule will conform to current practice, will be more easily understood by savings associations required to comply with the rule, and will be more easily enforced. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

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

The amendment is proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendment are contained in Texas Finance Code, Chapter 62.

§53.5. Loan Offices and Administrative Offices.

(a) Loan Offices. A savings association may, to the extent authorized by its board of directors, establish or maintain loan offices or loan production offices with the authority to take loan applications; originate; approve or make a credit decision; or accept payments on loans, unless such activity conflicts with state or federal law [~~that only service or originate (but do not approve) loans~~]. A savings association shall notify the commissioner in writing prior to the opening or closing of a loan office. Upon such notification, the establishment of such office shall be deemed an approved loan office of the savings association. A loan office or loan production office is not a branch.

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

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CHAPTER 57. CHANGE OF OFFICE LOCATION OR NAME

7 TAC §57.1

The Finance Commission of Texas (the "Commission") proposes an amendment to §57.1, concerning change of office location not requiring approval.

In general, the purpose of the amendment is to conform the rule to the Department's current practice and to add clarification.

Douglas B. Foster, Savings and Mortgage Lending 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 Foster 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 amendment will be that the Department's rule will conform to current practice, will be more easily understood by savings associations required to comply with the rule, and will be more easily enforced. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

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

The amendment is proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendment are contained in Texas Finance Code, Chapter 62.

§57.1. Change of Office Location Not Requiring Approval; Application for Change of Location; Findings for Approval.

(a) An association may not move any office beyond its immediate vicinity without prior approval of the commissioner. Immediate vicinity means the area included within a radius or distance of one mile from the present location of such office. Any relocation within the immediate vicinity as defined in this section will require the approval of the commissioner, if the office to be relocated has not been open for business at its present location for more than two years. If the existing office has been opened for more than two years, prior written notice shall be provided to the commissioner asserting the relocation is in the immediate vicinity.

(b) Notwithstanding subsection (a) of this section, a savings association may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the commissioner with prior written notice. Upon such notification, the establishment of such office shall be deemed an approved branch or administrative office of the savings association.

(c) Each application for such approval, or prior written notice, whichever is applicable, shall provide, the existing and new branch location's address; a description of the land and building to be built or leased and terms thereof; estimates of the cost of removal to and maintenance of the new location; whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office; evidence of the bank board's approval of the relocation; and any other information as deemed necessary by the commissioner.

(d) An application to move an office location shall be set for hearing by the commissioner and notice given as provided for new charter applications, and the hearing may be dispensed with by the commissioner under the same conditions.

[~~(b) Each application for such approval shall state the exact proposed new location of the office to be relocated and shall be supported with statements, exhibits, maps, and other data, properly verified under oath, which shall be sufficiently detailed and comprehensive to enable the commissioner to pass upon the factors for approval. Such supporting data shall also include estimates of the cost of removal to and maintenance of the new location.~~]

(e) [~~(c)~~] The commissioner may not approve an application to move or relocate any office of a savings [~~an~~] association, unless he shall have found from the data furnished with the application, the evidence adduced at the hearing, and his official records, all of the findings necessary for approval of a branch office[~~, as contained in §53.4 of this title (relating to Findings Necessary for Approval of Branch Office)~~].

(f) [~~(d)~~] This section does not apply to offices set forth in §53.5 of this title (relating to Loan Offices and Administrative Offices).

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

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

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CHAPTER 65. LOANS AND INVESTMENTS

7 TAC §65.19

The Finance Commission of Texas (the "Commission") proposes an amendment to §65.19, concerning investments in real property.

In general, the purpose of the amendment is to conform the rule to the Department's current practice and to add clarification.

Douglas B. Foster, Savings and Mortgage Lending 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 Foster 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 amendment will be that the Department's rule will conform to current practice, will be more easily understood by savings associations required to comply with the rule, and will be more easily enforced. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

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

The amendment is proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendment are contained in Texas Finance Code, Chapter 64.

§65.19. Investments in Real Property.

An association may, in the course of its business, purchase, sell, own, rent, lease, manage, subdivide, develop, improve, operate for income, or otherwise deal in and with real property, whether improved or unimproved (excluding any investment of any nature in an oil and gas drilling venture, whether such investment be in the stock of a corporate entity or in the partnership or joint venture of a corporate entity or in the partnership or joint venture interest of any entity making purchases or investments in oil and gas drilling ventures). Investments of an association under this section shall not at any one time aggregate more than an amount equal to 100% of an association's net worth without the prior written approval of the commissioner. All investments in real property under the authority of this section shall be subject to the following conditions.

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

(11) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the association shall be held by an association for no more than five years, unless the commissioner extends in writing the holding period for such property.

(12) Subject to paragraph (13) of this section, when real estate is acquired in accordance with paragraph (11) of this section, an association must substantiate the market value of the real estate by obtaining an appraisal within sixty (60) days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is less than $250,000.

(13) An additional appraisal or evaluation is not required when an association acquires real estate in accordance with paragraph (11) of this section, if a valid appraisal or appropriate evaluation was

made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than one (1) year old.

(14) An evaluation shall be made on all real estate acquired in accordance with paragraph (11) of this section at least once a year. An appraisal shall be made at least once every three years on real estate with a recorded book value in excess of $250,000.

(15) Notwithstanding any other provision of this section, the commissioner may require an appraisal of real estate if the commissioner considers an appraisal necessary to address safety and soundness concerns.

This 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-201005916
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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CHAPTER 67. SAVINGS AND DEPOSIT ACCOUNTS

7 TAC §67.16

The Finance Commission of Texas (the "Commission") proposes an amendment to §67.16, concerning overdraft protection.

In general, the purpose of the amendment is to conform the rule to the Department's current practice and to add clarification.

Douglas B. Foster, Savings and Mortgage Lending 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 Foster 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 amendment will be that the Department's rule will conform to current practice, will be more easily understood by savings associations required to comply with the rule, and will be more easily enforced. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposed amendment may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to sm-linfo@sml.state.tx.us within 30 days of this publication in the *Texas Register.*

The amendment is proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendment are contained in Texas Finance Code, Chapter 65.

§67.16. Overdraft Protection[~~--Credit and Debit Cards~~].

An association which offers overdraft protection for demand deposit accounts, may offer in connection with such accounts, open end credit plans in the form of revolving loans and may offer revolving triparty arrangements (using credit cards) under Chapter 346 of the Finance Code. The total net amount advanced at any time to any one accountholder, who does not have such an open end credit plan, shall not exceed $10,000. [~~permits withdrawals from accounts in the manner authorized by §67.12 of this title (relating to Now Accounts), §67.13 of this title (relating to Checking Accounts), §67.14 of this title (relating to Approval of the Commissioner), and §67.15 of this title (relating to Noninterest-Bearing Deposit Accounts), may offer in connection with such accounts overdraft protection to account holders in the form of revolving loans and may offer revolving triparty arrangements (credit and debit cards) under Chapter 346 of the Finance Code, provided the total net amount advanced at any time to any one debtor shall not exceed $10,000.~~]

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005917
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1350

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CHAPTER 73. SUBSIDIARY CORPORATIONS

7 TAC §73.3

The Finance Commission of Texas (the "Commission") proposes an amendment to §73.3, concerning authorized subsidiary investments.

In general, the purpose of the amendment is to conform the rule to the Department's current practice and to add clarification.

Douglas B. Foster, Savings and Mortgage Lending 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 Foster 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 amendment will be that the Department's rule will conform to current practice, will be more easily understood by savings associations required to comply with the rule, and will be more easily enforced. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposed amendment may be submitted in writing to Caroline C. Jones, General Counsel, Texas Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705, or by email to sm-linfo@sml.state.tx.us within 30 days of this publication in the *Texas Register.*

The amendment is proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendment is contained in Texas Finance Code, Chapter 66.

§73.3. Authorized Subsidiary Investments.

(a) Activities of a corporation performed directly or through one or more wholly owned or partially owned corporations or joint ventures, with [~~without~~] prior approval of the commissioner, shall consist of one or more of the following:

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

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

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

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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 475-1350

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CHAPTER 75. APPLICATIONS

The Finance Commission of Texas (the "Commission") proposes amendments to Subchapter A, §75.1, concerning the application for permission to organize a state savings bank; and Subchapter C, §75.34, concerning loan offices and administrative offices, and §75.38, concerning change of home or branch office location.

In general, the purpose of the amendments is to conform the rules to the Department's current practice and to add clarification. Section 75.1 has been revised to add clarification. Section 75.34 and §75.38 have been revised to add language to clarify current practices.

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

Commissioner Foster also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the proposed amendments will be that the Department's rules will conform to current practice, will be more easily understood by savings banks required to comply with the rules, and will be more easily enforced. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

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

SUBCHAPTER A. CHARTER APPLICATIONS

7 TAC §75.1

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 92.

§75.1. Application for Permission to Organize a State Savings Bank.

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

(c) No application to incorporate a savings bank shall be approved unless the application and evidence produced at a hearing satisfy the commissioner that the proposed savings bank has received subscriptions for capital stock and paid-in surplus in the case of a capital stock savings bank, or pledges for savings liability and expense fund in the case of a mutual savings bank, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the Federal Deposit Insurance Corporation or the amount required of a national bank [~~in the minimum amount of $3 million~~]. No savings bank with an approved charter shall open or do business as a savings bank until the commissioner certifies that he has received proof satisfactory to him that the amounts of capital stock and paid-in surplus, or the savings liability and expense fund, as set forth in this section, have been received by the savings bank in cash, free of encumbrance.

(d) (No change.)

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

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Douglas B. Foster
Commissioner
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SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §75.34, §75.38

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 92.

§75.34. Loan Offices and Administrative Offices.

(a) Loan Offices. A savings bank may, to the extent authorized by its board of directors, establish or maintain loan offices or loan production offices that only service or originate (but do not approve) loans with the authority to take loan applications; originate; approve or make a credit decision; or accept payments on loans, unless such activity conflicts with state or federal law. A savings bank shall notify the commissioner in writing prior to the opening or closing of a loan office. Upon such notification, the establishment of such office shall be deemed an approved loan office of the bank. A loan office is not a branch.

(b) (No change.)

(c) Deposit Production Offices. A savings bank may, to the extent authorized by its board of directors, establish or maintain a de-

posit production office of the bank. Such an office may solicit deposits, provide information about deposit products, assist persons in completing application forms and related documents to open a deposit account. However, the deposit production office may not receive deposits or pay withdrawals, or make loans to a savings bank customer and all such deposit or withdrawal activity must be performed by the savings bank customer either in person at the main office, branch office, or by mail, electronic transfer, or similar transfer method. A savings bank shall notify the commissioner in writing prior to the opening or closing of a deposit production office. A savings bank may use the services of, and compensate, persons not employed by the savings bank in its deposit production activities. Upon such notification, the establishment of such office shall be deemed an approved deposit production office of the bank. A deposit production office is not a branch.

§75.38. Change of Home or Branch Office Location.

(a) A savings bank may not move its home office or any branch office beyond its immediate vicinity without prior approval of the commissioner. Immediate vicinity is the area included within a radius or distance of one mile from the present location of such office. Any relocation within the immediate vicinity as defined in this section will require the approval of the commissioner, if the office to be relocated has not been open for business at its present location for more than two years. If the existing office has been opened for more than two years, prior written notice shall be provided to the commissioner asserting the relocation is in the immediate vicinity.

(b) Notwithstanding subsection (a) of this section, a savings bank may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the commissioner with prior written notice. Upon such notification, the establishment of such office shall be deemed an approved administrative office of the bank.

(c) Each application for such approval, or prior written notice, whichever is applicable, shall provide, the existing and new branch location's address; a description of the land and building to be built or leased and terms thereof; estimates of the cost of removal to and maintenance of the new location; whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office; evidence of the bank board's approval of the relocation; and any other information as deemed necessary by the commissioner. [~~shall state the exact proposed new location of the office to be relocated. Supporting data shall include estimates of the cost of removal to and maintenance of the new location.~~]

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

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

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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §77.73, §77.93

The Finance Commission of Texas (the "Commission") proposes amendments to Subchapter A, §77.73, concerning investment in banking premises and other real estate owned; and §77.93, concerning authorized subsidiary investments.

In general, the purpose of the amendments is to conform the rules to the Department's current practice and to add clarification. Section 77.73 and §77.93 have been revised to add language to clarify current practices.

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

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

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 94.

§77.73. Investment in Banking Premises and Other Real Estate Owned.

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

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a savings bank must substantiate the market value of the real estate by obtaining an appraisal within sixty (60) days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is less than $250,000.

(f) An additional appraisal or evaluation is not required when a savings bank acquires real estate in accordance with subsection (d) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than one (1) year old.

(g) An evaluation shall be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal shall be made at least once every three years on real estate with a recorded book value in excess of $250,000.

(h) Notwithstanding any other provision of this section, the commissioner may require an appraisal of real estate if the commissioner considers an appraisal necessary to address safety and soundness concerns.

§77.93. Authorized Subsidiary Investments.

(a) Activities of a corporation performed directly or through one or more wholly owned or partially owned corporations or joint ventures, with [~~without~~] prior approval of the commissioner, shall consist of one or more of the following:

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

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

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

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

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SUBCHAPTER B. SAVINGS AND DEPOSITS

7 TAC §77.113

The Finance Commission of Texas (the "Commission") proposes a new rule in Subchapter B, §77.113, concerning overdraft protection.

In general, the purpose of the new rule is to conform the rules to the Department's current practice and to add clarification.

Douglas B. Foster, Savings and Mortgage Lending 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 Foster 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 new rule will be that the Department's rules will conform to current practice, will be more easily understood by savings banks required to comply with the rules, and will be more easily enforced. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

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

The new rule is proposed under Texas Finance Code §11.302, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the proposed new rule are contained in Texas Finance Code, Chapter 95.

§77.113. Overdraft Protection.

A savings bank which offers overdraft protection for demand deposit accounts, may offer in connection with such accounts, open end credit plans in the form of revolving loans and revolving triparty arrangements using credit cards. The total net amount advanced at any time to any one accountholder who does not have such an open end credit plan shall not exceed $10,000 at any one time.

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

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

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 95. SHARE AND DEPOSITOR INSURANCE PROTECTION

SUBCHAPTER A. INSURANCE REQUIREMENTS

7 TAC §95.102

The Credit Union Commission (the Commission) proposes amendments to §95.102, concerning Qualifications for an Insuring Organization. The amendments clarify that an insuring organization must continue to meet the qualifications for approval in order to do business in the state. The amendments also address the process for an insuring organization to become compliant if the commissioner notifies it that it is not in compliance.

The amendments are proposed as a result of the Texas Credit Union Department's (Department) general rule review.

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

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

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §15.410, which directs the Commission to adopt rules requiring a credit union to provide share and deposit insurance protection for members and depositors, and which permits a credit union to provide the insurance through another source approved by the Department.

The specific section affected by the proposed amendments is Texas Finance Code, §15.410.

§95.102. Qualifications for an Insuring Organization.

(a) An insuring organization must, at a minimum, demonstrate the following prerequisites and must continue to meet these standards on an ongoing basis, in order to do business in this state:

(1) The insuring organization is authorized to provide share and deposit insurance protection in its state of domicile or in the State of Texas;

(2) The insuring organization is in good standing with the regulatory authorities in its state of domicile;

(3) The insuring organization receives regular examinations from its state of domicile;

(4) The insuring organization has capital which is adequate for its prospective business; and

(5) The insuring organization has loss reserves that are actuarially sound.

(b) In addition to the prerequisites delineated above, the department may scrutinize other data and information as the commissioner deems appropriate, including, but not limited to, demonstrated expertise in insuring credit union shares and deposits.

(c) The department shall have the right to examine the books and records of the insuring organization as part of the approval process. The insuring organization shall be assessed the supplemental examination fee as prescribed in §97.113 of this title (relating to Fees and Charges). The insuring organization shall pay the fee to the department within thirty days of the assessment.

(d) The department may, in approving an insuring organization, impose such written conditions as the commissioner deems reasonable, necessary, or advisable in the public interest.

(e) If an approved insuring organization subsequently fails to meet any of the prerequisite standards or written conditions imposed by the department, the commissioner, in the exercise of discretion, may provide a reasonable period of time for the insuring organization to take corrective actions to bring its operations back into compliance. During this period of corrective action, however, an insuring organization may not contract with any additional credit unions to provide share and deposit insurance protection.

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

Filed with the Office of the Secretary of State on October 18, 2010.

TRD-201005961
Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES
SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §97.104

The Credit Union Commission (Commission) proposes new §97.104, concerning Petitions for Adoption or Amendment of Rules. The proposed new rule sets out the procedure for an interested person to petition the Department to adopt or amend a rule.

The new rule is proposed to comply with Texas Government Code §2001.021 which directs agencies to adopt a rule prescribing the form for a petition and the procedure for its submission, consideration, and disposition.

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

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

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new rule is proposed under Texas Government Code §2001.021 which directs agencies to adopt a rule for petitions to adopt rules.

The specific section affected by the proposed new rule is Texas Government Code, §2001.021.

§97.104. Petitions for Adoption or Amendment of Rules.

(a) An interested party may submit a petition to the Department to adopt or amend a rule pursuant to Government Code, §2001.021. The petition must be in writing, must be directed to the commissioner, and must include:

(1) a brief explanation of the proposed rule or of the proposed amendment to the rule;

(2) the full text of the proposed rule, or, if the petition is to amend an existing rule, the text of the rule that clearly identifies any words to be added or deleted from the existing text by underlining new language and striking through language to be deleted; and

(3) any additional information the commissioner may request.

(b) If the petition complies with the requirements of subsection (a) of this section, the Department shall notify the applicant that the petition has been accepted for filing and will be processed in accordance with subsection (c) of this section. If the petition does not comply, the Department shall notify the applicant in writing of the deficiencies and give the applicant an opportunity to cure them by filing an amended petition. If the applicant does not file an amended petition curing the deficiencies by 5:00 p.m. on the 15th day following the date that the Department mailed a notice of deficiencies to the applicant, the petition shall be deemed denied for the reasons stated in the deficiency notice without the necessity of further action.

(c) Within 60 days of the date that a petition is accepted for filing, the Department must either deny the petition for reasons stated in writing or initiate a rulemaking proceeding.

This 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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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER C. GRANT POLICIES

DIVISION 3. LIBRARY SERVICES AND TECHNOLOGY ACT, LIBRARY COOPERATION GRANTS

13 TAC §2.311

The Texas State Library and Archives Commission proposes an amendment to §2.311, concerning eligible applicants for Library Cooperation grants.

The membership of the Texas Library Systems is changing with the application and accreditation of certain non-public libraries, and the rules need clarification that any member of the Texas Library System is an eligible applicant for these competitive grants.

Deborah Littrell, Library Development Division Director, has determined that for the first five year period the amendment is in effect, there will be no fiscal implications for state or local governments. Ms. Littrell does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed amendment.

Ms. Littrell also has determined that for the first five years the amendment is in effect the public benefit is that they will align the eligibility for the competitive grants with Texas Library System membership criteria. There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the amendment.

Written comments on this proposal may be submitted to Deborah Littrell, Director, Library Development Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927, fax (512) 463-8800, or email deborah.littrell@tsl.state.tx.us.

The amendment is proposed under the authority of Government Code §441.1006 that permits the commission to accept, receive, and administer federal funds, §441.109 that permits the commission to adopt a state plan consistent with federal goals, and directs the state library to administer the plan according to local, state, and federal requirements, §441.135(6) that authorizes the commission to offer competitive grant to public libraries and to certain non-public libraries described by §441.1271(a), and §441.1271 that authorizes extending membership in the Texas Library System to certain non-public libraries.

The amendment affects Government Code §§441.006, 441.009, 441.135(6), and 441.1271.

§2.311. Eligible Applicants.

(a) Through their governing authority, major resource library systems, regional library systems, and libraries that are members of the TexShare Library Consortium or Texas Library System are eligible to apply for funds. These funds are awarded to major resource or regional library systems, [~~or~~] TexShare member libraries or Texas Library System members but may be used with all types of libraries as specified in the grant guidelines and application. Applicants must be members of the TexShare Library Consortium or the Texas Library System at the time of application and for the period of grant funding. Non-profit organizations may be awarded funds for projects that involve a number of TexShare or Texas Library System member libraries, as well as other types of libraries or organizations. Public school libraries that are not members of the Texas Library System may participate as partners in grants lead by eligible entities.

(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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Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5459

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DIVISION 4. LIBRARY SERVICES AND TECHNOLOGY ACT, SPECIAL PROJECTS GRANTS

13 TAC §2.411

The Texas State Library and Archives Commission proposes an amendment to §2.411, concerning eligible applicants for Special Projects grants.

The membership of the Texas Library Systems is changing with the application and accreditation of certain non-public libraries, and the rule needs clarification that any member of the Texas Library System is an eligible applicant for these competitive grants.

Deborah Littrell, Library Development Division Director, has determined that for the first five year period the amendment is in effect, there will be no fiscal implications for state or local governments. Ms. Littrell does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed amendment.

Ms. Littrell also has determined that for the first five years the amendment is in effect the public benefit will be that they align the eligibility for the competitive grants with Texas Library System membership criteria. There will be no impact on small busi-

nesses, micro-businesses, or individuals as a result of enforcing the amendment as proposed.

Written comments on the proposal may be submitted to Deborah Littrell, Director, Library Development Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927, fax (512) 463-8800, or email deborah.littrell@tsl.state.tx.us.

The amendment is proposed under the authority of Government Code §441.1006 that permits the commission to accept, receive, and administer federal funds, §441.109 that permits the commission to adopt a state plan consistent with federal goals, and directs the state library to administer the plan according to local, state, and federal requirements, §441.135(6) that authorizes the commission to offer competitive grant to public libraries and to certain non-public libraries described by §441.1271(a), and §441.1271 that authorizes extending membership in the Texas Library System to certain non-public libraries.

The amendment affects Government Code §§441.006, 441.009, 441.135(6), and 441.1271.

§2.411. Eligible Applicants.

(a) Through their governing authority, major resource library systems, regional library systems, and libraries that are members of the TexShare Library Consortium or Texas Library System are eligible to apply for funds. These funds are awarded to major resource or regional library systems, [~~or~~] TexShare member libraries or Texas Library System members but may be used with all types of libraries as specified in the grant guidelines and application. Applicants must be members of the TexShare Library Consortium or the Texas Library System at the time of application and for the period of grant funding. Non-profit organizations may be awarded funds for projects that involve a number of TexShare or Texas Library System member libraries, as well as other types of libraries or organizations. Public school libraries that are not members of the Texas Library System may participate as partners in grants lead by eligible entities.

(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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Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5459

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CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §8.3

The Texas State Library and Archives Commission proposes an amendment to §8.3, concerning Consortium Membership and Affiliated Membership. The proposed revisions would allow the Texas State Library and Archives Division to collect fees from affiliate members of the consortium to cover the costs associated with their participation in TexShare services. They would also allow the commission to collect fees from public school libraries for their participation in group purchasing programs of the consortium.

Beverley Shirley, Division Director, has determined that for the first five year period the amendment is in effect, state and local governments may experience cost savings in expenditures on electronic informational resources as a result of enforcing or administering the amended section, but that effect is indeterminable at this time. Ms. Shirley does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed amendment.

Ms. Shirley has also determined that for the first five years the amendment is in effect the public benefit anticipated will be that they will enable expansion of the TexShare consortium and its benefits to additional libraries. There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the amendment as proposed.

Written comments on the proposal may be submitted to Beverley Shirley, Library Resource Sharing Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927; fax: (512) 936-2306.

The amendment is proposed under Government Code §441.225(b), which authorizes the commission to adopt rules to govern the operation of the consortium and Government Code §441.224, which authorizes the director and librarian to assess fees for consortium services.

The amendment affects Government Code, §441.224.

§8.3. Consortium Membership and Affiliated Membership.

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

(g) Members, affiliated members, and public school libraries may receive services or be assessed fees based on demographic, financial, or other information, as reflected in the latest statistics from the National Center for Educational Statistics, the Texas Higher Education Coordinating Board, the Independent Colleges and Universities of Texas, the Texas Education Agency, the most current statistical data reported to the commission in the Texas academic library survey, the Texas public library annual report (filed as required by subsection (d) of this section[~~.~~]), or from statistical information received directly from the member, [~~or~~] affiliated member, or public school library and certified by the member, [~~or~~] affiliated member, or public school library as accurate.

(h) Fees. Some consortium services are supported by fees paid by participants. Fees will be set by the Director and Librarian for different categories of consortium services, in consideration of the costs involved in providing these services to member libraries, affiliated members, and public school libraries.

(i) (No change.)

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

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TRD-201005973

Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER G. SUBMETERING

16 TAC §25.141, §25.142

The Public Utility Commission of Texas (commission) proposes amendments to §25.141, relating to Central System or Non-submetered Master Metered Utilities, and §25.142, relating to Submetering for Apartments, Condominiums, and Mobile Home Parks. The purpose of the amendments is to implement certain provisions of Texas House Bill 882, 81st Legislature (2009) (HB 882), which amended Texas Property Code §92.008(b) to provide that a landlord may not interrupt or cause the interruption of water, wastewater, gas, or electric service furnished to a tenant by the landlord as an incident of the tenancy or by other agreement unless the interruption results from bona fide repairs, construction, or an emergency. The amendments reflect that a landlord of an apartment house or landlord that leases mobile homes in a mobile home park can no longer disconnect electric service because of a tenant's nonpayment for that service. Project Number 37684 is assigned to this proceeding.

Ernest Garcia, Retail Market Analyst, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state government as a result of enforcing or administering the amendments.

Mr. Garcia has determined that for each year of the first five years the amendments are in effect the primary anticipated public benefits of the amendments will be to conform the commission's rules to HB 882 to make it clear that a landlord may not disconnect electric service to its residents except to make bona-fide repairs, construction or an emergency. Thus, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these amendments because the amendments conform the commission's rules to the law as contained in HB 882. Therefore, no regulatory flexibility analysis is required.

Mr. Garcia has also determined that for each year of the first five years the amendments are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday November 30, 2010. The request for a public hearing must be received within 20 days after publication of the amendments.

Initial comments on the amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication of the amendments. Reply comments may be submitted within 30 days after publication. Sixteen copies of initial comments and reply comments are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the amended rules. All comments should refer to Project Number 37684.

The amendments are proposed under Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §184.014, which requires the commission to adopt rules concerning the submetering of electricity in apartment houses and mobile home parks; and §184.052, which requires the commission to adopt rules concerning allocation of central system costs or non-submetered master metered utility service costs.

Cross Reference to Statutes: Utilities Code §§14.002, 184.011 - 184.014, and 184.051 - 184.052; and Texas Property Code §92.008(b).

§25.141. Central System or Non-submetered Master Metered Utilities.

(a) Purpose [~~and scope~~]. This section implements Texas Utilities Code §184.052.

[~~(1) The provisions of this section are intended to assure that billing systems involving central system or nonsubmetered master metered utilities are just and reasonable.~~]

[~~(2) For purposes of enforcement, both utilities and apartment house owners are subject to enforcement pursuant to the Public Utility Regulatory Act §§15.021, 15.022, 15.028, 15.029, 15.030, 15.031, 15.032, and 15.033, which may involve civil penalties of up to $5,000 for each offense and criminal penalties for willful and knowing violations.~~]

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

(1) Apartment house--One or more buildings containing two or more dwelling units rented primarily for nontransient use with rent paid at intervals of one week or longer.

(2) Apartment house owner--The legal titleholder of an apartment house or an individual, firm, or corporation purporting to be the landlord of tenants in the apartment house.

[~~(3) Billing unit--Kilowatt-hour for electric service.~~]

(3) [~~(4)~~] Central system utilities--Electricity consumed by a central air conditioning system, central heating system, central hot water system, or central chilled water system in an apartment house. The term does not include utilities directly consumed by a dwelling unit.

(4) [~~(5)~~] Customer--The individual, firm, or corporation in whose name a master meter is connected by a utility or that is served by a retail electric provider.

(5) [~~(6)~~] Dwelling unit--One or more rooms that are suitable for occupancy as a residence and that contain kitchen and bathroom facilities.

(6) [~~(7)~~] Nonsubmetered master metered utility service--Electric utility service that is master metered for an apartment house but is not submetered.

(7) [~~(8)~~] Utility--A public, private, or member-owned utility furnishing electricity service to an apartment house served by a master meter.

(c) Records and reports.

(1) The apartment house owner shall maintain and make available for inspection by the tenant during normal business hours:

(A) the billing from the utility to the apartment house owner for the current month and the 12 preceding months; and

(B) the calculation of the average cost per kilowatt-hour [~~billing unit (kilowatt-hour)~~] for the current month and the 12 preceding months which was used in assessing tenant utility billings. The average cost per kilowatt-hour [~~billing unit~~] shall be equal to the charges for the electric [~~utility~~] service plus applicable tax, less any penalties charged by the utility or retail electric provider to the apartment house owner for disconnect, reconnect, late payment or other similar service charges, divided by the total number of billing units.

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

(d) Calculation of costs. Central system utilities costs shall be calculated based on metered kilowatt-hour [~~billing units~~] of the central system during the same billing period as that of the utility. The metered kilowatt-hour [~~billing units~~] of the central system shall be multiplied by the average cost per billing calculated according to all applicable industry standards. The cost of nonsubmetered master metered utilities shall be the total charges for electric [~~utility~~] service to the apartment house less any penalties charged by the utility or the retail electric provider to the apartment house owner for disconnect, reconnect, late payment or other similar service charges.

(e) Billing. All rental agreements between the apartment house owner and the tenants shall provide a clear written description of the method of the allocation of central system utilities or non-submetered master metered utilities for the apartment house. The method of allocation may be changed only after 90 days notice of the change to the tenants. The rental agreement for each apartment unit shall contain a statement of the average monthly bill for the previous calendar year for that apartment unit. If there is no rental agreement, apartment house owners shall provide the method of allocation in a separate written document.

(1) Rendering and form of bill.

(A) Bills shall be rendered for the same billing period as that of the utility or retail electric provider, generally monthly, unless service is rendered for less than that period.

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

(D) Billings to the tenant shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, utility billing information must be separate and distinct from any other charges on the bill. The bill may not include a deposit, late penalty, reconnect charge, or any other charges unless otherwise provided for by this chapter.

[~~(i)~~] A one-time penalty not to exceed 5.0% may be made on delinquent accounts. If such penalty is applied, the bill shall indicate the amount due if paid by the due date and the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease which states the exact dollar or percentage amount of such late penalty.

[~~(ii)~~ ~~A reconnect fee may be applied if service to the tenant is disconnected for nonpayment of submetered bills in accordance with paragraph (4)(A) of this subsection. The reconnect fee shall be calculated based on the average actual cost to the landlord for the expenses associated with the reconnection, but under no circumstance shall exceed $10. No reconnect charge may be applied unless agreed to by the tenant in a written lease which states the exact dollar amount of the reconnect charge.~~]

(E) (No change.)

(2) (No change.)

(3) Overbilling and underbilling. If billings are found to be in error, the apartment house owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment shall be made for the entire period of the overcharges. If the tenant was undercharged, the apartment house owner may backbill the tenant for the amount which was underbilled. The backbilling is not to exceed six months unless the apartment house owner can produce records to identify and justify the additional amount of backbilling. If the underbilling is $25 or more, the apartment house owner shall offer to such tenant a deferred payment plan option, for the same length of time as that of the underbilling. [~~However, the apartment house owner may not disconnect service if the tenant fails to pay charges arising from an underbilling more than six months prior to the date the tenant was initially notified of the amount of the undercharges and the total additional amount due.~~] Furthermore, adjustments for usage by a previous tenant may not be backbilled to the current tenant.

(4) Discontinuance of electricservice. Disconnection of a dwelling unit by the apartment house owner is governed by Texas Property Code §92.008(b). Disconnection of electric service by a retail electric provider is governed by §25.483(k) of this title (relating to Disconnection of Service). Disconnection of service by an electric utility that is not a transmission and distributed utility is governed by §25.29(j) of this title (relating to Disconnection of Service).

[~~(A) Disconnection for delinquent bills. Utility service may only be disconnected for nonpayment of utility bills. A tenant's utility service may be disconnected if a bill has not been paid within 12 days from the date of issuance and proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least five days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where a tenant can go during normal working hours to make arrangements for payment of the bill and for reconnection of electric service.~~]

[~~(B) Disconnection on holidays or weekends. Unless a dangerous condition exists, or unless the tenant requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day when personnel of the apartment house are not available for the purpose of making collections and reconnecting service.~~]

[~~(C) Disconnection under special circumstances. An apartment house owner shall meet the same requirements as an electric utility in the following circumstances:~~]

[~~(i)~~ ~~Disconnection of ill and disabled. No electric utility may disconnect service at a permanent, individually metered dwelling unit of a delinquent customer when that customer establishes that disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill;~~]

[~~(I)~~ ~~Each time a customer seeks to avoid disconnection of service under this subsection, the customer must accomplish all of the following by the stated date of disconnection:~~]

[(-a-) have the person's attending physician for purposes of this subsection, the term "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the electric utility by the stated date of disconnection;]

[(-b-) have the person's attending physician submit a written statement to the electric utility; and]

[(-c-) enter into a deferred payment plan.]

[(II) The prohibition against service termination provided by this subsection shall last 63 days from the issuance of the electric utility bill or a shorter period agreed upon by the electric utility and the customer or physician.]

[(ii) Disconnection of energy assistance clients. No electric utility may terminate service to a delinquent residential customer for a billing period in which the electric utility receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service; and]

[(iii) Disconnection during extreme weather. An electric utility cannot disconnect a customer anywhere in its service territory on a day when:]

[(I) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours, according to the nearest National Weather Service (NWS) reports; or]

[(II) the NWS issues a heat advisory for any county in the electric utility's service territory, or when such advisory has been issued on any one of the preceding two calendar days.]

(5) [(D)] Disputed bills and complaints. In the event of a dispute between the tenant and the apartment house owner regarding any bill, the apartment house owner shall immediately make such investigation as shall be required by the particular case, and report the results thereof to the tenant. The investigation and report shall be completed within 30 days from the date the tenant notified the apartment house owner of the dispute. If the tenant is dissatisfied with the results of the investigation, the apartment house owner shall inform the tenant of the Public Utility Commission of Texas complaint process, giving the tenant the address and telephone number of the commission's Office of Customer Protection.

§25.142. Submetering for Apartments, Condominiums, and Mobile Home Parks.

(a) Purpose. This section implements Texas Utilities Code §184.052. [General rules.]

[(1) Purpose and scope.]

[(A) The provisions of this section are intended to establish a comprehensive regulatory system to assure that the practices involving submetering and billing of dwelling units are just and reasonable to the tenant and the owner and to establish the rights and responsibilities of both the owner and tenant. The provisions of this section shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, creed, sex, or marital status.]

[(B) For purposes of enforcement, owners are subject to enforcement pursuant to the Public Utility Regulatory Act §§15.021, 15.022, and 15.028 - 15.033.]

[(2) Application. This section shall apply to existing apartment houses or mobile home parks utilizing electrical submetering as of the effective date of this section as well as those apartment houses and mobile home parks which engage in electric utility submetering as defined by this section at any subsequent date. No incorporated city or town, including a home-rule city or other political subdivision of the state, may issue a permit, certificate, or other authorization for the construction or occupancy of a new apartment house or conversion to a condominium unless the construction plan provides for individual metering by the electric utility company or submetering by the owner of each dwelling unit for the measurement of the quantity of electricity, if any, consumed by the occupants within that dwelling unit. Therefore, the provisions of this section shall also apply to apartment houses and condominiums in the event submetering is chosen.]

(b) [(3)] Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) [(A)] Apartment house--One or more buildings containing more than five dwelling units, each of which is rented primarily for non-transient use with rent paid at intervals of one week or longer. The term includes a rented or owner-occupied residential condominium.

(2) [(B)] Dwelling unit--One or more rooms suitable for occupancy as a residence and that contain kitchen and bathroom facilities, or a mobile home in a mobile home park.

(3) [(C)] Master meter--A meter used to measure, for billing purposes, all electric usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units.

(4) [(D)] Month or monthly--The period between any two consecutive meter readings by the [electric] utility, either actual or estimated, at approximately 30-day intervals.

(5) [(E)] Owner--Any owner, operator, or manager of any apartment house or mobile home park engaged in electric [utility] submetering.

[(F) Utility metering--Individual apartment dwelling unit metering of electric utility service performed by an electric utility company.]

[(G) Utility service--Utility service shall include electric service only.]

(6) [(H)] Electric [Utility] submetering--Individual dwelling unit metering of electric [utility] service performed by the owner.

(c) [(b)] Records and reports.

(1) The owner shall maintain and make available for inspection by the tenant the following records:

(A) the billing from the [electric] utility or retail electric provider to the apartment owner for the current month and the 12 preceding months;

(B) the calculation of the average cost per billing unit, i.e., kilowatt-hour for the current month and the 12 preceding months;

(C) all submeter readings and tenant billings for the current month and the 12 preceding months;

(D) all submeter test results for the current month and the 12 preceding months.

(2) Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant at the convenience of both the apartment owner and tenant.

(3) All records shall be made available to the commission upon request.

(d) [~~(c)~~] Billing. All rental agreements between the owner and the tenants shall clearly state that the dwelling unit is submetered, that the bills will be issued thereon, that electrical consumption charges for all common areas and common facilities will be the responsibility of the owner and not of the tenant, and that any disputes relating to the computation of the tenant's bill and the accuracy of the submetering device will be between the tenant and the owner. Each owner shall provide a tenant, at the time the lease is signed, a copy of this section or a narrative summary as approved by the commission to assure that the tenant is informed of his rights and the owner's responsibilities under this section.

(1) Rendering and form of bill.

(A) Bills shall be rendered for the same billing period as that of the electric utility, generally monthly, unless service is rendered for less than that period. Bills shall be rendered as promptly as possible following the reading of the submeters. The submeters shall be read within three days of the scheduled reading date of the electric utility's master meter.

(B) The billing unit shall be that used by the electric utility in its billing to the owner.

(C) The owner shall be responsible for determining that the energy billed to any dwelling unit shall be only for that submetered and consumed within that unit.

(D) Submetered billings shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, submetered billing information must be separate and distinct from any other charges on the bill and conform to information required in subparagraph (H) of this paragraph. The submetered bill must clearly state "submetered electricity".

(E) The bill shall reflect only submetered usage. Utility consumption at all common facilities will be the responsibility of the owner and not of the tenant. Allocation of central systems for air conditioning, heating and hot water is not prohibited by this section as set forth in §25.141 of this title (relating to Central System or Nonsubmetered Master Metered Utilities).

(F) The owner shall not impose any extra charges on the tenant over and above those charges which are billed by the retail electric provider or [~~electric~~] utility to the owner. The bill may not include a deposit, late penalty, reconnect charge, or any other charges unless otherwise provided for by these sections.

(i) A one-time penalty not to exceed 5.0% may be made on delinquent accounts. If the penalty is applied, the bill shall indicate the amount due if paid by the due date and the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease which states the exact dollar or percentage amount of the late penalty.

(ii) In a mobile home park a [~~A~~] reconnect fee may be applied for a mobile home not leased by the mobile home park owner if service to the pad site tenant is disconnected for non-payment of submetered bills in accordance with subsection (e)(1) [~~(d)(1)~~] of this section. Such reconnect fee shall be calculated based on the average actual cost to the owner for the expenses associated with the reconnection, but under no circumstances shall exceed $10. No reconnect charge may be applied unless agreed to by the tenant in a written lease which states the exact dollar amount of such reconnect charge.

(G) The tenant's submeter bills shall be calculated in the following manner: after the electric bill is received from the [~~electric~~] utility or retail electric provider, the owner shall divide the net total charges for electrical consumption, plus applicable tax, by the total number of kilowatt-hours to obtain an average cost per kilowatt-hour. The average kilowatt-hour cost shall then be multiplied by each tenant's kilowatt-hour consumption to obtain the charge to the tenant. The computation of the average cost per kilowatt-hour shall not include any penalties charged by the [~~electric~~] utility or the retail electric provider to the owner for disconnect, reconnect, late payment, or other similar service charges.

(H) The tenant's electric submeter bill shall show all of the following information:

(i) the date and reading of the submeter at the beginning and at the end of the period for which the bill is rendered;

(ii) the number of billing units metered;

(iii) the computed rate per billing unit;

(iv) the total amount due for electricity used;

(v) a clear and unambiguous statement that the bill is not from the [~~electric~~] utility or retail electric provider, which shall be named in the statement;

(vi) the name and address of the tenant to whom the bill is applicable;

(vii) the name of the firm rendering the submetering bill and the name or title, address, and telephone number of the person or persons to be contacted in case of a billing dispute;

(viii) the date by which the tenant must pay the bill; and

(ix) the name, address, and telephone number of the party to whom payment is to be made.

(2) Due date. The due date of the bill shall not be less than seven days after issuance. A bill for submetered service is delinquent if not received by the party indicated on the bill by the due date. The postmark date, if any, on the envelope of the bill or on the bill itself shall constitute proof of the date of issuance. An issuance date on the bill shall constitute proof of the date of issuance if there is no postmark on the envelope or bill. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.

(3) Disputed bills. In the event of a dispute between the tenant and the owner regarding any bill, the owner shall promptly make an investigation as shall be required by the particular case, and report the results to the tenant. The investigation and report shall be completed within 30 days from the date the tenant notified the owner of the dispute.

(4) Tenant access to records. The tenants of any dwelling unit whose electrical consumption is submetered shall be allowed by the owner to review and copy the master billing for the current month's billing period and for the 12 preceding months, and all submeter readings of the entire apartment house or mobile home park for the current month and for the 12 preceding months.

(5) Estimated bills. Estimated bills shall not be rendered unless the meter has been tampered with or is out of order, and shall be distinctly marked "estimated bill".

(6) Overbilling and underbilling. If submetered billings are found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment shall be made for the entire

period of the overcharges. If the tenant was undercharged, the owner may backbill the tenant for the amount which was underbilled. The backbilling is not to exceed six months unless the owner can produce records to identify and justify the additional amount of backbilling. If the underbilling is $50 [$25] or more, the owner shall offer to the tenant a deferred payment plan option, for the same length of time as that of the underbilling. However, in a mobile home park, the mobile home park owner may not disconnect electric service to a mobile home not leased by the mobile home park owner if the pad site tenant fails to pay charges arising from an underbilling more than six months prior to the date the tenant was initially notified of the amount of the undercharges and the total additional amount due. Furthermore, adjustments for usage by a previous tenant may not be backbilled to the current tenant.

(7) Level and average payment plans. An owner may[. Owners with seasonal usage or seasonal demands are encouraged to] offer a level payment plan or average payment plan consistent with this paragraph [to elderly or chronically ill tenants who may be on fixed incomes and to other tenants having similarly unique financial needs].

(A) The payment plan may be one of the following methods:

(i) A level payment plan allowing eligible tenants to pay on a monthly basis a fixed billing rate of one-twelfth of that tenant's estimated annual consumption at the appropriate rates, with provisions for quarterly adjustments as may be determined based on actual usage.

(ii) An average payment plan allowing tenants to pay on a monthly basis one-twelfth of the sum of that tenant's current month's consumption plus the previous 11 month's consumption (or an estimate thereof, for a new customer) at the appropriate customer class rates, plus a portion of any unbilled balance. Provisions for annual adjustments as may be determined based on actual usage shall be provided. If at the end of a year the owner determines that he has collected an amount different than he has been charged by the [electric] utility or retail electric provider, the owner must refund any overcollection and may surcharge any undercollection over the next year.

(B) Under either of the plans outlined in subparagraph (A) of this paragraph the owner is prohibited from charging the tenant any interest that may accrue. Any seasonal overcharges or undercharges will be carried by the owner of the complex.

(C) A mobile home park owner may disconnect service to a mobile home not leased by the mobile home park owner, pursuant to subsection (d) of this section, if the pad site tenant does not fulfill the terms of a level payment plan or an average payment plan. [If a tenant does not fulfill the terms and obligations of a level payment agreement or an average payment plan, the owner shall have the right to disconnect service to that tenant pursuant to the disconnection requirements of subsection (d) of this section.]

(D) The owner may collect a deposit from all tenants entering into level payment plans or average payment plans; the deposit will not exceed an amount equivalent to one-sixth of the estimated annual billing. Notwithstanding any other provision in these sections, the owner may retain said deposit for the duration of the level or average payment plan; however, the owner shall pay interest on the deposit as is provided in §25.24 of this title (relating to Credit Requirements and Deposits).

(e) [(d)] Discontinuance of electric service.

(1) Application. This subsection applies only to mobile homes in a mobile home park that are not leased by the mobile home park owner. Disconnection of any other dwelling unit by the owner is governed by Texas Property Code §92.008(b).

(2) [(1)] Disconnection for delinquent bills.

(A) Electric [utility] service may [only] be disconnected only for nonpayment of electric [utility] bills. A pad site tenant's electric [utility] service may be disconnected if a bill has not been paid within 12 days from the date of issuance and proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least five days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where a tenant can go during normal working hours to make arrangements for payment of the bill and for reconnection of service.

(B) Under these provisions, a pad site tenant's electric service may be discontinued only for nonpayment of electric service.

(3) [(2)] Disconnection on holidays or weekends. Unless a dangerous condition exists, or unless the pad site tenant requests disconnection, electric service shall not be disconnected on a day, or on a day immediately preceding a day, when personnel of the [apartment house or] mobile home park are not available for the purpose of making collections and reconnecting electric service.

(4) [(3)] Disconnection under special circumstances. [An apartment house or mobile home park owner, operator or manager shall meet the same requirements as an electric utility in the following circumstances:]

(A) Disconnection of ill and disabled. A mobile home park owner shall not disconnect electric service to a pad site tenant [No electric utility may disconnect service at a permanent, individually metered dwelling unit of a delinquent customer] when that tenant [customer] establishes that disconnection of electric service will cause some person residing at the tenant's mobile home [that residence] to become seriously ill or more seriously ill;

(i) Each time a pad site tenant [customer] seeks to avoid disconnection of electric service under this subparagraph [subsection], the tenant [customer] must accomplish all of the following by the stated date of disconnection:

(I) have the person's attending physician (for purposes of this subsection, the term "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the mobile home park owner [electric utility] by the stated date of disconnection;

(II) have the person's attending physician submit a written statement to the mobile home park owner [electric utility]; and

(III) enter into a deferred payment plan.

(ii) The prohibition against electric service termination provided by this subparagraph [subsection] shall last 63 days from the issuance of the electric [utility] bill or a shorter period agreed upon by the mobile home park owner [electric utility] and the customer or physician.

(B) Disconnection of energy assistance clients. A mobile home park owner shall not disconnect electric service to a pad site tenant [No electric utility may terminate service to a delinquent residential customer] for a billing period in which the mobile home park owner [electric utility] receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue service; and

(C) Disconnection during extreme weather. A mobile home park owner shall not disconnect electric service to a pad site ten-

ant [~~An electric utility cannot disconnect a customer anywhere in its service territory~~] on a day when:

(i) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours, according to the nearest National Weather Service (NWS) reports; or

(ii) the NWS issues a heat advisory for any county in which the mobile home park is located [~~electric utility's service territory~~], or when such advisory has been issued on any one of the preceding two calendar days.

(f) [~~(e)~~] Submeters.

(1) Submeter requirements.

(A) Use of submeter. All electrical energy sold by an owner shall be charged for by meter measurements.

(B) Installation by owner. Unless otherwise authorized by the commission, each owner shall be responsible for providing, installing, and maintaining all submeters necessary for the measurement of electrical energy to its tenants.

(2) Submeter records. Each owner shall keep the following records:

(A) Submeter equipment record. Each owner shall keep a record of all of its submeters, showing the tenant's address and date of the last test.

(B) Records of submeter tests. All submeter tests shall be properly referenced to the submeter record provided in this section. The record of each test made shall show the identifying number of the submeter, the standard meter and other measuring devices used, the date and kind of test made, by whom made, the error (or percentage of accuracy), and sufficient data to permit verification of all calculations.

(3) Submeter unit indication. Each meter shall indicate clearly the kilowatt-hours consumed by the tenant.

(4) Submeter tests on request of tenant. Each owner shall, upon the request of a tenant, and if the tenant so desires, in the tenant's or the tenant's authorized representative's presence, make a test of the accuracy of the tenant's submeter. The test shall be made during reasonable business hours at a time convenient to the tenant desiring to observe the test. If the submeter tests within the accuracy standards for self-contained watt-hour meters as established by the latest edition of American National Standards Institute, Incorporated, (ANSI), Standard C12 (American National Code for Electricity Metering), a charge of up to $15 may be charged the tenant for making the test. However, if the submeter has not been tested within a period of one year, or if the submeter's accuracy is not within the appropriate accuracy standards, no charge shall be made to the tenant for making the test. Following completion of any requested test, the owner shall promptly advise the tenant of the results of the test.

(5) Bill adjustment due to submeter error. If any submeter is found not to be within the accuracy standards in subsection (f)(4) [~~(e)(4)~~] of this section proper correction shall be made of previous readings. An adjusted bill shall be rendered in accordance with subsection (d)(6) [~~(e)(6)~~] of this section. If a submeter is found not to register for any period, unless bypassed or tampered with, the owner may make a charge for units used, but not metered, for a period not to exceed one month based on amounts used under similar conditions during periods preceding or subsequent thereto, or during the corresponding period in previous years.

(6) Bill adjustment due to conversion. If, during the 90-day period preceding the installation of meters or submeters, an owner increases rental rates, and such increase is attributable to increased costs of electric service, then such owner shall immediately reduce the rental rate by the amount of such increase and shall refund all of the increase that has previously been collected within the 90-day period.

(7) Location of submeters. Submeters, service switches, or cut-off valves in conjunction with the submeters shall be installed in accordance with the latest edition of ANSI, Standard C12, and will be readily accessible for reading, testing, and inspection, with minimum interference and inconvenience to the tenant.

(8) Submeter testing facilities and equipment.

(A) Qualified expert. Each owner engaged in electric submetering shall engage an independent qualified expert to provide such instruments and other equipment and facilities as may be necessary to make the submeter tests required by this section. Such equipment and facilities shall generally conform to ANSI, Standard C12, unless otherwise prescribed by the commission, and shall be available at all reasonable times for the inspection by its authorized representatives.

(B) Portable standards. Each owner engaged in electrical submetering shall, unless specifically excused by the commission, provide or utilize a testing firm which provides portable test instruments as necessary for testing billing submeters.

(C) Reference standards. Each owner shall provide or have access to suitable indicating instruments as reference standards for insuring the accuracy of shop and portable instruments used for testing billing submeters.

(D) Testing of reference standards. All reference standards shall be submitted once each year or on a scheduled basis approved by the commission to a standardizing laboratory of recognized standing, for the purpose of testing and adjustment.

(E) Calibration of test equipment. All shop and portable instruments used for testing billing submeters shall be calibrated by comparing them with a reference standard at least every 120 days during the time such test instruments are being regularly used. Test equipment shall at all times be accompanied by a certified calibration card signed by the proper authority, giving the date when it was last certified and adjusted. Records of certifications and calibrations shall be kept on file in the office of the owner.

(9) Accuracy requirements for submeters.

(A) Limits. No submeter that exceeds the test calibration limits for self-contained watt-hour meters as set by the ANSI, Standard C12, shall be placed in service or left in service. All electrical current transformers, potential transformers, or other such devices used in conjunction with an electric submeter shall be considered part of the submeter and must also meet test calibration and phase angle limits set by ANSI C12 and C57.13 for revenue billing. A nameplate shall be attached to each transformer and shall include or refer to calibration and phase angle data and other information required by ANSI C12 and ANSI C57.13 for revenue billing. Whenever on installation, periodic, or other tests, an electric submeter or transformer is found to exceed these limits, it shall be adjusted, repaired, or replaced.

(B) Adjustments. Submeters shall be adjusted as closely as possible to the condition of zero error. The tolerances are specified only to allow for necessary variations.

(10) Submeter tests prior to installation. No submeter shall be placed in service unless its accuracy has been established. If any submeter is removed from actual service and replaced by another submeter for any purpose whatsoever, it shall be properly tested and adjusted before being placed in service again.

(11) Testing of electric submeters in service. Standard electromechanical single stator watt-hour meters with permanent braking magnets shall be tested in accordance with ANSI C12 standards for periodic, variable interval, or statistical sampling testing programs. All other types of submeters shall be tested at least annually unless specified otherwise by the commission.

(12) Restriction. Unless otherwise provided by the commission, no dwelling unit in an apartment house or mobile home park may be submetered unless all dwelling units are submetered.

(13) Same type meters required. All submeters which are served by the same master meter shall be of the same type, such as induction or electronic.

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005926
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 936-7223

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

The Public Utility Commission of Texas (commission) proposes the repeal of §25.498, relating to Prepaid Electric Service Using Customer-Premise Prepayment Devices, and new §25.498, relating to Prepaid Service. The new rule addresses the requirements for a retail electric provider (REP) to offer a service whose normal billing arrangement provides for payment before the rendition of service (prepaid service). The new rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 38675 is assigned to this proceeding.

Rebecca Reed, Retail Market Analyst, Competitive Markets Division, has determined that, for each year of 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 rule.

Ms. Reed has 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 be better protection of customers receiving prepaid service. Some REPs provide prepaid service without using customer prepayment devices or systems (CPDS). As a result, these REPs do not have timely access to the actual electricity consumption of their customers and consequently require customers to make payments based on the REPs' estimates of how much electricity the customers have consumed, which are later trued-up after the REPs obtain the customers' actual consumption. In contrast, REPs that provide prepaid service using CPDS and REPs that provide post-paid service do not rely on estimated consumption and instead rely on actual consumption for the calculation of charges for service. The use of estimated consumption as the basis for payment gives REPs considerable discretion in determining payments, and customer complaints made to the commission suggest that there may be considerable abuse of this discretion. Because of the fact-specific nature of these consumption estimates, it is difficult for the commission to ensure that REPs do not abuse their discretion in making these estimates.

REPs providing prepaid service without CPDS not only base payments on estimated usage, they also send disconnection notices to customers and disconnect customers based on estimated usage. As a result, customers may receive disconnection notices and actually be disconnected based on inaccurate estimates of their consumption.

Existing §25.498 applies to REPs that provide prepaid service using CPDS, but does not address the rendition of prepaid service without CPDS. As a result, REPs that offer prepaid service without CPDS are subject to the commission's other customer protection rules, which were designed for the rendition of post-paid service. As a result, serious questions have been raised as to whether REPs that provide prepaid service without CPDS can feasibly comply with those rules on an ongoing basis.

In the three years since the commission first adopted §25.498 in 2007, it has gained experience with the rendition of service pursuant to the rule, and that experience has shown problems that have arisen that can be addressed through the additional customer protections included in the proposed new §25.498.

The probable economic cost to persons required to comply with the new rule will vary from REP to REP. For REPs already providing prepaid service with CPDS, the economic cost will arise from compliance with the additional customer protections and will be modest and substantially outweighed by the public benefits of these protections. For REPs currently providing prepaid service without CPDS, those REPs may choose to discontinue providing prepaid service and provide only post-paid service as many other REPs currently do, or may convert to prepaid service using CPDS. The viability of converting from prepaid service using estimated usage to prepaid service using CPDS is evidenced by the number of REPs that already provide prepaid service using CPDS.

Based on data provided by the Electric Reliability Council of Texas (ERCOT), market participants, and other sources, Ms. Reed estimates that approximately 21 REPs are providing prepaid service. Staff calculates that 10 of those REPs are presently providing service to customers under existing §25.498. At least four of these 10 REPs have offered prepaid service to customers without advanced meters. Ms. Reed has calculated that the number of residential customers that currently receive prepaid service without use of a CPDS is less than 3% of the residential customer base in ERCOT. Although the probable economic cost of the new rule to REPs currently providing prepaid service without CPDS is not available to the commission, Ms. Reed has determined that the cost is substantially outweighed by the public benefits of requiring these REPs to discontinue providing prepaid service without CPDS, because of the serious harm that often occurs to customers receiving this service. In addition, the new rule provides a six-month transition period to reduce the rule's economic cost.

Ms. Reed has determined that the new rule may be considered not to have an adverse economic effect on small businesses or micro-businesses. As explained above, serious questions have been raised as to whether REPs that provide prepaid service without CPDS can feasibly comply with the commission's rules on an ongoing basis. Because of the fact-specific nature of con-

sumption estimates and other compliance issues, it is difficult for the commission to ensure that REPs providing prepaid service without CPDS are complying with all applicable commission rules. Nevertheless, REPs that provide prepaid service without CPDS could face the risk of substantial administrative penalties for violation of the commission's rules and possible revocation of their REP certificates. The new rule provides a viable and clearly lawful means of providing prepaid service, and REPs that stop providing prepaid service and instead limit themselves to prepaid service with CPDS and post-paid service will eliminate the regulatory risk of providing prepaid service without CPDS.

To address the possibility that the new rule has an adverse economic effect on small businesses or micro-businesses, Ms. Reed has prepared an economic impact statement and regulatory flexibility analysis pursuant to Texas Government Code §2006.002. The commission has issued certificates to approximately 130 REPs. Of these REPs, approximately 100 (77%) are serving customers. Approximately 30 of the 130 REPs (21%) are small or micro businesses. Approximately 15 of these small and micro businesses (50%) are currently not serving customers. The small and micro businesses that are serving customers represent about $25 million in combined annual revenues and about 0.53% of annual ERCOT electricity consumption. The projected economic impact of the new rule on small and micro businesses is the same as for other businesses, and this impact is described above in the discussion of the probable economic cost to persons required to comply with the new rule.

Ms. Reed has determined that no alternative methods of achieving the purpose of the new rule exist. The requirement to use CPDS to provide prepaid service is necessary to eliminate payments, disconnection notices, and disconnections based on estimated usage. As explained above, payments, disconnection notices, and disconnections based on estimated usage can cause serious harm to customers.

Ms. Reed has also determined that for each year of the first five years the new rule is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, November 30, 2010, at 10:00 a.m. The request for a public hearing must be received by November 18, 2010 (20 days after publication).

Initial comments on the new rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by November 29, 2010 (31 days after publication). Sixteen copies of comments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by December 6, 2010 (37 days after publication). Comments should be organized in a manner consistent with the organization of the new rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the new rule. The commission will consider the costs and benefits in deciding whether to adopt the new rule. All comments should refer to Project Number 38675.

16 TAC §25.498

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

The repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §17.004, which directs the commission to establish and enforce customer protection standards, including protection from unfair, misleading, deceptive, or anticompetitive practices; the right to have bills presented in a clear, readable format and easy-to-understand language; and the right of low-income customers to have access to bill payment assistance programs designed to reduce uncollectible amounts; PURA §39.001, which adopts a policy that competition in the sale of electricity is consistent with the public interest and directs the commission to use competitive, rather than regulatory methods, to achieve this policy; and PURA §39.101, which requires customer safeguards, including the right to safe, reliable and reasonably priced electricity; protection against service disconnections in extreme weather emergencies or in cases of medical emergency; bills presented in a clear format and in a language readily understandable by customers; accuracy of meter reading and billing; and other protections necessary to ensure high-quality service to customers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 39.001, and 39.101.

§25.498. Retail Electric Service Using a Customer Prepayment Device or System.

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005883
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 936-7223

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16 TAC §25.498

The new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §17.004, which directs the commission to establish and enforce customer protection standards, including protection from unfair, misleading, deceptive, or anticompetitive practices; the right to have bills presented in a clear, readable format and easy-to-understand language; and the right of low-income customers to have access to bill payment assistance programs designed to reduce uncollectible amounts; PURA §39.001, which adopts a policy that competition in the sale of electricity is consistent with the public interest and directs the commission to use competitive, rather than regulatory methods, to achieve this policy; and PURA §39.101, which requires cus-

tomer safeguards, including the right to safe, reliable and reasonably priced electricity; protection against service disconnections in extreme weather emergencies or in cases of medical emergency; bills presented in a clear format and in a language readily understandable by customers; accuracy of meter reading and billing; and other protections necessary to ensure high-quality service to customers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 39.001, and 39.101.

§25.498. Prepaid Service.

(a) Applicability. This section applies to retail electric providers (REPs) that offer prepaid service and to transmission and distribution utilities (TDUs) that have installed advanced meters and related systems. A REP may not offer prepaid service unless it complies with this section. The following provisions do not apply to prepaid service:

(1) §25.474(f)(3)(G) of this title (relating to Selection of Retail Electric Provider);

(2) §25.479(b) and (c)(1) of this title (relating to Issuance and Format of Bills);

(3) §25.480(b), (h), (i), (j), and (k) of this title (relating to Bill Payment and Adjustments); and

(4) §25.483 of this title (relating to Disconnection of Service), except for §25.483(b)(2)(A) and (B), (d), and (e)(1) - (6).

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

(1) Current balance--An account balance calculated consistent with subsection (c)(7)(A)(i) - (iii) of this section.

(2) Customer prepayment device or system (CPDS)--A device or system that includes metering and communications capabilities that meet the requirements of this section, including a device or system that accesses customer consumption information from a TDU's advanced meter or information system.

(3) Landlord--A landlord or property manager or other agent of a landlord.

(4) Minimum balance--An account balance, net of applicable TDU and REP discretionary fees, to initiate electric service, avoid disconnection of service, or reconnect electric service following disconnection.

(5) Prepaid service--A service offered by a REP for which the customer normally makes a payment for service before service is rendered.

(6) Prepaid disclosure statement (PDS)--A document described by subsection (e) of this section.

(7) Summary of usage and payment (SUP)--A document described by subsection (g) of this section.

(c) Requirements for prepaid service.

(1) A REP shall file with the commission a notice of its intent to provide prepaid service prior to offering such service. The notice of intent shall include a description of the type of CPDS the REP will use, and the initial Electricity Facts Label (EFL), Terms of Service (TOS), and PDS for the service.

(2) A CPDS that relies on metering equipment other than the TDU meter shall conform to the requirements and standards of §25.121(e) of this title (relating to Meter Requirements), §25.122 of this title (relating to Meter Records), and section 4.7.3 of the tariff for retail electric delivery service, which is prescribed by §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).

(3) A TDU may, consistent with its tariff, install CPDS equipment, including meter adapters and collars on or near the TDU's meters. Such installation does not constitute competitive energy services as this term is defined in §25.341(3) of this title (relating to Definitions).

(4) A CPDS shall not cause harmful interference with the operation of a TDU's meter or equipment, or the performance of any of the TDU's services. If a CPDS interferes with the TDU's meter or equipment, or TDU's services, the CPDS shall be promptly corrected or removed. A CPDS that relies on communications channels other than those established by the TDU shall protect customer information in accordance with §25.472 of this title (relating to Privacy of Customer Information).

(5) A REP providing prepaid service may choose the means by which it communicates required information to a customer, including an in-home device at the customer's premises, email, telephone, mobile phone, or other electronic communications. The means by which the REP will use to communicate required information to a customer shall be described in the TOS and the PDS.

(6) A REP providing prepaid service shall afford a means by which the customer may make payments for service by phone, internet, or other means that can be accomplished at the customer's premises, or at a location no farther than five miles from the customer's premises. The payment mechanism may include a requirement that a customer who has made a payment verify the payment using a card, code, or other similar method.

(7) A REP offering prepaid service shall:

(A) provide to the customer its current balance, which shall be calculated by reducing the prepaid balance by:

(i) charges that are known and have been incurred;

(ii) estimated applicable taxes; and

(iii) estimated TDU charges that will be passed through; and the date and time the current balance was determined and the estimated time or days of paid electricity remaining.

(B) provide the customer the current price for electric service calculated as required by §25.475(g)(2)(A) - (E) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers);

(C) provide a warning to the customer at an event trigger explained in the customer's TOS and PDS, at least three days and not more than seven days before the customer's current balance is estimated to drop to the minimum balance;

(D) when a customer makes a payment, provide a confirmation code, except that the REP shall provide a receipt showing the amount paid for payment in person and is not required to provide a confirmation code or receipt for payment by check. The customer may elect to have the REP confirm all payments by providing to the customer the customer's account number or Electric Service Identifier (ESI ID), payment amount, and the date the payment was received; and

(E) ensure that the CPDS does not impair a customer's ability to choose a different REP or any electric service plans offered by the REP that do not require prepayment. When a REP receives notice that a customer on a prepayment plan has chosen a new REP, the REP shall take any steps necessary to facilitate the switch on a schedule that

is consistent with the effective date stated on the Electric Reliability Council of Texas (ERCOT) enrollment transaction and ERCOT's rules for processing such transactions.

(8) The information provided pursuant to paragraph (7)(A) of this subsection either shall be available to the customer continuously or shall be provided within two hours of the customer's request. Nothing in this subsection limits a customer from obtaining a SUP.

(9) The communications provided under paragraph (7)(A) - (C) of this subsection and any confirmation of payment as described in paragraph (7)(D) of this subsection shall be provided in English or Spanish, at the customer's election.

(10) A REP shall cooperate with energy assistance agencies to facilitate the provision of energy assistance payments to requesting customers.

(11) A REP providing prepaid service shall not:

(A) tie the duration of an electric service contract to the duration of a tenant's lease;

(B) require, or enter into an agreement with a landlord requiring, that a tenant select the REP as a condition of a lease;

(C) require a minimum balance in excess of $75;

(D) require security deposits, but may charge and collect early termination fees for contracts with a term of more than one month; or

(E) base charges on estimated usage, other than a minimum balance.

(12) A REP providing service shall not charge a customer any fee for:

(A) transitioning from a prepaid service to a post-paid service;

(B) the cancellation or discontinuance of service, including a fee for the removal of equipment; or

(C) the switching of a customer to another REP or otherwise discontinuing taking prepaid service.

(13) If a customer owes a debt to the REP for electric service, the REP may reduce the customer's account balance by the amount of the debt. Before reducing the account balance, the REP must notify the customer of the amount of the debt and that the customer's account balance will be reduced by the amount of the debt no sooner than 10 days after the notice required by this paragraph is issued.

(d) Customer acknowledgement. A REP shall obtain a customer's acknowledgement that prepaid service depends on the customer prepaying for service on a timely basis and that if the customer's account balance falls below the specified minimum balance, the customer's service may be disconnected. The REP shall obtain this acknowledgement using any of the authorization methods specified in §25.474 of this title.

(e) Prepaid disclosure statement (PDS). The PDS shall be prominently displayed in the property management office of any multi-tenant commercial or residential building at which the landlord is acting as an agent of the REP. A REP shall also provide a PDS contemporaneous with the delivery of the contract documents to a customer pursuant to §25.474 of this title. The PDS shall be a separate document and shall be at a minimum written in 12-point font, and shall notify the customer:

(1) that the continuation of service depends on the customer prepaying for service on a timely basis and that if the customer's current balance falls below the specified minimum balance, the customer's service may be disconnected;

(2) inform the customer of the following:

(A) the minimum balance that is required to initiate or reconnect service;

(B) the acceptable forms of payment, the hours that payment can be made, and instructions on how to make payments;

(C) when service may be disconnected;

(D) that prepaid service is not available to critical care and chronic condition residential customers as these terms are defined in §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers and Chronic Condition Residential Customers);

(E) the means by which the REP will use to communicate required information;

(F) the availability of deferred payment plans; and

(G) the availability of energy bill payment assistance.

(f) Landlord as customer of record. A REP offering prepaid service to multiple tenants at a location may designate the landlord as the customer of record for the purpose of transactions with ERCOT and the TDU.

(1) For each ESI ID for which the REP chooses to designate the landlord as the customer of record, the REP shall provide the TDU the name, service and mailing addresses, and ESI ID, and keep that information updated as required in the TDU's Tariff for Retail Delivery Service.

(2) The REP shall treat each end-use consumer as a customer for purposes of this subchapter, including §25.471 of this title (relating to General Provisions of Customer Protection Rules). Nothing in this subsection affects a REP's responsibility to provide customer billing contact information to ERCOT in the format required by ERCOT.

(g) Summary of usage and payment (SUP).

(1) A REP shall provide a SUP to each customer upon the customer's request within three business days of receipt of the request. SUP shall be delivered by the United States Postal Service or, if the customer agrees, by an electronic means of communications that provides a durable record of the SUP. If a customer requests a paper copy of the SUP more than once per calendar month, a REP may charge a reasonable fee for the summary.

(2) A SUP shall include the following information:

(A) the certified name and address of the REP and the number of the license issued to the REP by the commission;

(B) a toll-free telephone number, in bold-face type, that the customer can call during specified hours for questions and complaints to the REP about the SUP;

(C) the name, account number, or ESI ID of the customer, and the service address of the customer;

(D) the dates and amounts of payments made during the period covered by the summary;

(E) a statement of the customer's consumption and charges by month during the period covered by the summary;

(F) an itemization of non-recurring charges, including returned check fees and reconnection fees;

(G) if applicable, a statement that indicates the customer is receiving the LITE-UP Discount, pursuant to §25.454 of this title (relating to Rate Reduction Program); and

(H) unless another time period is requested by the customer, information provided shall be for the most recent 12 months, or the longest period available if the customer has taken prepaid service from the REP for less than 12 months;

(3) In accordance with §25.472(b)(1)(D) of this title, a REP shall provide an SUP to an energy assistance agency within one business day of receipt of the agency's request, and shall not charge the agency for the SUP.

(h) Deferred payment plans. A deferred payment plan for a customer taking prepaid service is an agreement between the REP and a customer that requires a customer to pay a deficit balance over time. A deferred payment plan shall be confirmed in writing by the REP to the customer.

(1) A REP shall place a residential customer on a deferred payment plan, at the customer's request, when the customer's account reflects a deficit balance of $50 or more, not considering the customer's minimum balance. The deferred payment plan shall include both the deficit balance and the minimum balance.

(2) A REP shall not refuse a customer's request for a deferred payment plan on any basis set forth in §25.471(c) of this title, if the customer incurs a deficit balance of $50 or more during a period in which disconnection of service was prohibited.

(3) A customer has the right to satisfy the deferred payment plan before the prescribed time.

(4) A REP may require that:

(A) no more than 50% of each transaction amount be applied towards the deferred payment plan; or

(B) an initial payment of no greater than 50% of the amount due be made, with the remainder of the deficit amount paid by reducing the account balance by five equal monthly installments, unless the customer agrees to fewer installments. The installments to repay the deferred balance shall be applied to the customer's account on a specified day of each month.

(5) A copy of the deferred payment plan shall be provided to the customer.

(A) The plan shall include a statement, in clear and conspicuous type, that states, "If you are not satisfied with this agreement, or if the agreement was made by telephone and you believe this does not reflect your understanding of that agreement, contact (insert name and contact number of REP)."

(B) If a switch-hold will apply, the plan shall include a statement, in a clear and conspicuous type, that states "By entering into this agreement, you understand that {company name} will put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay this past due amount. The switch-hold will be removed after your final payment on this past due amount is processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay {us or company name}, to get your electricity turned back on."

(C) If the customer and the REP's representative or agent meet in person, the representative shall read to the customer the statement in subparagraph (A) of this paragraph and, if applicable, the statement in subparagraph (B) of this paragraph.

(D) The plan may include a one-time penalty in accordance with §25.480(c) of this title, but shall not include a finance charge;

(E) The plan shall include the terms for payment of deferred amounts, consistent with paragraph (3) of this subsection.

(F) The plan shall state the total amount to be paid under the plan.

(G) The plan shall state that a customer's electric service may be disconnected if the customer does not fulfill the terms of the deferred payment plan.

(6) The REP, through a standard market process, shall submit a request to remove the switch-hold, pursuant to §25.480(m) of this title if the customer pays the deferred balance owed to the REP. On the day the REP submits the request to remove the switch-hold, the REP shall notify the customer that the customer has satisfied the deferred payment plan and that the switch-hold is being removed.

(i) Disconnection of service. As provided by subsection (a)(4) of this section, only §25.483(b)(2)(A) and (B), (d), and (e)(1) - (6) of this title apply to prepaid service. In addition to those provisions, this subsection applies to disconnection of a customer receiving prepaid service.

(1) Prohibition on disconnection. A REP shall not authorize a disconnection for a customer's failure to maintain the minimum balance on a weekend day or during any period during which the mechanisms used for payments pursuant to the customer's PDS are unavailable; or during an extreme weather emergency, as this term is defined in §25.483(i)(1) of this title, in the county in which the service is provided.

(2) Authorization of disconnection. A REP may authorize disconnection of service when the current balance is below a customer's minimum balance, but only if the REP provided the customer a timely warning pursuant to subsection (c)(7)(C) of this section; and when a customer fails to comply with a deferred payment plan. A REP may send a disconnection request to the TDU if the customer's prepaid balance is exhausted due to reversal of a payment found to have insufficient funds available or is otherwise rejected by a bank, credit card company, or other payor.

(3) Pledge from electric assistance agencies. If a REP receives a pledge, letter of intent, purchase order, or other commitment from an electric assistance agency to make a payment for a customer, the REP shall immediately credit the customer's account balance with the amount of the pledge.

(A) A REP may require the customer to take steps necessary to ensure the customer's CPDS records the payment, such as a revaluing transaction.

(B) The REP may not authorize disconnection of service and, if the customer has been disconnected, shall request reconnection of service if the credit from the energy assistance agency satisfies the customer's minimum balance.

(C) The REP may authorize disconnection of service if payment from the energy assistance agency is not received within 45 days of the REP's receipt of the commitment or if the payment is not sufficient to satisfy the customer's minimum balance.

(4) Reconnection of service. Within one hour of satisfactory correction of the reasons for disconnection, the REP shall request

that the TDU reconnect service or, if the REP disconnected service using its CPDS, reconnect service.

(j) Service to Critical Care Residential Customers and Chronic Condition Residential Customers. A REP shall not provide prepaid service to a customer or applicant that is a critical care residential customer or chronic condition residential customer as those terms are defined in §25.497 of this title. If the REP is notified by the TDU that a customer receiving prepaid service is designated as a critical care residential customer or chronic condition residential customer, the REP shall diligently work with the customer to promptly transition the customer to another product or provider in a manner that avoids a service disruption.

(k) Effective date. Not later than six months after the effective date of this section, prepaid service offered by a REP pursuant to a new contract shall comply with this section. Beginning six months after the effective date of this section, a REP shall not renew a contract for prepaid service that does not comply with 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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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §§4.272, 4.273, 4.278

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§4.272, 4.273, and 4.278 concerning Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions. The intent of the amendments to these sections is to clarify the process by which lower-division off-campus clinical courses are approved. Presently, all off-campus, face-to-face lower-division courses, including clinical courses, must be approved by the appropriate Higher Education Regional Council regardless of how many students are enrolled in the clinical course. The proposed changes will enable institutions offering off-campus face-to-face lower division clinical courses to offer those courses without Higher Education Regional Council authority if: the enrolled student is an employee of the clinical facility where the clinical course will take place; the clinical facility provides the higher education institution with a letter certifying that the addition of the clinical student(s) will not impact the number of clinical spots available to area public institutions; and the higher education institution provides the affected Higher Education Regional Council with a copy of the facility letter and notice of the proposed clinical courses.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years there will be no fiscal implications for state or local governments as a result of the amendments.

Dr. Stephenson has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to allow distance education allied health programs with the flexibility to more easily arrange clinical courses at appropriate facilities as long as they can show that there will be no impact on the clinical space available for students of area institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.051, which provides the Coordinating Board with the authority to coordinate institutions of higher education.

The amendments affect the Texas Education Code, Subchapter C, §61.051(j).

§4.272. Definitions.

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

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

(4) Clinical course--An academic credit course that is a health-related, work-based learning experience that enables the student to apply specialized occupational theory, skills, and concepts.

(5) Clinical facility--A health care facility which provides learning experiences for students.

(6) [~~(4)~~] Commissioner--The Commissioner of Higher Education; as used in this subchapter, "Commissioner" means the agency acting through its executive, and his or her designees, staff, or agents.

(7) [~~(5)~~] Community College--Any public community college as defined in Texas Education Code, §61.003 and §130.005, and whose role, mission, and purpose is outlined in Texas Education Code, §130.0011 and §130.003.

(8) [~~(6)~~] Continuing education course--A Coordinating Board-approved higher education technical course offered for continuing education units and conducted in a competency-based format. Such a course has specific occupational and/or apprenticeship training objectives.

(9) [~~(7)~~] Continuing Education Unit or CEU--Ten contact hours of participation in an organized educational experience under

responsible sponsorship, capable direction, and qualified instruction and not offered for academic credit.

(10) [~~(8)~~] Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", and "doctor's" and their equivalents and foreign cognates, which signifies satisfactory completion of the requirements of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(11) [~~(9)~~] Doctoral Degree--An academic degree beyond the level of a master's degree that typically represents the highest level of formal study or research in a given field.

(12) [~~(10)~~] First-Professional Degree--An award that requires completion of a program that meets all of the following criteria:

(A) completion of the academic requirements to begin practice in the profession;

(B) at least two years of college work prior to entering the program; and

(C) a total of at least six academic years of college work to complete the degree program, including prior required college work plus the length of the professional program itself. First-Professional degrees are discipline-specific, including, but not limited to, degrees such as: Dentistry (D.D.S. or D.M.D.); Medicine (M.D.); Veterinary Medicine (D.V.M.); Law (L.L.B, J.D.); and Pharmacy (Pharm.D).

(13) [~~(11)~~] Formula Funding--The method used to allocate appropriated sources of funds among institutions of higher education.

(14) [~~(12)~~] Formula-funded Course--An academic credit course delivered face-to-face or by distance education, including correspondence, whose semester credit hours are submitted for formula funding.

(15) [~~(13)~~] Institution of Higher Education or Institution--Any public technical institute, public community college, public senior college or university, medical or dental unit, Lamar state college (public state college), or other agency of higher education as defined in Texas Education Code, §61.003.

(16) [~~(14)~~] Main Campus--The primary campus or campuses of an institution of higher education supplying instruction and supported by on-site administration, also referred to as on-campus.

(17) [~~(15)~~] Non-credit course--A course that results in the award of continuing education units (CEU) as specified by Southern Association of Colleges and Schools (SACS) criteria. Only courses that result in the award of CEUs may be submitted for state funding.

(18) [~~(16)~~] Off-Campus Course--A course in which a majority (more than 50 percent) of the instruction occurs when the students and instructor(s) are in the same physical location and which meets one of the following criteria: for public senior colleges and universities, Lamar state colleges, or public technical colleges, off-campus locations are locations away from the main campus; for public community colleges, off-campus locations are sites outside the service area.

(19) [~~(17)~~] Off-Campus Degree or Certificate Program--A program in which a student may complete a majority (more than 50 percent) of the credit hours required for the program through off-campus courses.

(20) [~~(18)~~] Off-Campus Instruction--The formal educational process in which a majority (more than 50 percent) of the instruction occurs when the students and instructor(s) are in the same physical location and which meets one of the following criteria: for public senior colleges and universities, Lamar state colleges, or public technical colleges, off-campus locations are locations away from the main campus; for public community colleges, off-campus locations are sites outside the service area.

(21) [~~(19)~~] Out-of-State/Out-of-Country Courses and Programs--Academic credit courses and programs delivered outside Texas/United States to individuals or groups who are not regularly enrolled on-campus students. Out-of-state and out-of-country courses do not receive formula funding.

(22) [~~(20)~~] Public Health-Related Institution or Health-Related Institution--A medical or dental unit as defined by Texas Education Code, §61.003(5).

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

(24) [~~(22)~~] Public University or University--A general academic teaching institution as defined by Texas Education Code, §61.003(3).

(25) [~~(23)~~] Regional Council--A cooperative arrangement among representatives of all public, private or independent institutions of higher education within a Uniform State Service Region, as established under Texas Education Code, §51.662.

(26) [~~(24)~~] Regular On-Campus Student--A student who is admitted to an institution, the majority of whose semester credit hours are reported for formula funding and whose coursework is primarily taken at an institution's main campus or on one or more of the campuses within a multi-campus community college system.

(27) [~~(25)~~] Self-Supporting Courses and Programs--Academic credit courses and programs whose semester credit hours are not submitted for formula funding.

(28) [~~(26)~~] Semester Credit Hour--A unit of measure of instruction consisting of sixty (60) minutes, of which fifty (50) minutes must be direct instruction, over a fifteen-week period in a semester system.

(29) [~~(27)~~] Service Area--The territory served by a community college district as defined in Texas Education Code, §130.161.

(30) [~~(28)~~] Study-in-America Courses--Off-campus, academic credit instruction which is delivered outside Texas but in the United States primarily to regular on-campus students.

(31) [~~(29)~~] Study-Abroad Courses--Off-campus, academic credit instruction which is delivered outside the United States primarily to regular on-campus students.

(32) [~~(30)~~] Workforce Continuing Education Course--A course of ten contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as outlined in the Guidelines for Instructional Programs in Workforce Education with an occupationally specific objective and supported by state appropriations. Workforce continuing education courses are offered by community and technical colleges and differ from a community service course which is not eligible for state reimbursement and is offered for recreational or a vocational purposes.

§4.273. General Provisions.

(a) This subchapter governs the following types of instruction offered by institutions of higher education:

(1) Academic credit courses, clinical courses, degree and certificate programs, and formula-funded workforce continuing edu-

cation provided by a community college outside the boundaries of its service area through off-campus instruction;

(2) Academic credit courses, clinical courses, and degree and certificate programs provided by a public technical college, Lamar State College, public senior college or university, or public health-related institution through off-campus instruction;

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

(b) (No change.)

§4.278. Functions of Regional Councils.

(a) (No change.)

(b) With the exception of subsection (e), [~~and~~] (i), and (j) of this section, Regional Councils in each of the ten Uniform State Service Regions shall make recommendations to the Commissioner and shall resolve disputes regarding plans for lower-division courses and programs proposed by public institutions.

(c) With the exception of subsection (e), [~~and~~] (i), and (j) of this section, for any dispute arising from off-campus delivery of lower-division courses to groups, any institution party to the disagreement may appeal first to the Regional Council, and then to the Commissioner and then the Board.

(d) Each Regional Council shall make recommendations to the Commissioner regarding off-campus courses and programs proposed for delivery within its Uniform State Service Region in accordance with the consensus views of Council members, except for courses and programs proposed to be offered by public community colleges in their designated service areas and courses and programs governed by the provisions of subsection (e), [~~and~~] (i), and (j) of this section.

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

(h) With the exception of subsection (i) and (j) of this section, universities, health-related institutions, public technical colleges, and Lamar state colleges shall submit for Regional Council review all off-campus lower-division courses proposed for delivery to sites in the Council's Service Region.

(i) Universities, health-related institutions, public community and technical colleges, and Lamar state colleges may offer clinical courses at clinical facilities without Regional Council approval if:

(1) the student(s) enrolled in the clinical course is already employed by the clinical facility;

(2) the clinical facility provides the institution of higher education with written verification that there will be no reduction in the number of clinical opportunities available for use by area institutions; and

(3) the institution of higher education shall notify the appropriate Regional Council(s) and provide the Regional Council(s) with the written verification from the clinical facility.

(j) [~~(i)~~] Universities, health-related institutions, public technical colleges, and Lamar state colleges may enter into an agreement to offer lower-division dual credit courses with a school district and/or high school that makes such a request, and regional council approval is not required in order to offer requested lower-division, dual credit courses.

(k) [~~(j)~~] All institutions of higher education shall provide notice to the Higher Education Regional Councils when planning to offer requested off-campus and/or electronic to groups dual credit courses in the Council's service area.

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

Filed with the Office of the Secretary of State on October 18, 2010.

TRD-201005966
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 27, 2011
For further information, please call: (512) 427-6114

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CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS

SUBCHAPTER C. TOBACCO LAWSUIT SETTLEMENT FUNDS

19 TAC §6.73

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §6.73, concerning grants awarded under the Nursing, Allied Health and Other Health-Related Education Grant Program. The intent of the amendment to this section is to allow the Texas Higher Education Coordinating Board more flexibility in awarding grants to eligible institutions that have demonstrated best practices in recruiting and retaining nursing students and qualified faculty.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years there will be no fiscal implications for state or local governments as a result of the amendments.

Dr. Stephenson has also determined that for each year of the first five years the amendment is in effect, the public benefits anticipated as a result of administering the section will be to allow eligible institutions to expand recruitment and retention activities that have been shown to be successful under the grant program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendment may be submitted to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amended section is proposed under the Texas Education Code, Chapter 63, Subchapter C, §63.202, which provides the Coordinating Board with the authority to administer the permanent fund for higher education nursing, allied health, and other health-related programs.

The amendment affects the Texas Education Code, Subchapter C, §63.202(f).

§6.73. Nursing, Allied Health and Other Health-Related Education Grant Program.

(a) - (g) (No change.)

(h) This subsection pertains to the 2008-09 and 2010-11 biennia only (rules are effective only from September 1, 2007 to August 31, 2011).

(1) Funds available to the program for the 2008-09 and 2010-11 biennia will be distributed as grants in proportions determined by the Board through one or more programs that are based on:

(A) (No change.)

(B) a [~~competitive,~~] staff-reviewed process for eligible institutions, as amended in subsection (h)(2) of this section [~~that are seeking awards of $15,000 or less for a one-year grant~~]; or

(C) (No change.)

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

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

Filed with the Office of the Secretary of State on October 18, 2010.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER S. BORDER COUNTY DOCTORAL FACULTY EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §21.591

The Texas Higher Education Coordinating Board proposes an amendment to §21.591, concerning the Border County Doctoral Faculty Education Loan Repayment Program. Specifically, the proposed amendment to this section would reinstate the remainder of the definition of "institution of higher education." The final phrase of the definition was inadvertently omitted from the document when amendments to the rules were adopted in 2002.

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

Mr. Weaver has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of this change will be that the rules will provide a clear definition of "institution of higher education" for the Border County Doctoral Faculty Education Loan Repayment Program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

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

The amendment is proposed under the Texas Education Code, §61.701, which authorizes the Coordinating Board to provide assistance in the repayment of certain teacher and faculty education loans for persons who apply and qualify for the assistance.

The amendment affects Texas Education Code, §§61.701 through 61.708.

§21.591. Definitions.

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

(1) Institution of Higher Education--A public or private and independent institution as defined in the Texas Education Code, §61.003, and an out-of-state institution of higher education that is accredited by a recognized accrediting agency.

(2) - (5) (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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1038

The Texas Education Agency (TEA) proposes new §61.1038, concerning credit enhancement for school district bonds. The proposed new section would allow the commissioner to implement and administer the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter I, as added by Section 75 of House Bill 3646, 81st Texas Legislature, 2009, which establishes an intercept program to provide credit enhancement for school district bonds.

In March 2009, the Texas Permanent School Fund (PSF) Bond Guarantee Program (BGP) was closed temporarily because a drop in the market had lowered the PSF's value to the point that outstanding guarantees exceeded capacity under federal regulations.

Partly in response to the closure of the BGP, the 81st Texas Legislature, 2009, included in House Bill 3646 provisions establishing an intercept program to provide credit enhancement for school district bonds. Section 75 of House Bill 3646 added these provisions to the TEC as Chapter 45, Subchapter I. TEC,

§45.263, directs the commissioner of education to adopt rules necessary for the administration of the new subchapter.

The proposed new 19 TAC §61.1038 would implement the provisions of the TEC, Chapter 45, Subchapter I. Specifically, the proposed new rule would set out the statutory provisions for the intercept credit enhancement program, provide definitions, set out the data sources used for prioritization of applications, explain application and approval requirements, provide a description of how applications would be processed, and set out eligibility requirements, limitations on access to the credit enhancement, financial exigency provisions, and credit enhancement restrictions. The rule would explain what effect defeasance would have on bonds approved for credit enhancement, the responsibilities of school districts that are unable to make payments on enhanced bonds, how payments would be made under the program, and how the Foundation School Program would be reimbursed for payments. The rule would also describe penalties for repeated failure of a district to make payments on enhanced bonds.

A school district that wished to receive the credit enhancement for its bonds would have to submit an application for the enhancement that included the following: the name of the school district and the principal amount of the bonds to be issued; the name and address of the district's paying agent for those bonds; and the maturity schedule, estimated interest rate, and date of the bonds. A single application would be used to apply for the PSF BGP guarantee and for the proposed program's credit enhancement. An applicant school district would also be required to submit any additional information related to the bonds that the commissioner specifically requested to make an approval determination. A school district that was applying for credit enhancement of refunding bonds would have to provide evidence that issuing the refunding bonds would result in a present value savings and that the refunding bonds did not have a maturity date later than the final maturity date of the bonds being refunded.

The proposed rule action would have no locally maintained paperwork requirements.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that for the first five-year period the new section is in effect there will be no additional costs for state government as a result of enforcing or administering the new section, but there would be fiscal implications for local government, which are school districts. The fiscal implications for school districts would not be beyond what is imposed by the authorizing statute. Any costs to school districts to participate in the intercept credit enhancement program would be outweighed by the program's benefits.

Administration of the program provides school districts with access to low-cost bonds. Potential savings to school districts are impossible to estimate at this time. Districts that would be approved to issue bonds with the benefit of the credit enhancement provided by the intercept credit enhancement program would experience a savings in two ways. First, the credit enhancement would be provided at a cost lower than that for private bond insurance. Second, districts would be able to get lower interest rates on bonds that had a credit enhancement than they could otherwise get. Actual savings would be influenced by the unique circumstances of each school district that proposed to issue bonds, including the market's assessment of the district's financial condition and the cost and availability of private bond insurance.

Ms. Beaulieu has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be a proposed new intercept credit enhancement program to provide low-cost bond insurance to school districts in Texas during periods in which the PSF BGP was closed. The proposed program would also ensure that the bonds issued by school districts under the program were rated competitively in the bond market. A competitive bond rating allows districts to market their bonds at lower interest rates and thus reduces the long-term costs of the bonds for school districts and taxpayers. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins October 29, 2010, and ends November 29, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 29, 2010.

The new section is proposed under the Texas Education Code (TEC), Chapter 45, Subchapter I, §45.263, which authorizes the commissioner to adopt rules necessary for the administration of the bond credit enhancement program. TEC, §45.263, also authorizes the commissioner, in adopting rules, to establish an annual deadline by which a school district must pay the debt service on bonds for which credit enhancement is provided under TEC, Chapter 45, Subchapter I. TEC, §45.261(b), authorizes the commissioner, in accordance with commissioner rules, to authorize reimbursement of the Foundation School Program in a manner other than that provided by TEC, §45.261.

The new section implements the Texas Education Code, Chapter 45, Subchapter I.

§61.1038. School District Bond Enhancement Program.

(a) Statutory provision. The commissioner of education must administer the intercept credit enhancement program for school district bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter I.

(b) Definitions. The following definitions apply to the intercept credit enhancement program for school district bonds.

(1) Application deadline--The last business day of the month in which an application for a credit enhancement is filed. Applications must be received by the Texas Education Agency (TEA) division responsible for state funding by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.

(2) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §42.005.

(3) Bond order--The order adopted by the governing body of a school district that authorizes the issuance of bonds.

(4) Combination issue--An issuance of bonds for which an application is filed for a credit enhancement that includes both a new money portion and a refunding portion, as permitted by the Texas Government Code, Chapter 1207. The eligibility of combination issues for the credit enhancement is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(5) Enrollment growth--Growth in student enrollment, as defined by §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook), that has occurred over the previous five school years.

(6) Existing annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during the fiscal year in which the credit enhancement is sought as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the district has outstanding bonded indebtedness.

(A) The existing annual debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) The existing annual debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the credit enhancement is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the TEA has sufficient evidence of the discharge or defeasance of such debt.

(C) The debt service amounts used in this calculation for variable rate bonds will be those that are published in the final official statement.

(7) Financial exigency--A determination by a school district board of trustees that the financial condition of the district requires a reduction in personnel, as authorized by the TEC, §21.211.

(8) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.

(9) New money issue--An issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. Eligibility for the credit enhancement for new money issues is limited to the issuance of bonds authorized under the TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A. A new money issue does not include an issuance of bonds to refinance any type of maintenance tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:

(A) time warrants or loans entered under the TEC, Chapter 45, Subchapter E; or

(B) any other type of loan or warrant that is not supported by bond taxes as defined by the TEC, §45.003.

(10) Notes issued to provide interim financing--An issuance of notes, including commercial paper notes, designed to provide short-term financing for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. For notes to be eligible for the credit enhancement under this section, the notes must be:

(A) issued to pay costs for which bonds have been authorized at an election occurring before the issuance of the notes;

(B) approved by the Office of the Attorney General or issued in accordance with proceedings that have been approved the Office of the Attorney General; and

(C) refunded by bonds issued to provide long-term financing no more than three years from the date of issuance of such notes, provided that the date of issuance of notes will be determined by reference to the date on which the notes were issued for capital expenditures and the intervening date or dates of issuance of any notes issued to refinance outstanding notes will be disregarded.

(11) Proposed annual debt service--Payments of principal and interest on the outstanding bonded debt for which the enhancement is sought scheduled to occur between September 1 and August 31 during the fiscal year in which the credit enhancement is sought and each fiscal year for which the credit enhancement is or would be in effect as described in the amortization schedule for the bonded debt for which the enhancement is sought.

(12) Refunding issue--An issuance of bonds for the purpose of refunding bonds, including notes issued to provide interim financing, that are supported by bond taxes as defined by the TEC, §45.003. Eligibility for the credit enhancement for refunding issues is limited to refunding issues that refund bonds, including notes issued to provide interim financing, that were authorized by a bond election under the TEC, §45.003.

(13) School District Bond Enhancement Program (SDBEP)--The intercept program to provide credit enhancement for school district bonds that is described by this section and established under the TEC, Chapter 45, Subchapter I.

(14) Total debt service--Total outstanding principal and interest on bonded debt.

(A) The total debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline, if the district has outstanding bonded indebtedness.

(B) The total debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the credit enhancement is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the TEA has sufficient evidence of the discharge or defeasance of such debt.

(C) The debt service amounts used in this calculation for variable rate bonds will be those that are published in the final official statement.

(c) Data sources.

(1) The following data sources will be used for purposes of prioritization:

(A) projected ADA for the current school year as adopted by the legislature for appropriations purposes;

(B) final property values certified by the comptroller of public accounts, as described in the Texas Government Code, Chapter 403, Subchapter M, for the tax year preceding the year in which the bonds will be issued. If final property values are unavailable, the most recent projection of property values by the comptroller, as described in the Texas Government Code, Chapter 403, Subchapter M, will be used;

(C) debt service information reported by the MAC of Texas or its successor as of the date of the application deadline; and

(D) enrollment information reported to the Public Education Information Management System (PEIMS) for the five-year time period ending in the year before the application date.

(2) The commissioner may consider adjustments to data values determined to be erroneous or not reflective of current conditions before the deadline for receipt of applications for that application cycle.

(d) Application for the credit enhancement.

(1) Application process. Districts must apply to the commissioner of education for the guarantee or the credit enhancement of eligible bonds. The district must submit, in a form specified by the commissioner, the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The application will first be considered for guarantee of eligible bonds under §33.65 of this title (relating to Bond Guarantee Program). If Permanent School Fund (PSF) capacity has been exhausted, the application will then be considered for credit enhancement of eligible bonds. The application must be accompanied by a fee in the amount specified as the application fee amount in §33.65 of this title.

(A) The fee is due at the time the application for the guarantee or the credit enhancement is submitted. An application will not be processed until the fee has been received in accordance with the process prescribed by the commissioner for remitting the fee on the application form.

(B) The fee will not be refunded to a district that:

(i) is not approved for the guarantee or the credit enhancement; or

(ii) does not sell its bonds before the expiration of its approval for the guarantee or the credit enhancement.

(C) The fee may be transferred to a subsequent application for the guarantee or the credit enhancement by the district if the district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee or the credit enhancement.

(2) Approval.

(A) Under the TEC, §45.056, the commissioner will investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for approval by the commissioner. The commissioner's review will include the following:

(i) the purpose of the bond issue;

(ii) the district's accreditation status as defined by §97.1055 of this title (relating to Accreditation Status) in accordance with the following:

(I) if the district's accreditation status is Accredited, the district will be eligible for consideration for the credit enhancement;

(II) if the district's accreditation status is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the district will not be eligible for consideration for the credit enhancement; or

(III) if the district's accreditation status is Not Accredited-Revoked, the district will not be eligible for consideration for the credit enhancement;

(iii) the district's compliance with statutes and rules of the TEA; and

(iv) the district's financial status and stability, regardless of the district's accreditation rating, including approval of the bonds by the Office of the Attorney General under the provisions of the TEC, §45.0031 and §45.005.

(B) The commissioner will grant or deny approval for the credit enhancement based on the review described in subparagraph (A) of this paragraph and will provide an applicant district whose application has received approval for the credit enhancement written notice of approval.

(e) Application processing. To facilitate prioritization of applications for the guarantee authorized under §33.65 of this title, or for the credit enhancement authorized under this section, if the PSF capacity has been exhausted, all applications received during a calendar month will be held until the fifteenth business day of the subsequent month. On the fifteenth business day of each month, the commissioner of education will announce the results of the prioritization described in paragraph (5) of this subsection. If the PSF capacity has been exhausted, the commissioner will process the application for approval for the credit enhancement up to the available capacity of money appropriated for the FSP for credit enhancement under this section as of the application deadline, subject to the requirements of this subsection.

(1) The school district may not submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.

(2) The actual credit enhancement of the bonds is subject to the approval process prescribed in subsection (d) of this section.

(3) During those periods in which the PSF capacity has been exhausted, the commissioner in each month of each fiscal year will estimate the amount of funds available to make payments under the SDBEP from the FSP through the end of the fiscal year for purposes of providing approval for the credit enhancement of school district bonds under this section. The commissioner will confirm that a sufficient amount of these funds exists to enhance the credit of the bonds before the issuance of the approval for the credit enhancement in accordance with subsection (d)(2) of this section. The amount of funds available to make payments under the SDBEP from the FSP is limited as described in paragraph (4) of this subsection and does not include:

(A) Available School Fund (ASF) funds;

(B) any FSP funds designated for the facilities programs provided for under the TEC, Chapter 46;

(C) any funds designated for the charter school credit enhancement program provided for under the TEC, Chapter 45, Subchapter J; or

(D) any federal funds, including federal funds provided by the American Recovery and Reinvestment Act of 2009.

(4) Before approving school district bonds for credit enhancement under the SDBEP, the commissioner must:

(A) make the determination described in paragraph (3) of this subsection;

(B) determine that credit enhancement of the bonds will not cause the projected debt service coming due during the remainder of the fiscal year for bonds provided credit enhancement under this section to exceed the lesser of:

(i) one-half of the amount of funds due to public schools from the FSP for the final month of the current fiscal year; or

(ii) one-half of the amount of funds anticipated to be on hand in the FSP to make payments for the final month of the current fiscal year; and

(C) determine that the maximum annual debt service on the bonds provided credit enhancement under this section, during any state fiscal year, will not exceed the lesser of:

(i) one-half of the amount of funds due to public schools from the FSP for the final month of the current fiscal year; or

(ii) one-half of the amount of funds anticipated to be on hand in the FSP to make payments for the final month of the current fiscal year.

(5) Credit enhancements will be awarded each month beginning with the districts with the lowest property wealth per ADA until the amount of funds available to make payments under the SDBEP from the FSP reaches its net capacity to enhance bonds, as described in paragraph (4) of this subsection. Credit enhancements will be awarded to applicants based on the amount available to fully enhance the bond issue for which the credit enhancement is sought. Applications for bond issues that cannot be fully enhanced will not receive an award. The amount of bond issue for which the guarantee or credit enhancement was requested may not be modified after the monthly application deadline for the purposes of securing the guarantee or credit enhancement during the award process.

(6) An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting district before the end of the subsequent month.

(7) Each district that submits a valid application will be notified of the application status within 15 business days of the application deadline. If a district is awarded approval for the credit enhancement as described in subsection (d)(2) of this section, the bonds must be approved by the Office of the Attorney General within 180 days of the date of the letter granting the approval for the credit enhancement. The approval for the credit enhancement will expire at the end of the 180-day period. The commissioner may extend the 180-day period, based on extraordinary circumstances, on receiving a written request from the district before the expiration of the 180-day period.

(8) If a district does not receive a credit enhancement or for any reason does not receive approval of the bonds from the Office of the Attorney General within the specified time period, the district may reapply in a subsequent month. Applications that were denied a credit enhancement will not be retained for consideration in subsequent months.

(9) If the bonds are not approved by the Office of the Attorney General within 180 days of the date of the letter granting the approval for the credit enhancement, the commissioner will consider the application withdrawn, and the district must reapply for a credit enhancement.

(10) Districts may not represent the bonds as approved for credit enhancement for the purposes of pricing or marketing the bonds before the date of the letter granting approval for the credit enhancement.

(f) Eligibility.

(1) For bonds to be eligible for the credit enhancement under the SDBEP:

(A) bonds must be issued in the manner provided by the TEC, §45.054;

(B) payments of all of the principal of the bonds must be scheduled during the first six months of the state fiscal year;

(C) the applicant school district must have, from any credit rating agency, a credit rating that is lower than that of the SDBEP;

(D) the bonded debt for which the credit enhancement is sought must be structured so that no single annual debt service payment exceeds two times the quotient produced by dividing the total proposed annual debt service, as defined in subsection (b)(11) of this section, for the term of the bonds by the number of years in the amortization schedule; and

(E) the applicant school district must agree in its application that the total annual debt service on bonds approved for the credit enhancement will be paid on or before August 15 of each state fiscal year.

(2) Refunding issues must comply with the following requirements to be eligible for the credit enhancement for the refunding bonds, except that subparagraph (D) of this paragraph does not apply to a refunding issue that provides long-term financing for notes issued to provide interim financing.

(A) The district must have an accreditation status of Accredited as defined by §97.1055 of this title. If the district has an accreditation status of Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the refunding bonds will not be eligible for the credit enhancement. Districts with an accreditation status of Not Accredited-Revoked will not be eligible for the credit enhancement for the refunding bonds.

(B) Only refunding issues as defined in subsection (b)(12) of this section are eligible for the credit enhancement.

(C) The bonds to be refunded must have been:

(i) previously guaranteed by the PSF under the guarantee program authorized under §33.65 of this title or provided credit enhancement under this section;

(ii) issued on or after November 1, 2008, and before December 16, 2009; or

(iii) issued as notes to provide interim financing as defined in subsection (b)(10) of this section.

(D) The district must demonstrate that issuing the refunding bond(s) will result in a present value savings to the district and that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must be computed at the true interest cost of the refunding bonds.

(E) If a district files an application for a combination issue, the application will be treated as a single issue for the purposes of eligibility for the guarantee or the credit enhancement. A credit enhancement for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable

eligibility requirements described in this subsection. The district making the application must present data to the commissioner that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

(F) The refunding transaction must comply with the provisions of subsection (e)(7) and (9) of this section.

(g) Limitations on access to the credit enhancement.

(1) The commissioner will limit approval for the credit enhancement to a district with less than the amount of annual debt service per student in ADA or less than the amount of total debt service per student in ADA that is specified as the limitation in §33.65 of this title at the time of the application for a guarantee or a credit enhancement. The limitation will not apply to school districts that have enrollment growth, as defined in subsection (b)(5) of this section, of at least 25%, based on PEIMS data on enrollment available at the time of application. The annual debt service amount is the amount defined by §33.65(b)(1) of this title. The total debt service amount is the amount defined by subsection (b)(14) of this section.

(2) The eligibility of bonds to receive the credit enhancement is limited to those new money, refunding, and combination issues as defined in subsection (b)(9), (12), and (4), respectively, of this section.

(h) Financial exigency. A school district that declares a financial exigency must designate the fiscal year to which the exigency applies. A state of financial exigency expires at the end of that fiscal year unless renewed or may be terminated by action of the board of trustees at any time before the end of the fiscal year.

(1) Declaration for current fiscal year.

(A) Application for credit enhancement of new money issue. The commissioner will deny approval of an application for the credit enhancement of a new money issue if the applicant school district has declared a state of financial exigency for the district's current fiscal year. The denial of approval will be in effect for the duration of the applicable fiscal year unless the district can demonstrate financial stability.

(B) Approval granted before declaration. If in a given district's fiscal year the commissioner grants approval for the credit enhancement of a new money issue and the school district subsequently declares a state of financial exigency for that same fiscal year, the district must immediately notify the commissioner and may not offer the bonds for sale unless the commissioner determines that the district may proceed.

(C) Application for credit enhancement of refunding issue. The commissioner will consider an application for the credit enhancement of a refunding issue that meets all applicable requirements specified in this section even if the applicant school district has declared a state of financial exigency for the district's current fiscal year. In addition to fulfilling all applicable requirements specified in this section, the applicant school district must also describe, in its application, the reason financial exigency was declared and how the refunding issue will support the district's financial recovery plan.

(2) Declaration in a previous fiscal year. An applicant school district that declared a state of financial exigency in a previous district fiscal year but that has not declared such a state for the district's current fiscal year will not be considered to be in a state of financial exigency for the purposes of this section.

(i) Defeasance. The credit enhancement will be completely removed when bonds provided credit enhancement under this section are defeased, and such a provision must be specifically stated in the bond resolution. If bonds provided credit enhancement under this section are defeased, the district must notify the commissioner in writing within ten calendar days of the action.

(j) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter I, matured principal and interest payments are limited to amounts due on bonds provided credit enhancement under this section at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment upon a tender of such bonds in accordance with the terms of the bonds do not constitute matured principal and interest payments.

(k) Credit enhancement restrictions. The credit enhancement provided for eligible bonds in accordance with the provisions of the TEC, Chapter 45, Subchapter I, is restricted to matured bond principal and interest. The credit enhancement does not extend to any obligation of a district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(l) Notice of failure or inability to pay. A school district that has determined that it is or will be unable to pay maturing or matured principal or interest on a bond for which credit enhancement is provided under this section must immediately, but not later than the tenth business day before maturity date, notify the commissioner.

(m) Payment from intercepted funds.

(1) Immediately after the commissioner receives the notice described in subsection (l) of this section, the commissioner will instruct the comptroller to transfer to the district's paying agent from the amount of funds available to make payments under the SDBEP from the FSP, as identified by the commissioner, the amount necessary to pay the maturing or matured principal or interest.

(2) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due.

(3) The procedures described in paragraphs (1) and (2) of this subsection apply to each payment of principal or interest on bonds as the payment becomes due until the bonds mature or are defeased according to state law.

(4) If, as a result of payments made under this subsection, there is insufficient money to fully fund the FSP, the commissioner will, to the extent necessary, reduce each school district's foundation school fund allocations, other than any portion appropriated from the ASF, in the same manner provided by the TEC, §42.253(h), for a case in which school district entitlements exceed the amount appropriated. The following fiscal year, the commissioner will increase each school district's entitlement under the TEC, §42.253, by an amount equal to the reduction under this paragraph.

(5) A payment made under this subsection by the state on behalf of a school district of funds the district owes on bonds for which credit enhancement is provided under this section creates a repayment obligation of the district to the state regardless of the maturity date of, or any payment of interest on, the bonds.

(6) This subsection does not create a debt of the state under the Texas Constitution or, except to the extent provided by this section, create a payment obligation.

(n) Bonds not accelerated on failure to pay. If a school district fails to pay principal or interest on a bond for which credit enhancement is provided under this section when the amount matures, other amounts not yet mature are not accelerated and do not become due by virtue of the district's failure to pay amounts matured.

(o) Reimbursement of FSP. If payment from the money appropriated to the FSP is made on behalf of a school district, the school district must reimburse the amount of the payment in accordance with the requirements of the TEC, §45.261.

(p) Repeated failure to pay. If a total of two or more payments are made under the guarantee program authorized under §33.65 of this title or the SDBEP on the bonds of a school district, the commissioner will take action in accordance with the provisions of the TEC, §45.262.

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005927
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.28

The Texas Board of Veterinary Medical Examiners proposes an amendment to §575.28, concerning Complaints--Investigations.

The amendment to §575.28 sets out the process of providing a copy to the complainant of the licensee's response to a complaint filed against them and in return providing a copy of the complainant's subsequent response if any is provided. The amendment further sets out that an investigator shall attempt to interview the complainant and if is unable to do so will make a notation in the investigative file of the attempts made. The amendment further sets out that the complainant will be invited to an informal conference regarding the complaint at the board offices.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the amendment as proposed is in effect the anticipated public benefit as a result of enforcing the proposal will be to provide an additional step in the investigative process to allow the complainant to see the licensee's response and have an ability to respond themselves. This additional process will provide more evidence to the Board during the investigative process.

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the amendment to the rule as proposed. Mr. Helmcamp has also determined that the amendment to the rule will have no local employment impact.

Mr. Helmcamp has also determined there will be a no direct adverse effect on small businesses or micro-businesses as a result of enforcing the amendment to the rule as proposed. Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the amendment to the rule as proposed.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

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

§575.28. Complaints--Investigations.

Investigation of complaints.

(1) Policy. 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.

(2) Priority. 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) Upon receipt of a complaint, a letter of acknowledgment will be promptly mailed to the complainant.

(4) Complaints 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 at approximately 45 day intervals.

(5) Upon receipt of a complaint, the director of enforcement, or their designee, will review it and may interview the complainant to obtain additional information. If the director of enforcement concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the board, or is without merit, the director of enforcement shall recommend through the general counsel to the executive director that an investigation not be initiated. If the executive director concurs with the recommendation, the complainant will be so notified. If the executive director does not concur with the recommendations, an investigation will be initiated.

(6) The director of enforcement will assign an investigator to the complaint. A copy of the complaint will be sent to the licensee, along with a request that the licensee respond to the complaint in writing within 21 days of receipt of the request. The licensee will also

be asked to provide a copy of the relevant patient records with the response.

(7) After the licensee's response to the complaint is received, the investigator shall send a copy of the licensee's response to the complainant, along with notification that the complainant may submit additional comments and other evidence, if any, at any time during the investigation to the board. The investigator shall provide any response provided by the complainant to the licensee and provide a single opportunity to respond to the board within ten days of receipt. No further responses from either the licensee or the complainant will be provided to either party.

(8) Further [~~further~~] investigation may be necessary to corroborate the information provided by the complainant and the licensee. During the investigation, the investigator shall attempt to interview by telephone [~~contact~~] the complainant, and if unable to contact the complainant shall document such in the file. Other persons, such as second opinion or consulting veterinarians, may be contacted. The investigator may request additional medical opinions, supporting documents, and interviews with other witnesses.

(9) [~~(8)~~] Upon the completion of an investigation, the investigator shall prepare a report of investigation (ROI) for review by the director of enforcement, who in turn shall present the ROI to the executive director along with a conclusion as to the probability that a violation(s) exists.

(A) If the executive director determines from the ROI that the probability of a violation involving medical judgment or practice exists, the director of enforcement shall forward a copy of the ROI and complaint file to the board secretary and another board member (the "veterinarian members") who will determine whether or not the complaint should be closed, further investigation is warranted, or if the licensee and complainant should be invited to respond to the complaint at an informal conference at the board offices.

(B) If the probable violation does not involve medical judgment or practice (example: administrative matters such as continuing education and federal and state controlled substances certificates), the executive director shall forward the complaint file to a committee of the executive director, director of enforcement, the investigator assigned to the complaint, and general counsel (the "staff committee"), which shall determine whether or not the complaint should be dismissed, investigated further, or settled.

(C) If the veterinarian members determine that a violation has not occurred, the executive director or the executive director's designee, shall notify the complainant and licensee in writing of the conclusion and that the complaint is dismissed.

(D) If the veterinarian members conclude that a probable violation(s) exists, the executive director or the executive director's designee, shall invite the licensee and complainant, in writing, to an informal conference to discuss the complaint made against the licensee. If the veterinarian members cannot agree to dismiss or refer the complaint to an informal conference, the complaint will be automatically referred to an informal conference. The letter invitation to the licensee must include a list of the specific allegations of the complaint.

(E) A complaint considered by the staff committee shall be referred to an informal conference if:

(i) the staff committee determines that the complaint should not be dismissed or settled;

(ii) the staff committee is unable to reach an agreed settlement; or

(iii) the licensee who is the subject of the complaint requests that the complaint be referred to an informal conference.

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

Filed with the Office of the Secretary of State on October 14, 2010.

TRD-201005854
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 305-7563

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §229.461 and §229.464, and the repeal of §229.462 and §229.463, concerning the regulations addressing dietary supplements with ephedrine group alkaloids and restricting the sale and distribution of drugs containing ephedrine.

BACKGROUND AND PURPOSE

The first three of the four rules which currently comprise Subchapter Y of the food and drug rules (§§229.461 - 229.463) restrict and regulate the sale and distribution of dietary supplements containing ephedrine group alkaloids. The fourth rule, §229.464, restricts and regulates the sale and distribution of drugs containing ephedrine. Since adoption of these rules, the U.S. Food and Drug Administration (FDA) has effectively banned entirely the sale and distribution of all dietary supplements containing ephedrine alkaloids by its adoption of 21 Code of Federal Regulations (CFR), §119.1. As the FDA has declared all dietary supplements containing ephedrine alkaloids adulterated foods under §402(f)(1)(A) of the federal Food, Drug, and Cosmetic Act, the department's rules regarding dietary supplements containing ephedrine group alkaloids require revision to be consistent with the federal regulations in this area.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 229.461 - 229.464 have been reviewed and the department has determined that the first dietary supplement rule, §229.461, should be amended and the second and third rules, §229.462 and §229.463, be repealed to reflect and be consistent with the federal prohibition on the sale and distribution of dietary supplements containing ephedrine group alkaloids. The reasons for adoption of the fourth rule, §229.464, which applies to ephedrine in drugs, continue to exist and, therefore, this rule continues to be needed.

SECTION-BY-SECTION SUMMARY

The title of Subchapter Y was reworded to "Regulations to Prohibit the Sale of Dietary Supplements Containing Ephedrine Group Alkaloids; and to Restrict the Sale and Distribution of Certain Products Containing Ephedrine."

Section 229.461 is being amended by changing the title of this rule to "Regulation to Prohibit the Sale and Distribution of Dietary Supplements Containing Ephedrine Group Alkaloids" and deleting rule language so that it reads: "The sale or distribution of any dietary supplement containing ephedrine group alkaloids is prohibited."

Section 229.462 and §229.463 are being repealed in their entirety to be consistent with the ban on the sale and marketing of these food products under 21 CFR, §119.1.

The amendment to §229.464(d)(5) consists of adding the legal citation to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C., §§301 *et seq.,* for reference purposes.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to the state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no adverse 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.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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.

STATEMENT OF NO ADVERSE ECONOMIC IMPACT

Pursuant to the requirement of Government Code, §2006.002(c) (amended by House Bill 3430, 80th Legislative Session, 2007), the department has determined that none of the proposed changes "may have an adverse economic effect on small businesses subject to the proposed rule." This determination is made because there will be no adverse economic impact on any regulated entity as a result of these revisions.

PUBLIC BENEFIT

In addition, Ms. Tennyson 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 and administering the sections will be by eliminating unnecessary sections of the rules and making state regulations consistent with federal regulations.

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Claire Perkins, Foods Group, Policy, Standards and Quality Assurance Unit, Department of State Health Services, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2173, or by email to claire.perkins@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER Y. REGULATIONS TO PROHIBIT THE SALE OF DIETARY SUPPLEMENTS CONTAINING EPHEDRINE GROUP ALKALOIDS; AND TO RESTRICT THE SALE AND DISTRIBUTION OF CERTAIN PRODUCTS CONTAINING EPHEDRINE

25 TAC §229.461, §229.464

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §431.241, which authorizes the department to adopt rules and to conform its rules, if practicable, with regulations the U.S. FDA adopts; 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 the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, the four year agency review requirement.

The amendments affect the Health and Safety Code, Chapters 431 and 1001; and Government Code, Chapter 531.

§229.461. Regulations to Prohibit [~~Restrict~~] the Sale and Distribution of Dietary Supplements Containing Ephedrine Group Alkaloids.

The sale or distribution of any dietary supplement containing ephedrine group alkaloids is prohibited. [~~unless the product complies with the following requirements:~~]

[~~(1) the product contains no chemically synthesized ephedrine group alkaloids; and~~]

[~~(2) each batch shall be analyzed to ensure that it contains the amount of total ephedrine alkaloids listed on the product label.~~]

§229.464. Regulations to Restrict the Sale and Distribution of Certain Drug Products Containing Ephedrine.

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

(d) The following formulations are exempt from the designation as dangerous drugs under subsection (a) of this section, and the dispensing restrictions under subsection (c) of this section:

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

(5) any ephedrine-containing drug product that is marketed pursuant to an approved new drug application under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§301, *et seq*.

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005938
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER Y. REGULATIONS TO SET STANDARDS FOR THE FORMULATION, SALE AND DISTRIBUTION OF DIETARY SUPPLEMENTS CONTAINING EPHEDRINE FROM NATURAL EPHEDRA ALKALOIDS AND TO RESTRICT THE SALE AND DISTRIBUTION OF CERTAIN DRUG PRODUCTS CONTAINING EPHEDRINE

25 TAC §229.462, §229.463

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

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §431.241, which authorizes the department to adopt rules and to conform its rules, if practicable, with regulations the U.S. FDA adopts; 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 the Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, the four year agency review requirement.

The repeals affect the Health and Safety Code, Chapters 431 and 1001; and Government Code, Chapter 531.

§229.462. Product Labels for Dietary Supplements Containing Ephedrine.

§229.463. Advertising and Promotional Literature for Dietary Supplements Containing Ephedrine.

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005939
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.18

The Texas Department of Insurance (Department) proposes amendments to §7.18, concerning Statements of Statutory Accounting Principles (SSAPs). SSAPs provide guidance to insurers and health maintenance organizations (HMOs), including accountants employed or retained by these entities, on how to properly record business transactions for the purpose of accurate statutory reporting. These insurers and HMOs are referred to collectively as "carriers" in this proposal. SSAPs provide a nationwide standard method of accounting, which most carriers are required to use for statutory financial reporting guidance. Therefore, SSAPs provide for a more consistent reporting of financial information from carriers. However, SSAPs do not preempt individual state legislative or regulatory authority. SSAPs are adopted by the National Association of Insurance Commissioners (NAIC) through its maintenance of statutory accounting principles process, which involves the developing and proposing of new SSAPs, providing the opportunity for public comment, and adoption by the NAIC in a series of public meetings with the opportunity for public comment. The Accounting Practices and Procedures Manual (Manual), published and issued by the NAIC, is a comprehensive guide to statutory accounting principles and includes the SSAPs that have been adopted by the NAIC. SSAPs provide the source of statutory accounting principles for the Department when analyzing financial reports and for conducting statutory examinations and rehabilitation of carriers licensed in Texas, except where otherwise provided by law.

The proposed amendments are necessary to adopt by reference the March 2010 version of the Manual, as well as substantive and non-substantive updates to this version of the Manual issued by the NAIC in calendar year 2010. Except for new SSAP Nos. 5R and 35R, the March 2010 version of the Manual and the updates to it must be used to prepare all financial statements filed with the

Department for reporting periods ending on or after December 31, 2010. SSAP Nos. 5R and 35R must be used to prepare all financial statements filed with the Department for reporting periods beginning on or after December 31, 2011, and January 1, 2011, respectively.

Amendments are proposed to §7.18(a) to replace the reference to the March 2008 Manual with the reference to the March 2010 Manual and to replace the word "additions" with the word "modifications." These amendments are necessary to clarify that the March 2010 version of the Manual, including the exceptions and modifications specified in §7.18(c) and (d), will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the Department.

Under the proposed amendments to §7.18(b), the Commissioner adopts by reference the March 2010 version of the Manual, with the exceptions and modifications specified in subsections (c) and (d), as the source of accounting principles for the Department when analyzing financial reports and for conducting statutory examinations and rehabilitations of insurers and HMOs licensed in Texas, except where otherwise provided by law. Amendments are also proposed to §7.18(b) to provide that except for new SSAP Nos. 5R and 35R, the March 2010 version of the Manual, as well as the exceptions and modifications specified in subsections (c) and (d), are required to be (i) applied to examinations conducted as of December 31, 2010, and thereafter; and (ii) used to prepare all financial statements filed with the Department for reporting periods ending on or after December 31, 2010. Under the proposed amendments to §7.18(b), SSAP Nos. 5R and 35R must be (i) applied to examinations conducted as of December 31, 2011, and January 1, 2011, respectively, and thereafter; and (ii) used to prepare all financial statements filed with the Department for reporting periods beginning on or after December 31, 2011, and on or after January 1, 2011, respectively. These proposed amendments are necessary to clarify the purpose and application of the updated Manual.

Under the proposed amendments to §7.18(c), the Commissioner adopts the exceptions and modifications to the Manual that are specified in §7.18(c)(1) and (2). The proposed amendments provide that except for new SSAP Nos. 5R and 35R, these exceptions and modifications must be (i) applied to examinations conducted as of December 31, 2010, and thereafter, and (ii) used to prepare all financial statements filed with the Department for reporting periods ending on or after December 31, 2010. Under the amendments to §7.18(c)(1)(A), the following substantively revised SSAPs are proposed to be adopted by reference: SSAPs Nos. 5R, 35R, and 91R. SSAP No. 5R, which was adopted by the NAIC in October 2010, was revised to include guidance for accounting guarantees that are issued to other entities. SSAP No. 5R is adopted to be effective on December 31, 2011, and must be used to prepare all financial statements filed with the Department for reporting periods beginning on or after December 31, 2011. SSAP No. 35R, which was adopted by the NAIC in October 2010, was revised to eliminate the non-admission criteria for accrued guaranty fund assessments, to incorporate new disclosures for assets, and to include transition guidance for assets. SSAP No. 35R was adopted by the NAIC to be effective on January 1, 2011, and must be used to prepare all financial statements filed with the Department for reporting periods beginning on or after January 1, 2011. SSAP No. 91R, which was adopted by the NAIC in August 2010, specifies updated securities lending accounting, reporting, and disclosures. SSAP No. 91R is effective on December 31, 2010, and must be used to prepare all financial statements filed with the Department for reporting periods beginning on or after December 31, 2010. The amendments to §7.18(c)(1)(A) also propose to delete references to SSAP Nos. 98 and 99 because SSAP Nos. 98 and 99 are included in the March 2010 version of the Manual. Additionally, a non-substantive amendment to §7.18(c)(1)(A) is needed to delete the redundant phrase "filed with the Department" in the sentence that begins "SSAP Nos. [No.] 5R and 35R [98] shall be applied to examinations conducted as of. . . ." Under amendments to §7.18(c)(1)(B), the Department is proposing to adopt by reference non-substantive modifications to SSAP Nos. 9, 43R, 90, 100, and 10R, and Issue Paper No. 99 issued by the NAIC in calendar year 2010. These non-substantive modifications clarify language or change disclosures, appendices, or other material referenced in SSAPs already included in the March 2010 version of the Manual. The proposed amendments to §7.18(c)(1)(B) also delete references to the non-substantive modifications to SSAP Nos. 5, 15, 21, 22, 26, 30, 32, 40, 41, 43, 48, 52, 54, 55, 63, 65, 68, 86, and 91, and to the Preamble section of the Manual because the March 2010 version of the Manual includes all of these with the non-substantive modifications. The proposed amendments to §7.18(c)(1)(C) delete references to Actuarial Guidelines 43, 44, and 45, and revisions to Actuarial Guidelines 34 and 39 because these guidelines are included in the March 2010 version of the Manual.

Amendments are also proposed to §7.18(a), (b), (c), and (c)(2) to replace the word "additions" with the word "modifications." These proposed amendments are necessary to classify more accurately the provisions adopted under §7.18(a), (b), (c), and (c)(2). An amendment is also proposed to §7.18(c)(1) to replace the words "additions and exceptions" with the word "modifications." This proposed amendment is necessary to classify more accurately the provisions adopted under §7.18(c)(1).

Additionally, amendments are proposed to §7.18(e) to add the phrases "and obtain approval prior to using the accounting deviation in a financial statement" and "that is proposed to be." These proposed amendments are necessary to clarify that a domestic insurer must both timely file a written request for a permitted practice and receive the Department's approval prior to using the accounting deviation in a financial statement. The proposed amendments to §7.18(e) also add the phrase "of the Financial Program." These proposed amendments are necessary to clarify that written requests for a permitted practice must be filed with the Senior Associate Commissioner of the Financial Program.

FISCAL NOTE. Danny Saenz, Senior Associate Commissioner, Financial Program, has determined that, for each year of the first five years the amended section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administrating the amended section, and there will be no effect on local employment or the local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that for each year of the first five years the amended section is in effect, the public benefit will be the adoption of an updated Accounting Practices and Procedures Manual (Manual) that will enable the Department to continue efficient financial solvency regulation of insurance in general and the decrease in costs to carriers that are required to comply with accounting requirements in multiple states. In particular, adoption of the March 2010 version of the Manual, and substantive and non-substantive updates to it, will enable the Department to continue efficient and effective utilization of existing resources in the analysis and examination of the financial condition of

carriers to better ensure financial solvency. Additionally, the adoption and use of the updated Manual will continue to support a more consistent regulatory environment and to provide a central source for accounting guidance. The Department does not anticipate that any of the proposed amendments, including the proposed adoption by reference of the 2010 Manual, will result in additional costs to those costs that are required of carriers, regardless of size, under the existing rules.

§7.18(c)(1)(A). The proposed amendments to §7.18(c)(1)(A) adopt by reference three substantively revised Statements of Statutory Accounting Principles (SSAPs): SSAP No. 5R, which was revised to include guidance for accounting guarantees that are issued to other entities; SSAP No. 35R, which was revised to eliminate the non-admission criteria for accrued guaranty fund assessments, to incorporate new disclosures for assets, and to include transition guidance for assets; and SSAP No. 91R, which specifies updated securities lending accounting, reporting, and disclosures, effective December 31, 2010. None of these substantively revised SSAPs will result in additional costs to those costs that are required of carriers, regardless of size, under the existing rules.

§7.18(c)(1)(B). The proposed amendments to §7.18(c)(1)(B) adopts by reference non-substantive modifications to SSAP Nos. 9, 10R, 43R, 90, and 100 and Issue Paper No. 99. The proposed nonsubstantive modifications clarify language or update reference materials, including disclosures and appendices, to SSAPs already included in the March 2010 version of the Manual as adopted by the NAIC and proposed for adoption by reference in this proposal. None of these non-substantive modifications will result in additional costs to those costs that are required of carriers, regardless of size, under the existing rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002, the Department has determined that the proposed amendments will not result in any additional costs to those costs that are required of small and micro business carriers under the existing rules for the reasons specified in the Public Benefit/Cost Note part of this proposal. Nevertheless, the rule exempts certain carriers that have historically accounted for their business on a cash basis and have historically posed relatively insubstantial insolvency-related risk to consumers, other carriers, and the state's general economic welfare from compliance with the Manual. Section 7.18(d) exempts any farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association with less than $6 million in annual direct written premiums from compliance with the Manual. Because of the types or methods of operations of these types of carriers, they are more likely to be small or micro business carriers. Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The Department has determined that the routine costs to comply with this proposal, i.e., compliance with the Manual in financial filings, will not have an adverse economic effect on small or micro business carriers. Therefore, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule as required by the Government Code §2006.002(c).

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 29, 2010. All comments should be submitted to Gene C. Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Danny Saenz, Senior Associate Commissioner, Financial Program, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code Chapters 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862, and §36.001. Sections 401.051 and 401.056 mandate that the Department examine the financial condition of each carrier organized under the laws of Texas or authorized to transact the business of insurance in Texas and adopt by rule procedures for the filing and adoption of examination reports. Section 404.005(a)(2) authorizes the Commissioner to establish standards for evaluating the financial condition of an insurer. Section 421.001(c) requires the Commissioner to adopt each current formula recommended by the NAIC for establishing reserves for each line of insurance. Section 425.162 authorizes the Commissioner to adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement the Insurance Code Chapter 425, Subchapter C. Section 426.002 provides that reserves required by §426.001 must be computed in accordance with any rules adopted by the Commissioner to adequately protect insureds, secure the solvency of the workers' compensation insurance company, and prevent unreasonably large reserves. Section 441.005 authorizes the Commissioner to adopt reasonable rules as necessary to implement and supplement Chapter 441 of the Insurance Code (Supervision and Conservatorship). Section 32.041 requires the Department to furnish to the companies the required financial statement forms. Section 802.001 authorizes the Commissioner, as necessary, to obtain an accurate indication of the company's condition and method of transacting business, to change the form of any annual statement required to be filed by any kind of insurance company. Section 823.012 authorizes the Commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (Insurance Holding Company Systems). Section 843.151 authorizes the Commissioner to promulgate rules that are necessary and proper to implement the provisions of Chapter 843 of the Insurance Code (Health Maintenance Organizations). Section 843.155 requires HMOs to file annual reports with the Commissioner, which include a financial statement of the HMO, certified by an independent public accountant. Sections 841.004(b), 861.255(b) and 862.001(c) authorize the Commissioner to adopt rules defining electronic machines and systems, office equipment, furniture, machines and labor saving devices, and the maximum period for which each such class may

be amortized. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Chapters 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862.

§7.18. National Association of Insurance Commissioners Accounting Practices and Procedures Manual.

(a) The purpose of this section is to adopt statutory accounting principles, which will provide insurers and health maintenance organizations, including accountants employed or retained by these entities, guidance as how to properly record business transactions for the purpose of accurate statutory reporting. The March 2010 [~~2008~~] version of the Accounting Practices and Procedures Manual (Manual) published by the National Association of Insurance Commissioners (NAIC), with the exceptions and modifications [~~additions~~] set forth in subsections (c) and (d) of this section, will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the department. The Commissioner reserves all authority and discretion to resolve any accounting issues in Texas. When making a determination on the proper accounting treatment for an insurance or health plan transaction, the Commissioner shall refer to the sources in paragraphs (1) - (6) of this subsection in the respective order of priority listed. The sources in paragraphs (1) - (3) of this subsection preempt any contrary provisions in the Manual. The department rules that preempt any contrary provisions in the Manual, include, but are not limited to: §§3.1501 - 3.1505, 3.1601 - 3.1608, 3.4505(f), 3.6101, 3.6102, 3.7001 - 3.7009, 3.9101 - 3.9106, 3.9401 - 3.9404, 7.7, 7.85 and 11.803 of this title (relating to Annuity Mortality Tables; Actuarial Opinion and Memorandum Regulation; General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves; Policy Reserves; Claims Reserves; Minimum Reserve Standards for Individual and Group Accident and Health Insurance; 2001 CSO Mortality Table; Preferred Mortality Tables; Subordinated Indebtedness, Surplus Debentures, Surplus Notes, Premium Income Notes, Bonds, or Debentures, and Other Contingent Evidences of Indebtedness; Audited Financial Reports; and Investments, Loans, and Other Assets).

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

(b) The Commissioner adopts by reference the March 2010 [~~2008~~] version of the Manual, with the exceptions and modifications [~~additions~~] set forth in subsections (c) and (d) of this section, as the source of accounting principles for the department when analyzing financial reports and for conducting statutory examinations and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. Except as provided in subsection (c)(1)(A) of this section concerning Statement of Statutory Accounting Principles (SSAP) Nos. 5R and 35R, this Manual that is adopted [~~This adoption~~] by reference with the exceptions and modifications specified in subsections (c) and (d) of this section shall be applied to examinations conducted as of December 31, 2010, [~~January 1, 2009~~] and thereafter, and also shall be used to prepare all financial statements filed with the department for reporting periods beginning on or after December 31, 2010 [~~January 1, 2009~~].

(c) The Commissioner adopts the exceptions and modifications [~~additions~~] to the Manual specified in paragraphs (1) and (2) of this subsection. Except as provided in paragraph (1)(A) of this subsection concerning SSAP Nos. 5R and 35R [~~Statement of Statutory Accounting Principles No. 98 (SSAP No. 98) and in paragraph (1)(C) of this subsection concerning Actuarial Guideline 43~~], these exceptions and modifications [~~additions~~] shall be applied to examinations conducted as of December 31, 2010, [~~January 1, 2009~~] and thereafter, and also shall be used to prepare all financial statements filed with the department for reporting periods beginning on or after December 31, 2010 [~~January 1, 2009~~].

(1) In addition to the statements of statutory accounting principles in the Manual, the following modifications [~~additions and exceptions~~] are adopted by reference:

(A) Statements [~~Statement~~] of Statutory Accounting Principles (SSAP) Nos. 5R, adopted by the NAIC in calendar year 2010, and effective December 31, 2011; 35R, adopted by the NAIC in calendar year 2010, and effective January 1, 2011; and 91R [~~and 99~~], adopted by the NAIC in calendar year 2010 [~~2008~~] and effective December 31, 2010 [~~January 1, 2009, and SSAP No. 98, adopted by the NAIC in calendar year 2008 and effective September 30, 2009~~]. SSAP Nos. 5R and 35R [~~No. 98~~] shall be applied to examinations conducted as of December 31, 2011, and January 1, 2011, respectively [~~September 30, 2009~~], and thereafter, and also shall be used to prepare all financial statements filed with the department for reporting periods beginning on or after December 31, 2011, and on or after January 1, 2011, respectively [~~filed with the Department after September 30, 2009, beginning with the third quarter 2009 financial statements~~].

(B) Nonsubstantive modifications to SSAP Nos. 9, 43R, 90, 100, and 10R, and Issue Paper No. 99 [~~5, 15, 21, 22, 26, 30, 32, 40, 41, 43, 48, 52, 54, 55, 63, 65, 68, 86, and 91 and to the Preamble section of the Manual~~] made by the NAIC in calendar year 2010 [~~2008~~], as follows:

(i) Ref. No. 2010-07: ASU 2010-09, Subsequent Events - Amendments to Certain Recognition and Disclosure Requirements [~~2008-25: FSP FAS 133-1 and FIN 45-4: Disclosures about Credit Derivatives and Certain Guarantees, Amendments of FAS 133 and FIN 45, and Clarification of the Effective Date of FAS 161~~];

(ii) Ref. No. 2010-01: AVR and IMR Guidance within SSAP No. 43R and SSAP No. 7 [~~2008-22: Disclosures for Funding Agreements Issued to a Federal Home Loan Bank~~];

(iii) Ref. No. 2010-02: Clarification of SSAP No. 90 - Accounting for the Impairment or Disposal of Real Estate Investments, paragraph 6 [~~2007-32: EITF 06-5: Accounting for Purchases of Life Insurance - Determining the Amount That Could be Realized in Accordance with FASB Technical Bulletin 85-4 and INT 07-05: Accounting for Deferred Compensation and Postretirement Benefit Aspects of Collateral Assignment Split-Dollar Life Insurance Arrangements~~];

(iv) Ref. No. 2010-05: ASU 2010-06, Fair Value Measurements and Disclosures - Improving Disclosures about Fair Value Measurements [~~2008-05: FSP FAS 13-2: Accounting for a Change or Projected Change in the Timing of Cash Flows Relating to Income Taxes Generated by a Leveraged Lease Transaction~~];

(v) Ref. No. 2010-09: Income Taxes [~~2008-08: Methods Used to Determine and Report Fair Value of Securities~~];

(vi) Ref. No. 2009-20: ASU 2009-02, Omnibus Update - Amendments to Various Topics for Technical Corrections; and 2010-04: ASU 2010-03, Extractive Activities - Oil and Gas; and Ref. No. 2010-04: ASU 2010-03, Extractive Activities - Oil and Gas. [~~2007-21: SOP 97-1: Accounting by Participating Mortgage Loan Borrowers;~~]

~~*[(vii)* Ref. No. 2008-12: Clarification of Accounting for Capital Notes Held as Investments;]~~

~~*[(viii)* Ref. No. 2002-20: Valuation and Reporting of Residential Interests;]~~

~~*[(ix)* Ref. No. 2007-34: Use of Audited Tax Basis Financial Statements;]~~

~~*[(x)* Ref. No. 2007-30: Remove Reference to Health Reserves Guidance Manual;]~~

~~*[(xi)* Ref. No. 2008-06: Clarification of SSAP No. 63 Regarding Intercompany Pooling Arrangements;]~~

~~*[(xii)* Ref. No. 2008-03: Discounting of Loss Adjustment Expense Reserves;]~~

~~*[(xiii)* Ref. No. 2007-36: Goodwill in a Merged Subsidiary;]~~

~~*[(xiv)* Ref. No. 2008-17: FSP FAS 142-3, Determination of the Useful Life of Intangible Assets;]~~

~~*[(xv)* Ref. No. 2008-14: Measurement of Sufficient Collateralization for Securities Lending Transactions;]~~

~~*[(xvi)* Ref. No. 2005-02: Amendment to the Permitted Practices Notice Requirement; and]~~

~~*[(xvii)* Ref. No. 2008-19: FAS 162, The Hierarchy of Generally Accepted Accounting Principles; and]~~

~~[(C) Actuarial Guidelines 43, 44, and 45, and revised Actuarial Guidelines 34 and 39, issued by the NAIC in calendar year 2008. Actuarial Guideline 43 shall be applied to examinations conducted as of January 1, 2010 and thereafter, and also shall be used to prepare all financial statements filed with the department for reporting periods beginning on or after January 1, 2010.]~~

(2) In addition, the following exceptions and modifications [~~additions~~] are adopted:

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

(d) (No change.)

(e) In the event a domestic insurer desires to deviate from the accounting guidance in a Texas statute or any applicable regulation, the insurer shall file a written request for a permitted accounting practice and obtain approval prior to using the accounting deviation in a financial statement. Such filing shall be made with the Senior Associate Commissioner of the Financial Program, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104 at least 30 days before filing the financial statement that is proposed to be affected by the deviated accounting practice. Insurers shall not use deviated accounting practice without the department's prior approval.

(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.

Filed with the Office of the Secretary of State on October 18, 2010.

TRD-201005965
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 13. LAND RESOURCES

SUBCHAPTER E. VACANCIES

31 TAC §§13.32 - 13.62

The General Land Office (GLO) and the School Land Board (SLB) propose new 31 Texas Administrative Code (TAC) Chapter 13, Subchapter E, relating to Vacancies. The new rules, §§13.32 - 13.62, are proposed to replace the current rules found in 31 TAC Chapter 13, Subchapter G, which are proposed for repeal concurrently with this Notice of Proposed Rulemaking. The new rules incorporate changes to the Texas Natural Resources Code, Chapter 51, Subchapter E, relating to the Sale or Lease of Vacancies, as amended by House Bill 3461, 81st Legislature, Regular Session (2009) and reflect current GLO practices and interpretations relating to the vacancy and good-faith claimant determination process.

BACKGROUND AND JUSTIFICATION

In 2002, the GLO and SLB adopted 31 TAC Chapter 13, Subchapter G, relating to Vacant Land, §§13.87 - 13.94, to reflect changes to the vacancy statute made by Senate Bill 1806 during the 77th Legislature, Regular Session (2001). September 6, 2002 (27 TexReg 8596). The 2001 changes to the vacancy statute were designed to expedite and simplify the vacancy process for interested and affected property owners, good-faith claimants, applicants, and the commissioner. The Subchapter G rules apply to all vacancy applications filed after September 1, 2001, the effective date of Texas Natural Resources Code §§51.171 - 51.192.

In 2005, the Texas Legislature made sweeping changes to the GLO's vacancy process through Senate Bill 1103 during the 79th Legislature, Regular Session (2005). In response to the legislative changes, the GLO and the SLB repealed the then-existing 31 TAC Chapter 13, Subchapter F and adopted a new Subchapter F, relating to Vacancy Process, §§13.71 - 13.83. The new 2006 rules implemented an expedient and efficient procedure for processing vacancy applications for interested and affected landowners, good-faith claimants, applicants, and the commissioner. The 2006 rules also fulfilled the requirements of the statute that the GLO adhere to the Texas Administrative Procedures Act, Texas Government Code, Chapter 2001, in determining contested vacancies. July 14, 2006 (31 TexReg 5663). The 31 TAC Chapter 13, Subchapter F rules apply to all vacancy applications filed after June 17, 2005, the effective date of the vacancy amendments to Texas Natural Resources Code §§51.171 - 51.195.

In 2009, more amendments were made to the vacancy statute to address practical issues that came to light during the GLO's implementation of the new administrative procedural requirements of the 2005 version of Texas Natural Resources Code §§51.171 - 51.195. The effective date of the 2009 vacancy amendments was June 19, 2009. House Bill 3461, 81st Legislature, Regular Session (2009).

As mentioned, the GLO and the SLB have proposed the repeal of current 31 TAC Chapter 13, Subchapter G, §§13.87 - 13.94, relating to Vacant Land, because there are no applications pending before the GLO or actions arising out of vacancy applications pending in the courts of the State of Texas that were filed before June 18, 2005, the effective date of current Subchapter F, which governs all vacancy applications filed on or after that date. Be-

cause there are no pending matters to which these rules apply or could apply, the rules are no longer necessary.

Because currently pending vacancy matters exist that were filed after June 17, 2005 but before June 19, 2009, the effective date of the 2009 legislative changes, 31 TAC Chapter 13, Subchapter F, §§13.71 - 13.83, relating to Vacancy Process, remains necessary and shall remain in force. No changes to those rules are required.

The proposed rules in new Subchapter E will apply to vacancy applications filed on or after June 19, 2009. In addition to incorporating the requirements of the 2009 vacancy amendments to the Texas Natural Resources Code, the proposed rules have been expanded to include additional language from the statute to make the rules clearer and more comprehensible to the public and to the GLO. Additional GLO interpretations have been incorporated, as well as practices that the GLO has adopted in implementing the 2005 sweeping changes.

SECTION-BY-SECTION ANALYSIS

Proposed §13.32 (relating to General Provisions) sets forth the effective date of the rules and provides that vacancies pending before the effective date are governed by 31 TAC Chapter 13, Subchapter F. The proposed rule authorizes the commissioner to grant an extension of time to comply with a statutory or regulatory requirement, to the extent provided by statute. It also allows the commissioner to waive a time limitation provided by statute, but only to the extent that such waiver does not materially prejudice the rights of a necessary party.

Proposed §13.33 (relating to Definitions) includes statutory definitions and definitions used under the previous vacancy rules. Additional definitions have been added or amended to clarify the meaning of terms and phrases used in the vacancy process.

Proposed §13.34 (relating to Vacancy Application: Requirements) gives the applicant guidance on how to initiate a vacancy proceeding. Subsection (a) tells the applicant how to obtain a proper application form from the GLO. Subsection (b) sets forth the information and documentation required for a complete application. Subsection (c) suggests that an applicant that is also a good-faith claimant file the affidavit and its supporting documentation with the vacancy application. The good-faith claimant documentation is helpful in identifying and locating necessary parties who may not appear on the property records. Subsection (d) provides that if an applicant wants the commissioner to appoint a surveyor to perform a survey for the vacancy application, the request must be made at the time of filing.

Proposed §13.35 (relating to Vacancy Application: Filing in the County Land Records) directs the applicant to file the vacancy application with the clerk's office of the county or counties in which the alleged vacancy is located.

Proposed §13.36 (relating to Vacancy Application: Filing in the Land Office) instructs the applicant to file two copies of the vacancy application file-stamped by the county clerk's office not later than the 30th day following the date on which the application was filed with the county clerk. Subsection (b) provides that the applicant must submit the applicable filing fees with the vacancy application.

Proposed §13.37 (relating to Vacancy Application: Application Properly Filed) provides criteria for the GLO to determine whether an application is properly filed. This provision is necessary because an applicant sometimes files a vacancy application, but the obvious facts do not support even the investigation of the existence of a vacancy. This provision lays out the criteria to be applied to more efficiently terminate an application filed improperly, to save the applicant and the GLO time and resources.

Proposed §13.38 (relating to Vacancy Application: Administrative Completeness) provides that a properly filed vacancy application will be deemed administratively complete when the GLO determines that the applicant has submitted all necessary documents. If the application is not administratively complete, the GLO must inform the applicant of any deficiencies in writing within 45 days from the proper filing of the application. The rule authorizes the applicant to resolve any deficiencies within a reasonable time, not to exceed 30 days.

Proposed §13.39 (relating to Vacancy Application: Cost Deposit) provides that an applicant must provide a cost deposit in cash to the GLO within a required time frame so that the GLO can properly investigate the vacancy application. The proposed rule places limits on the use of the deposit by the GLO and authorizes the GLO to require the applicant to pay supplemental costs to cover other anticipated expenses. The GLO must provide a statement and any unused funds to the applicant at the end of the vacancy proceeding.

Proposed §13.40 (relating to Processing Vacancy: Notice to Necessary Parties) provides notice requirements that must be followed by the GLO once the application has been deemed administratively complete.

Proposed §13.41 (relating to Processing Vacancy: Attorney Ad Litem) provides that the commissioner will appoint an attorney ad litem to identify and locate necessary parties if the applicant's list of necessary parties appears to be incomplete, as confirmed by GLO research. The proposed rule provides standards by which the attorney ad litem must research the potential necessary parties and report his or her findings back to the GLO. The proposed rule authorizes the attorney ad litem to represent the interests of other necessary parties and provides that the attorney ad litem is entitled to reasonable compensation for services, which will be paid by the GLO from the applicant's cost deposit.

Proposed §13.42 (relating to Necessary Party Identified but Not Located) describes the actions that should be taken when a necessary party has been identified but cannot be located. If the GLO and attorney ad litem (at the request of the GLO) cannot locate the necessary party, the GLO must follow certain requirements for publishing notice of the vacancy application. Finally, the rule provides that the attorney ad litem will represent the interests of identified, unlocated necessary parties.

Proposed §13.43 (relating to Necessary Party Exceptions to Survey or Vacancy Application) provides that a necessary party may file an exception or exceptions to the survey or to the vacancy application within 60 days of the notice of vacancy application or within 30 days of the date of an appointed surveyor's report. The proposed new rule requires the exceptor to send a copy of the exception to each necessary party that requested notice, and requires the GLO to provide a written list of all necessary parties to the vacancy application and their contact information to any necessary party upon written request. The proposed new rule provides the circumstances under which an exception will be accepted for filing but states that the failure of a party to file exceptions to a survey will constitute acquiescence to the survey. Finally, the rule requires the GLO to include a copy of the exception in its notice of vacancy application to additional necessary parties identified after the date of filing of the exception.

Proposed §13.44 (relating to Investigation of Vacancy Application) describes the manner in which the commissioner must investigate the vacancy application, including the information that may be reviewed, and requires the commissioner to keep a record of the persons consulted, information reviewed, and applicable law.

Proposed §13.45 (relating to Commissioner's Survey) describes the manner in which the commissioner may require a survey to aid in the investigation of a survey application. The proposed rule allows for any necessary party to observe the survey and requires the commissioner to send notice of the survey to all necessary parties.

Proposed §13.46 (relating to Surveyor Appointed Upon Request of Applicant) provides that an applicant may request, in writing, that the commissioner appoint a surveyor and requires the applicant to pay for the cost of such a survey if the request is granted.

Proposed §13.47 (relating to Appointed Surveyor's Report) describes the contents of a surveyor's report and requires that it be filed within 120 days from the surveyor's appointment unless the time period is extended by the commissioner.

Proposed §13.48 (relating to Completion of Survey by Appointed Surveyor) requires the commissioner to provide a copy of the surveyor's report to all necessary parties and authorizes necessary parties to file exceptions to the report.

Proposed §13.49 (relating to Removal of an Appointed Surveyor) provides that an appointed surveyor may be removed upon motion of the commissioner or any necessary party. The proposed rule includes information that must be included in any petition for removal, the grounds under which a surveyor may be removed, circumstances under which the commissioner's decision may be reconsidered, and a statement that a surveyor removed pursuant to this section cannot be grounds for a disciplinary action.

Proposed §13.50 (relating to Finding of Not Vacant Land) provides that the commissioner may issue an order finding that the alleged vacancy is "Not Vacant Land" at any time following the completion of the investigation of the vacancy without a hearing within a year of the application commencement date. After one year, the commissioner may not issue an order finding "Not Vacant Land" if a necessary party has properly filed an exception to the application or the survey. The proposed rule includes requirements for providing notice of the commissioner's final order and states that the finding "Not Vacant Land" is conclusive and may not be appealed.

Proposed §13.51 (relating to Findings that a Vacancy Exists) authorizes the commissioner to find that a vacancy exists by issuing a final order supported by findings of fact and conclusions of law at any time following the completion of the investigation of the vacancy unless a hearing is required under proposed new §13.52.

Proposed §13.52 (relating to Findings that Require Hearing) describes the circumstances under which a hearing must be held on a vacancy application: (1) a necessary party has properly filed an exception to the survey or application and the commissioner has not entered a finding of "Not Vacant Land" within one year of the application being administratively complete; and (2) the chief surveyor has determined that a vacancy may exist. The proposed rule requires the commissioner to provide notice of the hearing and states that the hearing must be held within 60 days of the commissioner's hearing order. The proposed rule further states that the hearing will be conducted as a contested case hearing pursuant to 31 TAC Chapter 2.

Proposed §13.53 (relating to Waiver of Hearing Requirement) provides that the necessary parties and the commissioner may enter into an agreement waiving the hearing requirement with the consent of all necessary parties that have been located.

Proposed §13.54 (relating to Final Orders) describes the manner in which the commissioner will issue a final order of "Not Vacant Land" or finding the existence of a vacancy and outlines the required contents of the order. The proposed rule clarifies that the commissioner is not limited to the descriptions of the vacancy provided by the applicant, the surveyor, or any other person. Finally, the rule provides the requirements for issuing notice of the final order.

Proposed §13.55 (relating to Appeal of Final Vacancy Order) provides that a final order with a finding of "Not Vacant Land" may not be appealed. A final order finding that a vacancy exists is subject to appeal by a necessary party that meets certain requirements. The proposed rule provides these requirements and the timelines within which the appeal must be filed. The proposed rule also discusses the effect of the outcome of the appeal, the court of governing jurisdiction, and the standard of review.

Proposed §13.56 (relating to Application for Good-Faith Claimant Status) describes the good-faith claimant requirements and lists the documentation that must be provided with a good-faith claimant affidavit.

Proposed §13.57 (relating to Priority Among Good-Faith Claimants) details the priority among good-faith claimants when two or more necessary parties that filed good-faith claimant affidavits have proven a valid good-faith claim to purchase or lease the vacant land. This priority rule determines which good-faith claimant gets the preferential right to purchase or lease all or a portion of the vacant land.

Proposed §13.58 (relating to Declaration of Good-Faith Claimant Status) authorizes the commissioner, when determining whether a person qualifies to be a good-faith claimant, to consider whether a person should have conducted a title investigation before or after taking possession of the land and whether public records suggested the existence of a vacancy before the date that the person used, occupied, or possessed the land. The proposed rule clarifies that the declaration of good-faith claimant status merely grants a preferential right to purchase or lease land, and nothing more, and requires the commissioner to determine whether a party is a good-faith claimant within 120 days from the final order that a vacancy exists.

Proposed §13.59 (relating to Appeal of Declaration of Good-Faith Claimant Status) authorizes a person who is denied good-faith claimant status to request a hearing or appeal the denial as part of any appeal of a final order finding that a vacancy exists. The commissioner must determine the scope of the hearing, provide timely notice, and provide each party an opportunity to be heard if the commissioner decides to grant a hearing.

Proposed §13.60 (relating to Exercise of Preferential Rights) states that a preferential right may be exercised after a final judicial determination or after the period for filing an appeal of a final order has expired. The proposed rule sets out the time periods within which the good-faith claimant must apply to purchase or lease the vacant land and close the transaction in order to avoid expiration of the preferential right. The proposed

rule clarifies the method for applying to purchase or lease a vacancy, and the portion of the vacancy that may be purchased or leased by a good-faith claimant. Finally, the proposed rule provides that the price and conditions on a sale or lease are set by the SLB and sets limitations on interests purchased that are less than a permanent interest.

Proposed §13.61 (relating to Purchase or Lease by Applicant) provides the circumstances under which the applicant has a preferential right to a certain royalty interest or a purchase or lease any remaining interest in the vacant land if no good-faith claimant exists or exercises a preferential right. The proposed rule outlines the terms of the royalty interest and of purchase or lease of vacant land.

Proposed §13.62 (relating to Terms of Sale or Lease by the School Land Board) provides that the SLB sets the conditions for the sale or lease of vacant land and authorizes the SLB, in its sole discretion, to reserve all mineral and other like interests to the state, in addition to a right of ingress and egress for exploration and production. The proposed rule authorizes the SLB to reserve a royalty in a mineral interest purchased by an applicant at a percentage determined by the SLB, and sets forth the rules regarding preferential rights for good-faith claimants and applicants. Finally, the proposed rule describes the circumstances under which the file for the vacant land must be marked as "surveyed, unsold school land" and the vacant land may later be sold or leased in accordance with other similar lands.

FISCAL AND EMPLOYMENT IMPACTS

Bill O'Hara, Chief Surveyor of the GLO, has determined that, for each year of the first five years the new sections as proposed are in effect, there will be no fiscal implications for the state government. There will also be no fiscal impact on local governments as a result of the proposed sections.

Mr. O'Hara has determined that the proposed rulemaking will not have an effect on the costs of compliance for individuals and small businesses or large businesses. Mr. O'Hara has also determined the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. O'Hara has determined the public will benefit from this proposed rulemaking because it will streamline the vacancy application process and provide the public with a clearer understanding of how the process works. The proposed new subchapter will also implement the most recent changes to the vacancy statute and provide consistency between the statutes and rules.

TAKINGS IMPACT ASSESSMENT

The SLB and GLO have evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The SLB and GLO have determined the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Furthermore, the SLB and GLO have determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the new rule.

ENVIRONMENTAL REGULATORY ANALYSIS

The SLB and GLO have evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT

To comment on the proposed rulemaking, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

STATUTORY AUTHORITY.

The new rules are proposed pursuant to Texas Natural Resources Code §51.174(c), which authorizes the GLO to adopt rules necessary and convenient to administering the vacancy process under 31 TAC Chapter 13, Subchapter F.

The proposed rulemaking affects Texas Natural Resources Code Chapter 51, Subchapter E, relating to the sale and lease of vacancies. No other statutes, articles, or codes are affected by this proposal.

§13.32. General Provisions.

(a) This subchapter applies to applications to purchase or lease vacant land filed on or after June 18, 2009. This subchapter implements Texas Natural Resources Code §§51.171 - 51.195, Acts 2005, 79th Legislature, Chapter 974 (2005), as amended in Acts 2009, 81st Legislature, Chapter 1175 (2009).

(b) Texas Natural Resources Code §§51.171 - 51.192 and the related regulations at Subchapter F, §§13.71 - 13.83 of this chapter (relating to Vacancy Process), continue to apply to applications pending before the General Land Office and actions arising out of vacancy applications pending in the courts of the State of Texas on or before June 18, 2009.

(c) To the extent permitted by statute and upon written request of a party, the commissioner may grant an extension of time to comply with a requirement of this subchapter or of Subchapter E of Chapter 51 of the Texas Natural Resources Code, relating to Sale or Lease of Vacancies.

(d) The commissioner may waive any time limitation set forth in this subchapter or Subchapter E of Chapter 51 of the Texas Natural Resources Code, relating to Sale or Lease of Vacancies, but only to the extent that the waiver does not materially prejudice the rights of a necessary party.

§13.33. Definitions.

The following terms, when used in this subchapter, mean the following unless the context clearly indicates otherwise.

(1) "Applicant" means any person, including a good-faith claimant, who files a vacancy application.

(2) "Application commencement date" means the date determined by the commissioner following the agency's determination that the application is administratively complete, which generally will be not later than thirty days following the date of the letter determining that the application is administratively complete.

(3) "Agency" means the General Land Office.

(4) "Board" means the School Land Board.

(5) "Chief surveyor" means the chief surveyor of the General Land Office.

(6) "Commissioner" means the commissioner of the General Land Office.

(7) "Cost deposit" means an advance payment required to be made by the applicant to cover the anticipated costs of a vacancy proceeding.

(8) "Eligible surveyor" means a duly elected county surveyor in a county that has an elected county surveyor or a licensed state land surveyor as defined in §1071.002(5) of the Texas Occupations Code.

(9) "Exception" means an objection or protest.

(10) "Exceptor" means the necessary party filing an exception to a survey or vacancy application.

(11) "Good-faith claimant" means a person who, on the application commencement date:

(A) occupies or uses or has previously occupied or used, or whose predecessors in interest in the land alleged to be vacant have occupied or used, the land or any interest in the land for any purposes, including occupying or using:

(i) the surface or mineral estate for any purposes, including exploring for or removing oil, gas, sulphur, or other minerals and geothermal resources from the land;

(ii) an easement or right-of-way; or

(iii) a mineral royalty or leasehold interest;

(B) has had, or whose predecessors in interest have had, the land alleged to be vacant enclosed or within definite boundaries recognized in the community and in possession under a chain of title for a period of at least ten (10) years with a good-faith belief that the land was included within the boundaries of a survey or surveys that were previously titled, awarded, or sold under circumstances that would have vested title in the land if the land were actually located within the boundaries of the survey or surveys;

(C) is the owner of land:

(i) that adjoins the land alleged to be vacant; and

(ii) for which no vacancy application has been previously filed; or

(D) holds title under a person described by subparagraph (A), (B), or (C) of this paragraph or is entitled to a distributive share of a title acquired under an application filed by a person described by subparagraph (A), (B), or (C) of this paragraph.

(12) "Interest" means any right or title in or to real property, including a surface, subsurface, or mineral estate.

(13) "Lease vacant land" means to obtain a mineral lease for the mineral estate appurtenant to the vacancy or any portion thereof.

(14) "Mineral estate" means an estate in or ownership of all or part of the minerals underlying a specified tract of land, and a right of entry and use to obtain the minerals.

(15) "Necessary party" means:

(A) an applicant or good-faith claimant whose present legal interest in the surface or mineral estate of the land alleged to be vacant may be adversely affected by a vacancy determination;

(B) a person who asserts a right to or who claims an interest in land alleged to be vacant;

(C) a person who asserts a right to or who claims an interest in land adjoining land alleged to be vacant as shown in the records of the agency or the county records, including tax records, of any county in which all or part of the land alleged to be vacant is located;

(D) a person whose name appears in the records described by subparagraph (C) of this paragraph;

(E) an attorney ad litem appointed under §13.41 of this title (relating to Processing Vacancy: Attorney Ad Litem); or

(F) only for purposes of notifications required to be sent to necessary parties under this subchapter, any surveyor involved in the vacancy application and any party who has notified the agency in writing that he or she is representing the interests of a necessary party.

(16) "Permanent interest" means an interest established under any existing instrument or document that is not limited to a finite time period.

(17) "Permanent School Fund land" means lands dedicated to fund public schools by Article VII, Sections 5(a) and (c) of the Texas Constitution.

(18) "Surface estate" means an estate in or ownership of the surface of a particular tract of land.

(19) "Survey report" means a written report of a survey conducted by a licensed state land surveyor or a county surveyor of the county in which a majority of the land alleged to be vacant is located.

(20) "Unsurveyed" means land that was never surveyed out of the sovereign lands of the state and, for purposes of this subchapter, such land remains unsurveyed until the vacancy process has concluded, and the land is recorded in the records of the General Land Office as Permanent School Fund land.

(21) "Vacancy" means an area of unsurveyed public school land that:

(A) is not in conflict on the ground with land previously titled, awarded, or sold;

(B) has not been listed on the records of the land office as public school land; and

(C) was not, on the application commencement date:

(i) subject to an earlier subsisting application;

(ii) subject to a vacancy application denied with prejudice;

(iii) the subject of pending litigation relating to state ownership or possession of the land; or

(iv) subject to a previous vacancy application that has been finally adjudicated by the commissioner or a court of this state or the United States.

(22) "Vacancy application" means a form submitted to the commissioner by an applicant to:

(A) initiate a determination by the commissioner whether land alleged to be vacant is vacant; and

(B) acquire an interest in vacant land under the provisions of this subchapter and Subchapter E of Chapter 51 of the Texas Natural Resources Code and under the terms and conditions set by the SLB.

(23) "Vacant land" means the surface, subsurface or mineral estate, or any combination of the surface, subsurface and mineral estates, of land determined to be a vacancy, or any portion thereof.

§13.34. Vacancy Application: Requirements.

(a) An applicant seeking a vacancy determination should file a vacancy application on the form prescribed by the commissioner, which may be obtained as follows:

(1) by request in a letter addressed to the Vacancy Administrator, Texas General Land Office, Legal Services Division, P.O. Box 12873 (physical address 1700 N. Congress Avenue 78701), Austin, Texas 78711-2873; or

(2) on the agency's website at www.glo.texas.gov.

(b) A completed application must include the following:

(1) A description of the land alleged to be vacant that is sufficient to locate the land on the ground.

(2) A written statement indicating the interest or interests in the land alleged to be vacant that the applicant seeks to purchase or lease.

(3) Evidence that a vacancy exists in the form of:

(A) a survey report, including:

(i) the field notes describing the land and the lines and corners surveyed; and

(ii) a plat depicting the results of the survey; or

(B) an abstract of title to each parcel of land that adjoins the land alleged to be vacant.

(4) A list, in a format prescribed by the commissioner, containing the name, last known mailing address, telephone number, and e-mail address (if available) of each necessary party.

(5) An affidavit executed by the applicant affirming that the applicant conducted a diligent search of local land and property tax records in formulating the list of necessary parties described in paragraph (4) of this subsection.

(c) To facilitate the identification of necessary parties, an applicant who also seeks status as a good-faith claimant should file the good-faith claimant affidavit and supporting documentation with the land office prior to the determination that the application is administratively complete.

(d) If the applicant wishes to request that the commissioner appoint a surveyor for the vacancy application, the request must be included with the application.

§13.35. Vacancy Application: Filing in the County Land Records.

(a) The applicant must file the original and a duplicate copy of the vacancy application with the county clerk of each county in which all or part of the land alleged to be vacant is located.

(b) The county clerk shall mark the exact date and hour of filing on the original and a duplicate copy of the vacancy application and shall return a marked copy to the person filing the application. The original shall be recorded in a book kept for that purpose separate from the deed or real property records. The failure to record a vacancy application as provided by this subsection does not affect the validity of the application filing.

(c) Not later than the fifth day after the date an applicant files the vacancy application with the county clerk, the applicant shall file a duplicate copy of the marked copy received from the county clerk with the county surveyor of each county in which all or part of the land alleged to be vacant is located if that county has a county surveyor.

(d) Priority among vacancy applications covering the same land alleged to be vacant is determined by the earliest time of filing indicated by the date and hour marked on the application by the county clerk.

§13.36. Vacancy Application: Filing in the Land Office.

(a) The applicant shall submit to the commissioner two duplicate copies of the marked copy that has been file-stamped by the county clerk not later than the 30th day after the date the vacancy application is filed with the county clerk. The commissioner shall mark the date on which the two duplicate copies are received on each copy, assign a file number to the vacancy application, and return a marked duplicate copy containing the file number to the applicant.

(b) The applicant shall include the applicable filing fees for the documents submitted as set forth in §3.31(b) of this title (relating to Fees). The fees for a properly filed application are non-refundable.

§13.37. Vacancy Application: Application Properly Filed.

(a) When a vacancy application is received by the agency, the chief surveyor will determine whether the application was properly filed under §13.34 of this title (relating to Vacancy Application: Requirements).

(b) The date of the chief surveyor's determination that the application is properly filed is the filing date for the vacancy application, and the filing date shall be noted on the application.

(c) The commissioner may reject an application:

(1) if an application is deemed not properly filed; or

(2) if the agency files contain a previous determination that the land described in the application is not vacant.

(d) If the commissioner rejects an application under subsection (c) of this section, the agency will inform the applicant in writing that the file has been rejected and the reasons for the rejection.

(1) A file rejected under subsection (c)(1) of this section shall be endorsed "dismissed without prejudice."

(2) A file rejected under subsection (c)(2) of this section shall be endorsed "dismissed with prejudice."

(e) Termination of an application means that no substantive determination was made on the vacancy application. When an application is terminated, the file will be endorsed with "dismissed without prejudice" and a statement of the reason for termination. The agency may terminate an application:

(1) when the applicant refuses or fails to make a required cost deposit; or

(2) when the applicant refuses or fails to perform any other act required by the agency under this subchapter.

§13.38. Vacancy Application: Administrative Completeness.

(a) The properly filed vacancy application will be deemed administratively complete when the agency determines that the applicant

has submitted all the necessary documents in the proper form to support a claim of vacancy.

(b) Within forty-five (45) days after the date that the application is deemed properly filed, the agency will inform the applicant in writing of any deficiencies in the application.

(c) The applicant shall have a reasonable period of time to resolve the deficiencies, not to exceed thirty (30) days. If the applicant fails to resolve the deficiencies in the application, the agency shall reject the application without prejudice, and will so inform the applicant in writing. If the application is rejected, the file will be endorsed with "dismissed without prejudice," and a statement of the reason for rejection.

§13.39. Vacancy Application: Cost Deposit.

(a) A cost deposit from the applicant is required for the agency to evaluate and investigate the vacancy application. Any required deposit shall be used only for the agency's administrative costs, the expenses of a survey (if the commissioner appoints a surveyor), and other investigative and related costs, including attorney ad litem fees, the cost of hearings, and recording fees. The minimum initial cost deposit for a vacancy application is usually not less than $3,000.00, and is significantly higher if the commissioner will appoint the surveyor.

(b) From time to time, the agency may require the applicant to pay a supplemental cost deposit to cover anticipated expenses related to the vacancy application. The agency will send a written request for a supplemental cost deposit to the applicant.

(c) The applicant shall submit cost deposit funds to the agency in cash (including cashier checks, certified checks, money orders or electronic funds transfer). The agency will inform the applicant in writing of the procedures for submitting payment. For purposes of this subchapter, the deposit date shall be the date of tender.

(d) The applicant must submit the required cost deposits no later than the date set forth in the agency's written notice that a cost deposit is due. If the applicant fails to timely submit the initial deposit or within the time period set forth in the notice for a supplemental cost deposit, the agency may terminate the application without prejudice, and shall so notify the applicant in writing.

(e) At the conclusion of the vacancy proceeding, the agency will provide a written statement to the applicant of all deposits and expenditures from the cost deposits paid by the applicant. Such a statement may be issued to the applicant during the proceeding upon written request.

(f) The unexpended balance of the cost deposit will be refunded to the applicant at conclusion of the vacancy process.

§13.40. Processing Vacancy: Notice to Necessary Parties.

(a) Not later than thirty days following the application commencement date, the agency shall send a written notice of vacancy application to all necessary parties by regular mail and by certified mail, return receipt requested. The notice shall include the following documents:

(1) a copy of the vacancy application, including the survey report, plat and field notes, if included in the application;

(2) a form requesting future notices from the agency concerning the vacancy application described in subsection (b) of this section, which should be signed by the necessary party and returned to the agency; and

(3) a summary explanation of the vacancy process, including the right of a necessary party to file an exception to the survey or to the application.

(b) The agency shall provide each necessary party with an opportunity to receive all future notices throughout the vacancy proceeding. The agency shall provide a notice with the initial notice under subsection (a) of this section, or separately, that clearly advises the necessary parties that future notices will not be provided unless specifically requested. If future notices are requested, the agency shall provide such future notices by mail, facsimile or as otherwise reasonably requested by a necessary party. No party involved in the vacancy process may use or assist any other person in using the names, addresses, telephone numbers, e-mail addresses or other information about the necessary parties for personal gain.

(c) If the attorney ad litem notifies the agency that any additional necessary parties have been identified, the agency shall send a written notice to each additional necessary party in the manner described in subsection (a) of this section.

§13.41. Processing Vacancy: Attorney Ad Litem.

(a) If, based on all the documents submitted, the applicant's list of necessary parties appears to be incomplete, the agency will conduct an investigation of the ownership interests in the alleged vacant land and in the land surrounding the alleged vacant land to ensure that all necessary parties have been identified and located. The investigation shall be completed within sixty (60) days of the application commencement date.

(b) If the agency concludes from its investigation that the applicant has not identified and located all necessary parties, the commissioner will appoint an attorney ad litem within thirty (30) days of the conclusion of the investigation.

(c) The agency shall provide the attorney ad litem with all documents submitted by the applicant and the results of the investigation described in subsection (a) of this section.

(d) The attorney ad litem shall search public records and other available records to identify and locate necessary parties.

(e) At the conclusion of his or her search, the attorney ad litem shall promptly provide the following documents to the agency:

(1) If no additional necessary parties were identified, a declaration that no additional necessary parties were identified.

(2) If additional necessary parties were identified, the name, last known address, and e-mail address (if known) for each additional necessary party and a brief description of the nature of the interest of each additional necessary party.

(3) An affidavit attesting to the attorney ad litem's determination, including a description of the search conducted, the records consulted, the time spent on the search, and the attorney ad litem's determination regarding the identification of additional necessary parties.

(f) At the agency's request, the attorney ad litem may perform related services, such as searching for the location of an identified necessary party whom the agency deems unlocated.

(g) If the attorney ad litem certifies to the agency that he or she believes that the interests of other necessary parties should be represented at a hearing, the agency shall request the attorney ad litem to represent the interests of such necessary party or parties until the commissioner issues an order finding no vacancy or finding that a vacancy exists.

(h) The attorney ad litem is entitled to reasonable compensation for services. The reasonable fees for services and costs incurred by the attorney ad litem shall be paid by the agency from the applicant's cost deposit.

§13.42. Necessary Party Identified But Not Located.

(a) If the agency sends a notice to a necessary party and the notice is returned, the agency shall make reasonable efforts to locate the necessary party. If the reasonable efforts do not locate the necessary party, the agency, in its sole discretion, may request that the attorney ad litem make additional reasonable efforts to locate such necessary party.

(b) If the agency or the attorney ad litem cannot locate an identified necessary party, the agency shall publish notice in a newspaper of general circulation in the county and general area where the land alleged to be vacant is located. The notice shall be published once a week for three consecutive weeks. The notice shall:

(1) describe the alleged vacant land as it is described in the application and state whether a survey was filed with the application; if a survey was filed, the notice shall also advise necessary parties of their right to receive a copy of the survey and to file exceptions to the application or the survey;

(2) advise the public that the agency has accepted the application and contact information for agency staff handling the vacancy application;

(3) include applicant's full name and address;

(4) advise necessary parties not otherwise notified to contact agency for copies of the application, survey and other related existing documents; and

(5) advise necessary parties that no further notices will be provided unless a request for same is made to the agency.

(c) The agency shall request the attorney ad litem to represent the interest of any identified, unlocated necessary party.

§13.43. Necessary Party Exceptions to Survey or Vacancy Application.

(a) A necessary party may file an exception or exceptions to the survey or to the vacancy application within sixty (60) days of the date of the notice of vacancy application from the agency, or within thirty (30) days of the date of notice of an appointed surveyor's report under §13.47 of this title (relating to Appointed Surveyor's Report). The exceptor must send a copy of the exception to each necessary party that requested continuation of notices by regular mail and by certified mail, return receipt requested.

(b) The agency shall provide a written list of all necessary parties to the vacancy application and their contact information to any necessary party upon written request.

(c) An exception will be accepted for filing if it includes the following documentation:

(1) the GLO file number, the name of the applicant, and the name of the county stated in the vacancy application;

(2) a statement of the legal and factual basis for each exception; and

(3) a statement certifying that a copy of the exception or exceptions has been sent by regular mail and by certified mail, return receipt requested, to each necessary party to the vacancy.

(d) Exceptions shall clearly identify the corner, course, distance or other relevant factor that is being challenged. The exceptions shall also reference the legal or other expert authorities relied upon to support the challenges to the survey.

(e) The failure of a party to file exceptions to a survey will not be considered as agreement with or acquiescence in any survey purporting to show the existence of a vacancy. The commissioner will not consider the failure to file exceptions when deciding whether a vacancy exists.

(f) If additional necessary parties are identified after the exceptor has sent copies of the exception or exceptions to the then-identified necessary parties, the agency shall include a copy of the exception in its notice of vacancy application to each additional necessary party.

§13.44. Investigation of Vacancy Application.

(a) The commissioner shall conduct an investigation of the vacancy application.

(b) The investigation shall include, but is not limited to:

(1) an evaluation of the vacancy application;

(2) a determination that the vacancy application was properly filed and administratively complete; and

(3) a review of public records at the general land office relating to the land alleged to be vacant.

(c) The investigation may include a review of:

(1) any survey conducted by a licensed state land surveyor or by the county surveyor of a county in which all or part of the land alleged to be vacant is located; or

(2) any documents or public records necessary to determine whether a vacancy exists.

(d) An investigation may include a survey requested by the commissioner or a surveyor's report prepared by a surveyor appointed by the commissioner.

(e) The commissioner shall record the names of the persons consulted, the documents and surveys reviewed, and the relevant law and other materials used in the investigation.

§13.45. Commissioner's Survey.

(a) To investigate a vacancy application, the commissioner may require a survey. If the commissioner requires a survey, the commissioner shall appoint a licensed state land surveyor who is not associated with the vacancy application to prepare a report. The commissioner may limit the scope of the work performed by the surveyor.

(b) A necessary party may observe a survey conducted under this section. A survey will not be delayed to accommodate a necessary party who provides notice to the commissioner that the party intends to observe the surveyor conducting the survey.

(c) The commissioner shall send a notice of intention to survey to each necessary party by regular mail and by certified mail, return receipt requested, not later than the 30th day before the date the surveyor begins work. The notice must contain:

(1) the proposed starting date of the survey;

(2) the name, address, and telephone number of the surveyor; and

(3) a statement informing the necessary party that any necessary party may observe the field work of the surveyor conducting the survey.

§13.46. Surveyor Appointed Upon Request of Applicant.

(a) An applicant may request that the commissioner appoint a surveyor to perform the survey required for a vacancy determination. Such request must be made in writing in the vacancy application.

(b) The applicant must bear the cost of the performance of the requested survey by a surveyor appointed by the commissioner. Therefore, upon the commissioner's decision to grant the request for appointment of a surveyor, the agency shall request a cost deposit from the

applicant to cover the projected cost of the survey. If the cost deposit payment is not received by the agency within thirty (30) days of the date of the notice of cost deposit from the agency described in §13.39(d) of this title (relating to Vacancy Application: Cost Deposit), the application may be dismissed without prejudice.

(c) The commissioner is under no obligation to appoint a surveyor upon request, but, in the commissioner's sole discretion, he or she may appoint a licensed state land surveyor in the manner described in §13.45 of this title (relating to Commissioner's Survey).

§13.47. Appointed Surveyor's Report.

(a) Not later than the 120th day after the date a surveyor is appointed under §13.45 or §13.46 of this title (relating to Commissioner's Survey or Surveyor Appointed Upon Request of Applicant), the surveyor shall file a written report of the survey, the field notes describing the land and the lines and corners surveyed, a plat depicting the results of the survey, and any other information required by the commissioner. The commissioner may extend the time for filing the report as reasonably necessary.

(b) The survey report must also contain:

(1) the name and last known mailing address of:

(A) each person who has possession of the land described in the vacancy application; and

(B) each person determined by the surveyor to have an interest in the land; and

(2) all abstract numbers associated with surveys of land adjoining the land alleged to be vacant.

§13.48. Completion of Survey by Appointed Surveyor.

(a) The commissioner shall serve a true copy of the survey report filed by the surveyor appointed under §13.45 or §13.46 of this title (relating to Commissioner's Survey or Surveyor Appointed Upon Request of Applicant) on each necessary party, including those named in the survey report, by certified mail, return receipt requested, not later than the 30th business day after the date the survey report is filed with the land office.

(b) Any necessary party may file exceptions to the appointed surveyor's report under §13.43 of this title (relating to Necessary Party Exceptions to Survey or Vacancy Application).

§13.49. Removal of an Appointed Surveyor.

(a) An appointed surveyor may be removed upon motion of the commissioner or of any necessary party.

(b) Petition for removal.

(1) Any necessary party may petition the commissioner for the removal of an appointed surveyor because of bias, prejudice, or conflict of interest.

(2) Any person petitioning the commissioner for removal of an appointed surveyor shall pay all actual costs, but not less than $250.00, for processing the petition for removal including, but not limited to, the cost of the hearing, mailing, copying and staff time and expenses.

(3) The petition must be post marked no later than thirty days after the date of the notice of intention to survey described in §13.45(c) of this title (relating to Commissioner's Survey).

(4) An action for removal of an appointed surveyor shall be conducted under the contested-case hearing rules under Chapter 2 of this title (relating to Rules of Practice and Procedure).

(5) The movant for removal of an appointed surveyor must send a copy of the petition for removal and all exhibits thereto to each necessary party by regular mail and by certified mail, return receipt requested.

(c) Grounds for removal for bias, prejudice, or conflict of interest

(1) The following actions constitute bias or prejudice for purposes of removal:

(A) Communicating to another person orally or in writing a personal animus against a necessary party or against a necessary party's position in the vacancy proceeding.

(B) Communicating to another person orally or in writing a personal preference for a necessary party or for a necessary party's position in the vacancy proceeding.

(2) The following actions constitute conflicts of interest for purposes of removal:

(A) acceptance or solicitation of any gift, favor, or service that might reasonably tend to influence the appointed surveyor in the performance of the survey, or that the surveyor knows or should know is being offered with the intent to influence the surveyor's conduct;

(B) intentionally or knowingly soliciting, accepting, or agreeing to accept any benefit, other than payment for services by the commissioner, for performing the survey in a manner that favors any necessary party;

(C) accepting other work that could reasonably be expected to impair the surveyor's independence of judgment in the performance of the survey;

(D) making personal investments, or have a personal or financial interest, that could reasonably be expected to create a substantial conflict between the surveyor's private interest and the interest of the commissioner or any necessary party;

(E) having a relative within the second degree of consanguinity or affinity or a co-owner or partner in a business enterprise who makes personal investments, or has a personal or financial interest that could reasonably be expected to create a substantial conflict of interest between the relative's or business associate's private interest and the interest of the commissioner or any necessary party; or

(F) having a relative within the second degree of consanguinity or affinity of the applicant, the commissioner, or an employee of the agency who actively participates in vacancy determinations.

(d) No final order of the commissioner removing or denying removal of a surveyor shall be reconsidered unless the commissioner finds that relevant facts that could not have been discovered timely through due diligence compel reconsideration to avoid gross injustice. The commissioner's decision regarding the removal of a surveyor is not a final administrative order and is not subject to appeal.

(e) The fact that a petition for removal of a surveyor has been filed or the removal of a surveyor under this section shall not be a basis for disciplinary action against that surveyor under Texas Occupations Code, Title 6, Chapter 1071.

(f) The commissioner on his or her own motion may remove a surveyor for bias, prejudice, or conflict of interest only in accordance with this section.

§13.50. Finding of Not Vacant Land.

(a) Prior to the first anniversary of the application commencement date, the commissioner may issue an order finding that the alleged vacancy is "Not Vacant Land" at any time following the completion of the investigation of the vacancy under §13.44 of this title (relating to Investigation of Vacancy Application) without a hearing. After the first anniversary of the application commencement date, the commissioner may issue an order finding "Not Vacant Land" without a hearing unless a necessary party has properly filed an exception to the application or the survey under §13.43 or §13.48(b) of this title (relating to Necessary Party Exceptions to Survey or Vacancy Application or Completion of Survey by Appointed Surveyor).

(b) The agency shall send a copy of the commissioner's final order finding the alleged vacancy to be "Not Vacant Land" to each necessary party that can be located regardless of whether the necessary party requested continuation of notices. The orders shall be sent by regular mail and certified mail, return receipt requested, not later than the 15th day following the date of the final order.

(c) A final order of the commissioner finding "Not Vacant Land" is conclusive as to the land investigated during the vacancy proceedings and may not be appealed.

§13.51. Findings that a Vacancy Exists.

Unless a hearing is required under §13.52 of this title (relating to Findings that Require Hearing), the commissioner may find that a vacancy exists by issuing a final order supported by findings of fact and conclusions of law at any time following the completion of the investigation of the vacancy under §13.44 of this title (relating to Investigation of Vacancy Application).

§13.52. Findings that Require Hearing.

(a) A hearing must be held under §51.187 of the Texas Natural Resources Code if both of the following conditions exist:

(1) a necessary party has properly filed an exception to the survey or the application under §13.43 or §13.48(b) of this title (relating to Necessary Party Exceptions to Survey or Vacancy Application or Completion of Survey by Appointed Surveyor) and the commissioner has not issued a final order finding "Not Vacant Land" prior to the first anniversary of the application commencement date; and

(2) the chief surveyor has determined after the investigation under §13.44 of this title (relating to Investigation of Vacancy Application) that a vacancy may exist.

(b) If a hearing is required, the commissioner shall order a hearing to determine whether a vacancy exists following the completion of the investigation. The agency shall provide notice of the hearing order to each necessary party that requested continuation of notices by regular mail and by certified mail, return receipt requested, within thirty (30) days of the date of the order.

(c) The hearing shall be held not later than sixty (60) days following the date of the hearing order.

(d) A vacancy hearing will be conducted as a contested case hearing under the rules of Chapter 2 of this title (relating to Rules of Practice and Procedure).

§13.53. Waiver of Hearing Requirement.

(a) If all necessary parties that can be located enter into an agreement with the commissioner that a hearing required by §13.52 of this title (relating to Findings that Require Hearing) may be waived, no hearing is required.

(b) After the chief surveyor determines that a vacancy may exist, the agency may send a waiver agreement to each necessary party that can be located, stating that the commissioner and the necessary party agree that the hearing requirement may be waived. Upon receipt of signed waiver agreements from each necessary party that can be located, the commissioner shall complete the work necessary to issue a final order.

§13.54. Final Orders.

(a) Following the investigation described in §13.44 of this title (relating to Investigation of Vacancy Application) and a hearing, if one is required by §13.52 of this title (relating to Findings that Require Hearing), the commissioner shall issue a final order with a finding of "Not Vacant Land" or issue an order finding a vacancy exists. Not later than the 15th day after the date the final order is issued, the agency shall notify each necessary party that can be located of the final order by providing each necessary party a copy of the final order.

(b) In addition to any information required under Chapter 2 of this title (relating to Rules of Practice and Procedure), a final order finding that a vacancy exists must contain the following information:

(1) a finding by the commissioner that the land alleged to be vacant is unsurveyed public school land that is not in conflict with land previously titled, awarded, or sold by the state as established by:

(A) clear and convincing proof for an application to which an exception has been filed; or

(B) a preponderance of the evidence for an application to which no exceptions have been filed;

(2) the field note description used to determine the vacancy, which must be sufficient to locate the land on the ground;

(3) an accurate plat of the land that is:

(A) consistent with the field notes; and

(B) prepared by a licensed state land surveyor or a county surveyor of the county in which all or a part of vacant land is located;

(4) a list of all the records reviewed and persons consulted in reaching the determination, including agency staff; and

(5) any other matters required by law.

(c) In determining the boundaries and size of a vacancy, the commissioner is not restricted to a description of the land alleged to be vacant that is provided by the applicant, the surveyor, or any other person. The commissioner shall adopt the description of a vacancy that best describes the land found to be vacant and that is consistent with the investigation under this subchapter.

(d) The commissioner shall file a document entitled "Notice of Claim of Vacancy" (notice). The notice shall contain a legal description of the vacant land and date on which the final order was issued. The commissioner shall file the notice with the county clerk and any county surveyor of each county in which all or a part of the vacancy is located.

§13.55. Appeal of Final Vacancy Order.

(a) A final order with a finding of "Not Vacant Land" may not be appealed.

(b) A final order finding a vacancy exists is subject to appeal by a necessary party that has:

(1) a present legal interest in the surface, subsurface or mineral estate at the time a vacancy application is properly filed; or

(2) acquired a legal interest in the vacant land before the date of the commissioner's final order.

(c) A necessary party may file an appeal not later than the 30th day after the date the commissioner issued the final order. All necessary

parties that have been located must be provided notice of an appeal under this section by the party filing the appeal.

(d) A person whose predecessor in title was bound by the outcome of an appeal is bound to the same extent that the predecessor in title would be bound if the predecessor in title continued to hold title.

(e) The district court in the county in which a majority of the vacant land is located has jurisdiction of an appeal under this subchapter. In an appeal of the commissioner's final order determining that a vacancy exists, the district court shall conduct a trial de novo. The court may review the commissioner's declaration of good-faith claimant status only in conjunction with a review of a final order determining that a vacancy exists.

§13.56. Application for Good-Faith Claimant Status.

(a) A necessary party may apply for good-faith claimant status not later than the 90th day after the date the commissioner issues a final order finding that a vacancy exists.

(b) Any person who wishes to assert status as a good-faith claimant must submit a good-faith claimant affidavit together with the applicable filing fees found in §3.31(b) of this title (relating to Fees). The good-faith claimant affidavit is included in the vacancy application, which can be found on the agency's website at www.glo.texas.gov.

(c) The following documentation, if applicable, must be submitted with the good-faith claimant affidavit:

(1) certified copies of the applicable county records supporting the good-faith claimant's status;

(2) documentary evidence, including, if appropriate, affidavits to establish past or present use or occupation of the surface, subsurface or mineral estate of the land alleged to be vacant;

(3) proof of color of title or other muniment of title;

(4) documentary evidence of possession for a period of at least ten (10) years;

(5) a description of the method of enclosure and relevant information about the definite boundaries recognized in the community, including a physical description of those boundaries and evidence of their recognition; and

(6) a statement of facts supporting a good-faith belief that the vacant land was within legal boundaries that would have vested title in the claimant.

§13.57. Priority Among Good-Faith Claimants.

If more than one necessary party files a good-faith claimant affidavit for land or minerals found to be vacant or on some portion thereof or interest therein, and the commissioner enters a finding that more than one claimant is a good-faith claimant, the commissioner shall apply the following priority rules in descending order to determine who is entitled to a preferential right to purchase or lease the vacant land or any portion thereof:

(1) claimants qualifying under §13.33(11)(B) of this title (relating to Definitions), which is based on having the land found to be vacant enclosed or within definite boundaries recognized in the community and in possession under a chain of title for a period of at least ten (10) years with a good-faith belief that the land was included within the boundaries of a survey or surveys that were previously titled, awarded, or sold under circumstances that would have vested title in the land to the claimant if the land were actually located within the boundaries of the survey or surveys;

(2) claimants qualifying under §13.33(11)(A) of this title, which is based on occupation or use of the land found to be vacant or any interest in the land for any purposes;

(3) claimants qualifying under §13.33(11)(D) of this title, which is based in part on holding title under a person described in §13.33(11)(A) or (B) of this title or is entitled to a distributive share of a title acquired under an application filed by a person described in §13.33(11)(A) or (B) of this title with a higher priority given to a person holding title under a person described in §13.33(11)(B) of this title;

(4) claimants qualifying under §13.33(11)(C) of this title, which is based on ownership of land adjoining the vacant land; and

(5) claimants qualifying under §13.33(11)(D) of this title, which is based in part on holding title under a person described in §13.33(11)(C) of this title or is entitled to a distributive share of a title acquired under an application filed by a person described in §13.33(11)(C) of this title.

§13.58. Declaration of Good-Faith Claimant Status.

(a) When determining whether a person is a good-faith claimant, the commissioner may take into account whether, under the facts and circumstances presented, the person should have conducted a title investigation before or after taking possession of the land. The commissioner will also consider whether public records delineated or disclosed the existence of the vacant land prior to the person's use, occupation or possession of the land.

(b) Not later than the 120th day after the date the commissioner issues a final order finding that a vacancy exists, the commissioner shall declare whether a necessary party is a good-faith claimant.

(c) A declaration of good-faith claimant status grants a preferential right to the claimant to purchase or lease the land or an interest in the land under terms and conditions set by the board as provided by §51.194 of the Texas Natural Resources Code. It confers no other rights.

§13.59. Appeal of Declaration of Good Faith Claimant Status.

(a) A person who is denied good-faith claimant status may:

(1) request a hearing by the commissioner; or

(2) appeal the denial as part of any appeal of a final order finding that a vacancy exists.

(b) If the commissioner grants a hearing, the commissioner shall:

(1) determine the scope of the hearing;

(2) provide timely notice of the time and place of the hearing to each necessary party; and

(3) provide each necessary party an opportunity to be heard.

§13.60. Exercise of Preferential Rights.

(a) A good-faith claimant who has been notified by the commissioner that a vacancy exists under this subchapter has a preferential right to purchase or lease the interest claimed in the land before the land was declared vacant under terms and conditions set by the board. The preferential right may be exercised after a final judicial determination or after the commissioner's final order and the period for filing an appeal has expired.

(b) If a good-faith claimant does not apply to purchase or lease the interest before the later of the 121st day after the date the commissioner's order becomes final or the 60th day after the date of the final judicial determination of an appeal under this subchapter, then the good-faith claimant's preferential right expires.

(c) If a good-faith claimant does not close a transaction to purchase or lease the interest before the 121st day after the date the terms and conditions are determined by the board, then the good-faith claimant's preferential right expires.

(d) A good-faith claimant may purchase or lease the vacancy by submitting a written application to the board. The agency will provide the good-faith claimant with the proper application.

(e) A good-faith claimant that owns a separate surface interest, a contractual right to a mineral or leasehold interest, a leasehold interest, or a royalty interest in the land occupied or used that is found to be part of or to include a vacancy is entitled to purchase or lease that same interest at the price and under the terms and conditions set by the board and in accordance with the law in effect on the date the application is properly filed.

(f) If the interest purchased under subsection (e) of this section is less than a permanent interest, then:

(1) the interest purchased is limited to the duration of a deed, contract, instrument, or lease in existence before the filing of the vacancy application and subject to a division of the amount of the royalty between the state and the existing royalty owners, provided that the state retains at least one-half of the amount of the royalty interest; and

(2) the interest and any remaining mineral interest, including all executory rights, vest with the state at the expiration of the deed, contract, instrument, or lease.

§13.61. Purchase or Lease by Applicant.

(a) If no good-faith claimant exists or if no good-faith claimant exercises a preferential right within the applicable period, the applicant has a preferential right to purchase or lease an interest in the vacant land on or before the 60th day after the date on which:

(1) the commissioner determines that no good-faith claimant exists; or

(2) the period for a good-faith claimant to exercise a preferential right to purchase or lease the vacant land expires.

(b) If a good-faith claimant exercises the claimant's preferential right in the land determined to be vacant, at the board's election, the applicant has a preferential right to either of the following:

(1) an award by the board of a perpetual 1/32 nonparticipating royalty of the full mineral interest of the vacancy; or

(2) a preferential right to purchase or lease any remaining interest in the vacant land.

(c) If a lease that is less than a permanent interest exists on the land determined to be vacant, the applicant's 1/32 nonparticipating royalty interest, as described by subsection (b)(1) of this section, shall be taken from the state's royalty interest as reserved under §13.60(f)(1) of this title (relating to Exercise of Preferential Rights) for the duration of the lease, provided that the applicant's share for the duration of the lease may never equal more than the interest retained by the state.

(d) An applicant who exercises a preferential right under subsection (a) or (b)(2) of this section may purchase or lease the vacant land or an interest in the vacant land:

(1) at the price set by the board;

(2) subject to any royalty or other reservations provided by the board; and

(3) in accordance with the law in effect on the date the application is properly filed.

§13.62. Terms of Sale or Lease by the School Land Board.

(a) The board shall set the conditions for each sale or lease of vacant land.

(b) The board, in its sole discretion, may reserve to the State of Texas for the use and benefit of the permanent school fund all oil, gas, coal, lignite, sulphur, and other mineral substances from which sulphur may be derived or produced, salt, potash, uranium, thorium, groundwater, wind, solar and geothermal resources, and all other minerals in and under the vacant land and by whatever method recovered, as well as the right to lease such minerals and the right of ingress and egress to explore for and produce the same.

(c) The board may reserve a royalty in a mineral interest purchased by an applicant in a percentage that the board may determine in its sole discretion.

(d) When leasing vacant land, the board may consider the interests of persons who currently hold or previously held mineral interests in adjoining or surrounding lands when determining the fair distribution of the purchase or leasing rights in the mineral estate. Where there is no good faith claimant, the board may enter into agreements with persons holding mineral interests in adjoining or surrounding lands prior to the vacancy determination in lieu of offering the mineral estate for lease to others.

(e) The board shall recognize a good-faith claimant's preferential right to purchase the surface and lease the minerals in vacant land by offering the good-faith claimant the first opportunity to purchase and lease under terms and conditions and at a price set by the board.

(f) An applicant's preferential right to purchase or lease an interest in vacant land is secondary to the preferential right of good-faith claimants. The board may sell the surface estate and lease the minerals to the applicant under the same conditions as to a good-faith claimant. If neither the good-faith claimant nor the applicant exercises the right to purchase or lease all of the vacant land or any portion thereof within sixty (60) days of the date on which the application for purchase or lease is sent to the good-faith claimant or applicant by the agency, then the agency file shall be endorsed, "surveyed, unsold school land" and may be sold and leased in the manner prescribed by law for sale and lease.

This 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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Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
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SUBCHAPTER G. VACANT LAND

31 TAC §§13.87 - 13.94

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

The General Land Office (GLO) and the School Land Board (SLB) propose the repeal of 31 Texas Administrative Code (TAC) Chapter 13, Subchapter G, relating to Vacant Land. The sections to be repealed are: §13.87, relating to General Provisions; §13.88, relating to Terms of Sale or Lease; §13.89, relating to Applications; §13.90 relating to Deposits; §13.91, relating to Notifications and Publications; §13.92, relating to Determination of Good Faith Claimant Status; §13.93, relating to Exceptions to Survey Report; and §13.94, relating to Investigation.

In 2002, the GLO and SLB adopted 31 TAC Chapter 13, Subchapter G, §§13.87 - 13.94, relating to Vacant Land, to reflect changes to the vacancy statute made by Senate Bill 1806 during the 77th Legislature, Regular Session (2001). September 6, 2002 (27 TexReg 8596). The 2001 changes to the vacancy statute were designed to expedite and simplify the vacancy process for interested and affected property owners, good-faith claimants, applicants, and the commissioner. The Subchapter G rules apply to all vacancy applications filed after September 1, 2001, the effective date of Texas Natural Resources Code §§51.171 - 51.192.

In 2005, the Texas Legislature made sweeping changes to the GLO's vacancy process through Senate Bill 1103 during the 79th Legislature, Regular Session (2005). In response to the legislative changes, the GLO and the SLB repealed the then-existing 31 TAC Chapter 13, Subchapter F and adopted a new Subchapter F, relating to Vacancy Process, §§13.71 - 13.86. The new 2006 rules implemented the requirements of the statutory changes that the GLO adhere to the Texas Administrative Procedures Act, Texas Government Code, Chapter 2001, in determining contested vacancies. July 14, 2006 (31 TexReg 5663). The 31 TAC Chapter 13, Subchapter F rules apply to all vacancy applications filed after June 17, 2005, the effective date of the vacancy amendments to Texas Natural Resources Code §§51.171 - 51.195.

In 2009, more amendments were made to the vacancy statute to address practical issues that came to light during the GLO's implementation of the new administrative procedural requirements of the 2005 version of Texas Natural Resources Code §§51.171 - 51.195. The effective date of the 2009 vacancy amendments was June 19, 2009. House Bill 3461, 81st Legislature, Regular Session (2009).

The GLO and the SLB propose the repeal of 31 TAC Chapter 13, Subchapter G, §§13.87 - 13.94, because there are no applications pending before the GLO or actions arising out of vacancy applications pending in the courts of the State of Texas that were filed before June 18, 2005, the effective date of current Subchapter F, which governs all vacancy applications filed on or after that date. Because there are no pending matters to which these rules apply or could apply, the rules are no longer necessary.

Because currently pending vacancy matters exist that were filed after June 17, 2005 but before June 19, 2009, the effective date of the 2009 legislative changes, 31 TAC Chapter 13, Subchapter F, §§13.71 - 13.86, relating to Vacancy Process, remains necessary and shall remain in force. No changes to those rules are required.

Concurrently with this proposed repeal of 31 TAC §§13.87 - 13.94, the SLB and GLO are proposing a new 31 TAC Chapter 13, Subchapter E that will fill the gap created by this proposed repeal and apply to all vacancy applications filed on or after June 19, 2009. In addition to incorporating the requirements of the 2009 vacancy amendments to the Texas Natural Resources Code, the proposed rules have been expanded to include additional language from the statute to make the rules clearer and more comprehensible to the public and to the GLO. Additional GLO interpretations have been incorporated, as well as practices that the GLO has adopted in implementing the 2005 sweeping changes. The Notice of Proposed Rulemaking for the new Subchapter E appears elsewhere in this issue of the *Texas Register.*

FISCAL AND EMPLOYMENT IMPACTS

Bill O'Hara, Chief Surveyor of the GLO, has determined that, for each year of the first five years the repeal is in effect, there will be no fiscal implications for the state government. There will also be no fiscal impact on local governments as a result of the repeal of these sections.

Mr. O'Hara has determined that the proposal will not have an effect on the costs of compliance for individuals and small businesses or large businesses. Mr. O'Hara has also determined the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. O'Hara has determined the public will benefit from this proposed rulemaking because it will streamline the vacancy application process and provide the public with a clearer understanding of how the process works. The proposed new subchapter will also implement the most recent changes to the vacancy statute and provide consistency between the statutes and rules.

TAKINGS IMPACT ASSESSMENT

The SLB and GLO have evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The SLB and GLO have determined the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Furthermore, the SLB and GLO have determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of this proposed rulemaking.

ENVIRONMENTAL REGULATORY ANALYSIS

The SLB and GLO have evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

STATUTORY AUTHORITY

The repeal is proposed pursuant to Texas Natural Resources Code §51.174(c), which authorizes the GLO to adopt rules necessary and convenient to administering the vacancy process under 31 TAC Chapter 13, Subchapter F.

The proposed rulemaking affects Texas Natural Resources Code Chapter 51, Subchapter E, relating to the sale and lease of vacancies. No other statutes, articles, or codes are affected by this proposal.

§13.87. General Provisions.

§13.88. Terms of Sale or Lease.

§13.89. Applications.

§13.90. Deposits.

§13.91. Notifications and Publications.

§13.92. Determination of Good Faith Claimant Status.

§13.93. Exceptions to Survey Report.

§13.94. 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 October 18, 2010.

TRD-201005978
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.346

The Comptroller of Public Accounts proposes amendments to §3.346, concerning use tax. Subsection (a) is amended to change the definition of "storage" to incorporate two exclusions formerly found in subsection (c), to change the definition of "use" to reflect the language of Tax Code, §151.011(a), to add to the definition of "use" to the exclusions found in Tax Code, §151.011(c) and (f), and to change the definition of "use tax" to clarify that the tax is imposed on the "storage, use, or other consumption of a taxable item in this state."

Subsection (b) is amended to reorganize for clarity, to reinforce that the term "contractor" refers to "contractor" as defined in §3.291 and to distinguish between use tax liabilities associated with nonresidential repair or remodeling and separated contracts for new construction or residential repair or remodeling and use tax liabilities associated with lump sum contracts for new construction or residential repair or remodeling, to provide examples of "shipments of taxable items from out-of-state suppliers to purchaser's designees," and to add a paragraph regarding the use tax responsibility of a permitted purchaser who makes a purchase under the occasional sale exemption set out in Tax Code, §151.304(b)(1). Paragraph (5) is added to implement a statutory change to Tax Code, §151.011 by House Bill 2425, 78th Legislature, 2003, which provides that the use tax extends to tangible personal property transported into this state that has been processed, fabricated, or manufactured into other property, or has been attached or incorporated into other property. Paragraph (6) implements a decision by the Third Court of Appeals that the exclusion for printed material in §151.011 applies only to printed materials that have been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state.

Subsection (c) is amended to rename it "Inapplicability of use tax," to substitute §3.338 for §3.340 in accordance with the consolidation of §3.338 and §3.40 and the repeal of §3.340, and to delete exclusions which are replaced in subsection (a).

Subsection (d) is added to replace subsection (c)(4) regarding credit allowed. The section also clarifies that the user of a taxable item from out of state or under a direct pay permit is liable for accrual and remittance of use tax; when payment of the tax is due; and the amount on which the tax is based.

Subsection (e) is added to replace subsection (c)(5) regarding property used outside Texas.

Subsection (f) is added to replace subsection (b)(1)(C) and to provide greater clarity regarding the accrual of use tax for items stored in Texas.

Subsection (g) is added to address the accrual of local use taxes.

The amendments include other nonsubstantive changes for the purpose of clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman 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 enforcing the rule will be by clarifying the applicability and accrual of the use tax. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt,

and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.101 and §151.011.

§3.346. Use Tax.

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

(1) Storage--The [~~Any~~] keeping or retention of tangible personal property in Texas for any purpose other than: [~~, except as provided in subsection (c) of this section.~~]

(A) transporting property out of state to a location outside Texas for use solely outside of Texas; or

(B) processing, fabricating, or manufacturing of tangible personal property into other property or attaching the tangible personal property to or incorporating the tangible personal property into other property that will be transported outside Texas for use solely outside of Texas.

(2) Use--The exercise of a [~~any~~] right or power incidental to the ownership of tangible personal property over tangible personal property, including tangible personal property other than printed material that has been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state [~~, except as provided in subsection (c) of this section~~]. With respect to a taxable service, use means the derivation in this state of direct or indirect benefit from the service. The term does not include the following:

(A) the sale of tangible personal property or a taxable service in the regular course of business;

(B) the transfer of a taxable service as an integral part of the transfer of tangible personal property in the regular course of business;

(C) the transfer of tangible personal property as an integral part of the transfer of a taxable service in the regular course of business;

(D) the exercise of a right or power over tangible personal property for the purpose of subsequently transporting the property outside Texas for use solely outside of Texas; or

(E) the exercise of a right or power over tangible personal property for the purpose of processing, fabricating, or manufacturing of tangible personal property into other property or attaching the tangible personal property to or incorporating the tangible personal property into other property that will be transported outside Texas for use solely outside of Texas.

(3) Use tax--A nonrecurring tax that is [~~,~~] complementary to the sales tax and [~~, which~~] is imposed on the storage, use, or other consumption of a taxable item in this state [~~exercise or enjoyment of any right or power over taxable items incident to the ownership, possession, or custody of that item~~].

(b) Imposition of the use tax.

(1) Out-of-state purchases [~~and direct payment permit purchases~~]. Use tax is due on

[~~(A)~~] [~~If~~] taxable items [~~are~~] purchased out of state that [~~for use in Texas and~~] are stored, used or consumed in Texas. [~~brought or shipped into Texas for storage, use, or consumption, use tax is due. The liability may be extinguished by payment of the Texas use tax directly to the comptroller or to a retailer authorized to collect it. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities) concerning use tax permit requirements for out-of-state retailers. If taxable items are purchased under a direct payment permit and are stored and used or consumed in Texas, use tax is due. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).~~]

(2) Direct payment permit purchases. Use tax is due on taxable items purchased under a direct payment permit that are stored, used or consumed in Texas. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

[~~(B) The basis of the tax is the purchase price, and the tax should be reported in the period in which the taxable items are first stored, used, or otherwise consumed in Texas.~~]

[~~(C) If storage facilities contain property purchased out of state or under a direct payment permit and it is not known when the property is stored whether the property will be used in Texas or will be removed from the state, then the taxpayer may elect to report the use tax either when the property is first stored in Texas or is first removed from inventory for use in Texas, as long as use tax is reported in a consistent manner. If use tax is paid on stored property which is subsequently removed from Texas, the tax may be recouped in accordance with the refund and credit provisions in §3.325 of this title (relating to Refunds, Interest, and Payments under Protest) and §3.338 of this title (relating to Allowance of Credit for Tax Paid to Suppliers).~~]

(3) [~~(2)~~] Construction contracts.

(A) Use tax is due on [~~If~~] taxable items used, consumed or incorporated into real property in [~~are brought into~~] Texas by a contractor [~~for use~~] in the performance of a lump-sum contract [~~or subcontract~~] for construction of a new improvement [~~the improvement~~] to realty or for repair and remodeling of a residential improvement to realty. See §3.291 of this title (relating to Contractors) [~~, use tax is applicable~~].

(B) Use tax is due on taxable items used or consumed in Texas by a person in the performance of a lump sum or separated contract for nonresidential repair or remodeling, or in the performance of a separated contract for construction of a new improvement to realty or for repair or remodeling of a residential improvement to realty. See §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance) and [~~The basis of the tax is the purchase price, and the tax is due in the reporting period in which the item was first stored, used, or consumed in Texas. See~~] §3.291 of this title.

(4) [~~(3)~~] Shipments of taxable items from out-of-state suppliers and sellers to purchaser's designees.

[~~(A)~~] Use tax is due on taxable items, such as gifts, catalogs and promotional goods purchased outside this state by a purchaser [~~person~~] engaged in business in this state if the taxable items are delivered at the direction of the purchaser to a location [~~recipients~~] in Texas designated by the purchaser. [~~The purchaser owes use tax based on the purchase price of the items delivered to Texas.~~]

(A) [~~(B)~~] A purchaser [~~For the purposes of this section, a person~~] is engaged in business in Texas if the purchaser [~~person~~] is required to collect sales or use tax under [~~the~~] Tax Code, Chapter 151 or [~~. If the purchaser is not a seller of taxable items, the person is engaged in business in Texas~~] if the purchaser has nexus or is engaged in business in Texas as defined in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, Collection and Exemption Rules, and Criminal Penalties) [~~person has some physical presence in Texas in connection with a commercial enterprise~~].

(B) [(C)] Local use taxes (city, county, transit, special purpose district [MTA, CTD]) are also due, but only to the extent that the purchaser is engaged in business in the local taxing jurisdictions into which deliveries are made.

(5) Raw materials manufactured or incorporated into other tangible personal property. Use tax is due on raw materials (tangible personal property), other than printed materials as provided under paragraph (6) of this subsection, purchased outside this state that have been processed, fabricated, or manufactured into other property or attached to or incorporated into other property outside this state and subsequently transported into this state, and, except as provided by Tax Code, §151.056(b) regarding property incorporated under a separated contract for the improvement of realty, includes the incorporation of tangible personal property into real estate or into improvements of real estate whether or not the real estate is subsequently sold.

(6) Printed materials.

(A) Use tax is due on the total cost of printed materials, including printing, paper and ink, purchased out of state, such as a book, brochure or catalog, and then shipped or delivered into Texas. An example of such printed material is a catalog where either the purchaser or the printer of the catalog first purchased ink and paper outside of Texas that was then printed and bound before being mailed to Texas residents in the form of a catalog. The item being used by the purchaser in this state is the catalog and since the catalog is not incorporated into another item, use tax is due on the total cost of the catalogs delivered into Texas.

(B) Use tax does not apply to printed materials purchased outside of this state that have been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state. An example would include the purchase of printed pages by a Texas customer from an out-of-state printer who ships the items directly to another out-of-state firm that binds the items into a manual or book. The charge by the out-of-state binder to the Texas customer is subject to tax. The charge by the vendor that sold the printed materials to the Texas customer is not taxable since the printed materials have been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state.

(7) Occasional sales.

(A) A person who holds or is required to hold a sales and use tax permit must accrue use tax on the purchase of a taxable item from a person entitled to the occasional sale exemption from sales tax provided by Tax Code, §151.304(b)(1) and remit it to the comptroller. Tax Code, §151.304(b)(1) relates to one or two sales during a 12-month period by a person who does not habitually engage, or hold himself out as engaging, in the business of selling taxable items at retail.

(B) A purchaser who holds or is required to hold a sales and use tax permit is not required to accrue use tax and remit it to the comptroller on a purchase from a person entitled to claim the occasional sales exemption from sales tax provided by Tax Code, §151.304(b)(2) - (5). Tax Code, §151.304(b)(2) relates to the sale of the entire operating assets of a business or of a separate division, branch, or identifiable segment of a business; Tax Code, §151.304(b)(3) relates to the transfer of all or substantially all the property used by a person in the course of an activity if after the transfer the real or ultimate ownership of the property is substantially similar to that which existed before the transfer; Tax Code, §151.304(b)(4) relates to the sale of not more than 10 admissions for amusement services during a 12-month period by a person who does not hold himself out as engaging, or does not habitually engage, in providing amusement services; Tax Code, §151.304(b)(5) relates to sales of items purchased for use by an individual who does not hold, and is not required to obtain a sales and use tax permit. In order to be exempt from sales tax, total sales by the individual must not exceed $3,000 per calendar year. See §3.316 of this title (relating to Occasional Sales; Joint Ownership Transfers; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters).

(c) Inapplicability of use tax [Exceptions].

[(1) Use tax is not applicable to, and the terms "use" or "storage" do not include:]

[(A) the sale, lease, or rental of tangible personal property in the regular course of business;]

[(B) the holding of tangible personal property for the purpose of subsequently transporting it outside Texas for use solely outside Texas; or]

[(C) the processing, fabricating, or manufacturing of tangible personal property into other property or attaching the tangible personal property to or incorporating the property into other property to be transported outside Texas for use solely outside Texas.]

(1) [(2)] Use tax is not applicable if the purchaser of a taxable item paid sales tax to a Texas seller [retailer] or owes sales tax to a Texas seller [retailer] who failed to collect it. The comptroller may proceed against the seller or the purchaser for the sales tax owed by either.

(2) [(3)] Use tax is not applicable to the storage, use, or other consumption of taxable items in this state if the sale, lease, or rental of the taxable items would be exempt from the sales tax had the items been [were it] purchased within Texas [this state].

(d) User liability, payment of the tax and credit for tax paid to another state.

(1) The person storing, using, or consuming a taxable item in this state is liable for the tax imposed under this section, and except as provided by paragraph (2) of this subsection, the liability continues until the tax is paid to the state.

(2) The liability may be extinguished by payment of the Texas use tax directly to the comptroller or to a seller authorized to collect it. See the use tax permit requirements for out-of-state sellers in §3.286 of this title.

(3) The basis of the use tax is the total purchase price of the taxable item, including any related charges such as shipping and handling fees, regardless of whether such fees are separately stated. See §3.303 of this title (relating to Transportation and Delivery Charges).

(4) The tax must be reported and remitted to the comptroller with the return covering the period in which the taxable items are first stored, used, or otherwise consumed in Texas as provided by §3.286 of this title. Purchasers without a sales and use tax permit should refer to §3.286 of this title to view the tax responsibilities of non-permitted purchasers.

(5) [(4)] Credit is [will be] allowed against the use tax liability to the extent that a similar sales or use tax was [is] legally due and paid to another state under the conditions provided in [the] Tax Code, Chapter 141 and Chapter 151, §151.303. See §3.338 [§3.340] of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

[(5) If taxable items were purchased out of state and used outside Texas for more than one year before the date of entry into Texas, the purchase will not be presumed to have been for use in Texas. Transactions covered by the provisions of the Tax Code, §151.330(a), are

~~also subject to the one-year presumption if the items covered by the transactions are returned to the state by the purchaser. The use outside Texas must be substantial and constitute a primary use for which the property was purchased. Either the comptroller or the purchaser may introduce evidence to establish the intent or absence of intent to use the taxable items in Texas at the time of purchase.~~]

(e) Presumption.

(1) Tangible personal property that is shipped or brought into this state by, or at the direction of, a purchaser is presumed, in the absence of evidence to the contrary, to have been purchased from a seller for storage, use, or consumption in this state. A taxable service used in this state is presumed, in the absence of evidence to the contrary, to have been purchased from a seller for use in this state.

(2) Tangible personal property purchased out of state and used for its intended purpose outside of Texas for more than one year before the date of entry into Texas will not be presumed to have been purchased for use in Texas. This presumption applies only if the use outside Texas is substantial and constitutes a primary use for which the property was purchased. Either the comptroller or the purchaser may introduce evidence to establish the intent or absence of intent to use the taxable items in Texas at the time of purchase.

(3) If tangible personal property is shipped outside of Texas by the seller such that the transaction is exempt from sales tax under Tax Code, §151.330(a), and the property is outside of Texas for less than one year before reentering Texas, the presumption is that the property is purchased for use in Texas.

(f) Storage of property purchased out of state or under a direct payment permit.

(1) If storage facilities contain property purchased out of state or under a direct payment permit, and the purchaser does not know at the time the property is stored whether the property will be used in Texas or will be removed from the state, then the purchaser may elect to report the use tax either when the property is first stored in Texas or when the property is first removed from inventory for use in Texas, as long as use tax is reported in a consistent manner.

(2) If use tax is paid on stored property that is subsequently removed from Texas, the tax may be recouped in accordance with the refund and credit provisions in §3.338 of this title and §3.325 of this title (relating to Refunds, Interest, and Payments under Protest).

(g) Local Tax.

(1) Local use tax is due on the purchase or lease price of taxable items purchased out of state or under a direct payment permit to the local taxing jurisdictions in which the taxable items are first stored in a taxing jurisdiction, or if not stored, where the taxable items are first used, or otherwise consumed.

(2) A direct pay permit holder who does not know at the time of storage whether the taxable items being stored will be used in Texas may elect to accrue and report both state use tax and local use taxes based on either first storage or first use, as long as the use tax is reported in a consistent manner. A direct pay permit holder must use the same method for the accrual of local use taxes that is used for accrual of state use tax. In other words, if a taxpayer elects to accrue state use tax based on the location of first use, then the local use taxes due must also be accrued and allocated based on the location in this state where first use occurs. For the purpose of direct pay use tax accruals only, first storage is not considered a use if the purchaser does not know at the time of storage whether the taxable items being stored will be used in Texas.

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

Filed with the Office of the Secretary of State on October 18, 2010.

TRD-201005982
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 475-0387

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PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 23. ADMINISTRATIVE PROCEDURES

34 TAC §23.5

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §23.5, which concerns the nominating elections for appointment to the TRS board of trustees and the terms of board members. The proposed amendments arise from TRS' four-year rule review of Chapter 23 in Title 34, Part 3, of the Texas Administrative Code. Chapter 23 contains rules concerning TRS administrative procedures that are not directly related to benefit administration. The proposed amendments to §23.5 update the current terms of board member positions.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments to §23.5 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to provide current information on the terms of TRS board members.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board of trustees to adopt rules for the administration of the funds of

the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendments reflect §825.004(a) of the Government Code, concerning the terms of office of TRS board members.

§23.5. Nomination for Appointment to the Board of Trustees.

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

(f) Terms of board members run for six years and expire August 31. Terms expire on the following dates and every six years thereafter:

(1) Public school district appointment, Place One, August 31, 2013 [~~2007~~].

(2) Gubernatorial appointment, Place One, August 31, 2013 [~~2007~~].

(3) State Board of Education appointment, Place One, August 31, 2013 [~~2007~~].

(4) Public School district appointment, Place Two, August 31, 2015 [~~2009~~].

(5) Gubernatorial appointment, Place Two, August 31, 2015 [~~2009~~].

(6) State Board of Education appointment, Place Two, August 31, 2015 [~~2009~~].

(7) Higher Education appointment, August 31, 2011 [~~2005~~].

(8) Retiree appointment, August 31, 2011 [~~2005~~].

(9) Gubernatorial appointment, Place Three, August 31, 2011 [~~2005~~].

(g) (No change.)

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

Filed with the Office of the Secretary of State on October 14, 2010.

TRD-201005861
Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 542-6438

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CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER C. UNREPORTED SERVICE OR COMPENSATION

34 TAC §25.41, §25.45

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.41 and §25.45, concerning unreported service or compensation of TRS members. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter C, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter C establishes policies related to service or compensation a member's employer must report but did not.

Section 25.41 concerns deposits for unreported service or compensation; deposits must be paid before TRS will pay benefits to a member. The proposed amendment to §25.41 deletes subsection (c), which relates to the Internal Revenue Code requirement that deposits must be paid consistent with the annual limitations on contributions from a member to the plan. The tax code limitations still apply, but recent amendments to 34 TAC §§29.50, 29.51, and 29.55, concerning plan limitations, adequately address the limitations, and the deletion of subsection (c) in §25.41 will lessen redundancy.

Section 25.45 concerns verification of unreported compensation or service. The proposed amendments clarify how unreported service or compensation must be verified to TRS and clarify that verification, salary reports, and deposits will not be accepted after the member has retired and received the first annuity payment.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments to §25.41 and §25.45 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to elucidate current policies and processes concerning unreported service or compensation of a TRS member and to enhance the readability of the rules by eliminating redundancy.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board of trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendments affect §825.403 of the Government Code concerning the collection of member contributions.

§25.41. Deposits for Unreported Service or Compensation.

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

~~[(c) Deposits for unreported service or compensation shall be paid in a manner consistent with any applicable limitations of 26 United States Code §415, including any applicable limitations on payments as~~

~~a percentage of compensation from a TRS-covered employer in the school year in which the payments are made.~~]

§25.45. Verification of Unreported Compensation or Service.

Members who claim unreported service or compensation after the school year in which it was received must verify the claim on a form prescribed by [~~presenting to~~] the Teacher Retirement System and must present such evidence as the staff of the system may require to provide clear and convincing proof of the existence and amount of such service or compensation, such as a copy of the minutes of the governing board of the employing institution, copies of any written contracts between the member and the employer, a verified statement by the employer of the reasons why such service or compensation was not reported earlier, and copies of income tax documents showing that the compensation was reported as income for the member. In no event shall verification, salary reports, or member contributions for additional compensation or service credit be accepted after a member has retired from the system and the first monthly annuity payment has been issued, after the effective date of a member's participation in the Deferred Retirement Option Plan, or after the payment of a death benefit. A fee for deposits for unreported service as provided in §25.43 of this title (relating to Fee on Deposits for Unreported Service or Compensation) will be assessed when applicable on the amount of such unreported service or compensation.

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005942
Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 542-6438

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SUBCHAPTER E. MILITARY SERVICE

34 TAC §25.61, §25.66

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.61 and §25.66, concerning military service credit. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter E, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter E establishes policies for an eligible member to purchase up to five years of military service credit in the system.

Section 25.61 concerns service credit for eligible military duty. The first proposed amendment to §25.61 adds language addressing the existing policy of the system not to permit the establishment of military service credit already established in another Texas public retirement system. The proposed amendment explains that, if TRS inadvertently recognized such service credit, then TRS would make a refund, cancel the credit, and, when applicable, adjust benefit payments. Another proposed amendment adds language addressing retirement with joint service in the Employees Retirement System of Texas (ERS) pursuant to the TRS/ERS transfer rule under §25.113 of TRS' rules and Chapter 805 of the Government Code. The proposed amendment describes TRS' existing policy providing that a person who retires under the TRS/ERS transfer rule may not establish more than a total of five years of military service credit. TRS also proposes deleting the provision in §25.61 specifying the order in which military service must be purchased (from oldest to newest); TRS generally permits a member to pay for the least expensive year first. The final proposed amendment to §25.61 deletes subsection (d), which relates to the Internal Revenue Code requirement that deposits must be paid in a manner consistent with the annual limitations on contributions from a member to the plan. The tax code limitations still apply, but recent amendments to TRS rules §§29.50, 29.51, and 29.55, concerning plan limitations, adequately address the limitations, and the deletion of subsection (d) in §25.61 will eliminate redundancy.

Section 25.66 concerns the application process for military service credit. The proposed amendments to §25.66 make minor wording changes to clarify the types of service referred to in the section.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments to §25.61 and §25.66 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to elucidate current policies and processes concerning eligibility, deposits, and application for military service credit and to enhance the readability of the rules by eliminating redundancy.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board of trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 823, Subchapter D, of the Government Code, which provides for the establishment of military service credit with TRS.

§25.61. Service Credit for Eligible Military Duty.

(a) (No change.)

(b) Credit for military duty under this section is limited to a maximum of five years. Eligible military duty will be evaluated for crediting only in the school year in which it was rendered. A member must have served a minimum of 4 1/2 months of military duty in a school year to be eligible to obtain military service credit for that year.

No credit may be given for any school year of military duty which duplicates any other credit already granted or in which a year of creditable service is available for service in the public schools of Texas. If a member establishes military service credit but TRS determines that credit already has been given for the military service in another Texas public retirement system, TRS shall refund the amount paid for the military credit duplicated in TRS, less fees that are not refundable, and shall cancel the TRS credit and, if applicable, adjust the calculation of benefits. In accordance with §25.113(m)(3) of this title (relating to Transfer of Credit Between TRS and ERS), a person retiring from the Employees Retirement System of Texas (ERS) under Government Code, Chapter 805, and returning to work in a TRS-eligible position may not establish more than a total of five years of military service credit, including any military service established before retirement under either TRS or ERS.

(c) To obtain each school year of military credit, the member must make a deposit based upon the full annual compensation rate for the last school year of membership service preceding the school year of military duty, if the member was a member while the duty was being rendered, or upon the full annual compensation rate for the first school year of membership service occurring after the duty. Membership service does not include service as a substitute. The deposit shall be a percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered. [~~A member must make deposits from the oldest to the newest year in order of the school years in which military service credit is sought.~~]

[~~(d) Deposits for military service credit shall be paid in a manner consistent with any applicable limitations of 26 United States Code §415, including any applicable limitations on payments as a percentage of compensation from a TRS-covered employer in the school year in which the payments are made.~~]

§25.66. Application for Military Credit.

Members desiring to make deposits for military credit should request in writing to be billed for the cost of the credit. Requests should be addressed to Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Included with the request should be a certified or legible unaltered copy or copies of the member's military service record showing the dates and nature of the member's active duty. The system may require the member to make available to it such other evidence as may be required to establish the member's eligibility for service [~~retirement~~] credit and the amount of deposits due. When the system determines the duty eligible for credit, it shall bill members for the total amounts of deposits and fees due for the credit at the last address of the member of which the system has record. The member must return the bill to the system with the total amount due for the military duty credit or with an installment payment agreement and all subsequent installment payments due. Deposits for military duty credit will not be accepted after date of death, except to the extent permitted under the laws and rules governing installment payments, or date of service retirement of a member.

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

Filed with the Office of the Secretary of State on October 14, 2010.

TRD-201005862

Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 542-6438

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SUBCHAPTER F. VETERAN'S (USERRA) SERVICE CREDIT

34 TAC §§25.71, 25.73 - 25.75, 25.77

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.71 and §§25.73 - 25.75; and new §25.77, concerning service credit for eligible active military duty under the Uniformed Services Employment and Re-Employment Rights Act (USERRA). The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter F, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter F establishes policies for an eligible member or retiree to purchase up to five years of eligible veteran's service credit in the retirement system or to establish compensation credit, in accordance with the requirements of USERRA, the federal law protecting veterans' benefits upon re-employment or application for re-employment following active military duty.

Section 25.71 generally concerns USERRA service credit. TRS proposes clarifying the section to indicate that a member may be eligible for USERRA service credit upon return to or application for re-employment with the same TRS-covered employer that the member left in order to perform military service.

Section 25.73 addresses ineligible military service. TRS proposes a minor punctuation change to the section.

Section 25.74 concerns the cost to purchase USERRA service credit. TRS proposes a minor wording change in subsection (a). TRS also proposes deleting subsection (f) relating to the Internal Revenue Code requirement that deposits must be paid consistent with the annual limitations on contributions from a member to the plan. The limitations still apply but recent amendments to 34 TAC §§29.50, 29.51, and 29.55 adequately address the limitations, and the deletion of subsection (f) will eliminate redundancy.

Section 25.75 concerns the application process for requesting USERRA service credit. In addition to minor wording changes, TRS proposes revising the deadline by which USERRA service credit may be purchased. The rule currently tracks federal law requirements but is confusing to apply. TRS proposes a simpler five year deadline, which is more generous than required by USERRA and easier to administer.

Proposed new §25.77 addresses service creditable but not established. TRS proposes the new section to permit a member who performs USERRA service but who chooses not to purchase TRS credit for that service to have the service considered as if it were credited in TRS, to the extent required by USERRA. Retirement benefit eligibility and TRS-Care eligibility would be determined as if the member had purchased credit for the service; however, the unpurchased USERRA service would not affect the calculation of benefits. This new rule is proposed so that TRS programs will be considered compliant with USERRA.

Brian Guthrie, Deputy Director, estimates that, for each year of the first five years that proposed §§25.71, 25.73 - 25.75, and

25.77 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended and new rules. Any fiscal impact to the state or local governments will be negligible because of the small number of individuals potentially affected by the proposed rules. Although proposed new §25.77 enhances retirement eligibility for persons who could purchase USERRA service credit but do not, the small number of persons who become eligible for retirement and TRS-Care benefits under that provision would have a negligible actuarial impact on the TRS pension or retirees health-benefit trust fund.

For each year of the first five years that the proposed amended and new rules will be in effect, Mr. Guthrie has determined that the public benefit will be to clarify and simplify provisions relating to USERRA service credit and to ensure compliance with applicable federal law provisions requiring such service credit be available for eligibility purposes to persons called to military duty from positions covered by TRS.

Mr. Guthrie has determined that there will be no anticipated economic cost to entities or persons required to comply with the proposed rules. Because most persons called to military duty from positions covered by TRS who return to TRS-covered service do so with their same TRS-covered employer, the proposed amendments to §25.71 requiring they return to the same TRS-covered employer to be eligible for USERRA service credit will affect so few persons, who may or may not have otherwise purchased such service credit, that TRS cannot estimate any economic costs they may sustain. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended and new rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments and new rule are proposed under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board, and §823.304 of the Government Code, which authorizes the Board to adopt rules in order to comply with the federal law relating to USERRA service credit.

Cross-Reference to Statute: The proposed amendments and new rule affect 38 U.S.C. §4301 et seq. (USERRA).

§25.71. Service Credit for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act.

(a) (No change.)

(b) A member who leaves a position in the employ of a Teacher Retirement System of Texas (TRS) covered employer to perform duty, on a voluntary or involuntary basis, in the uniformed services, as defined in the USERRA, is eligible to obtain service or compensation credit under this section if the member separates from uniformed service under honorable conditions or as otherwise provided by USERRA and returns to or applies for re-employment with the [~~a~~] TRS covered employer within ninety (90) days of discharge or release from active military service. TRS shall consider the provisions of USERRA or regulations adopted pursuant to USERRA in determining eligibility of members who apply for or return to re-employment later than this period of time, due to illness or injury incurred in, or aggravated during, uniformed service.

(c) Notwithstanding any provisions of this section [~~these rules~~] to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Internal Revenue Code §414(u) and as required by USERRA.

§25.73. Ineligible Military Service.

A member who establishes service credit under §25.71 of this title (relating to Service Credit for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act) cannot use the same military service to establish military service credit under §25.61 of this title (relating to Service Credit for Eligible Military Duty). No additional service credit may be given for any school years of military duty eligible for service credit already granted for service in the public schools of Texas.

§25.74. Cost.

(a) To obtain service credit for active military duty under the Uniformed Services Employment and Re-Employment Rights Act (USERRA) and §25.71 of this title (relating to Service Credit for Eligible Active Duty under the Uniformed Services Employment and Re-Employment Rights Act [~~(USERRA~~]), the member must deposit with the retirement system for each school year of service claimed an amount equal to member contributions based on the following:

(1) the percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered; and

(2) the full annual compensation rate for each school year of membership service in which the member was on active military duty eligible under the USERRA and §25.71 of this title [~~(relating to Service Credit for Eligible Active Duty under the Uniformed Services Employment and Re-Employment Rights Act)~~]. Membership service does not include service as a substitute. For purposes of determining the full annual compensation rate under this section, the Teacher Retirement System (TRS) will use the amount of wages and salary the member would have received had he continued to be employed in his former TRS covered position from which he left for active military duty. The member must submit a certification by the employer whose employ he left to enter into active military duty of the wages and salary he would have received had he remained in the TRS covered position.

(b) To obtain credit for member compensation for active military duty under the USERRA and §25.71 of this title [~~(relating to Service Credit for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act)~~], the member must deposit with the retirement system for each school year of salary credit claimed an amount equal to member contributions based on the following:

(1) the percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered; and

(2) the full annual compensation rate for each school year of membership service in which the member was on active military duty eligible under the USERRA and §25.71 of this title [~~(relating to Service Credit for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act)~~]. Membership service does not include service as a substitute. For purposes of determining the full annual compensation rate under this section, TRS will use the amount of wages and salary the member would have received

had he continued to be employed in his former TRS covered position from which he left for active military duty. The member must submit a certification by the employer whose employ he left to enter into active military duty of the wages and salary he would have received had he remained in the TRS covered position.

(c) Credit for member compensation may be established for any school year of active military duty eligible under the USERRA and §25.71 of this title [~~(relating to Service Credit for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act)~~], even if service credit has already been granted for the school year for service in the public schools of Texas.

(d) Establishment of compensation credit does not entitle a member to service credit for a school year unless no service credit has been granted for the school year through sufficient service in the public schools of Texas.

(e) A member is first eligible to establish credit under §25.71 of this title [~~(relating to Service Credit for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act)~~] on the date of application for reemployment in a TRS covered position or on November 12, 1991, whichever is later.

~~[(f) Deposits for TRS service credit for USERRA military duty shall be paid in a manner consistent with limitations on contributions under Internal Revenue Code §415, as applicable under the USERRA.]~~

§25.75. Application for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act.

Members desiring to make deposits for service or compensation credit for eligible military duty under the Uniformed Services Employment and Re-Employment Rights Act (USERRA) should request in writing to be billed for the cost of the credit. Requests should be addressed to Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Included with the request should be a certified or legible unaltered copy or copies of the member's military service record showing the dates and nature of the member's military duty. Also included with the request should be a certification of the date of the member's application for reemployment with a Teacher Retirement System of Texas (TRS) covered employer or other proof of the date of employment with a TRS covered employer. The system may also require the member to make available to it such other evidence as may be required to establish the member's eligibility under the USERRA and §25.71 of this title (relating to Service Credit for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act) for service [~~retirement~~] credit and the amount of the deposits due. When the system determines the duty is eligible for credit, it shall bill the member for the total amounts of deposits and fees due for the credit at the last address of the member of which the system has record. The member must return the bill to the system with the total amount due for the eligible credit or with an installment payment agreement and all subsequent installment payments due. Deposits for military duty eligible for credit under the USERRA and §25.71 of this title must be made no later than five years after [~~during a period beginning with~~] the date of re-employment or application for re-employment, [~~and which has a duration of three (3) times the period of the person's uniformed service, not to exceed five (5) years,~~] subject to any additional period available under USERRA.

§25.77. USERRA Service Creditable but not Established.

(a) A member who performs USERRA service creditable in the retirement system but who does not establish credit for the service by making the deposits required by this subchapter is entitled to have the USERRA service considered as if it were credited in TRS to the extent required by USERRA. To use USERRA service in this manner, the member must submit a written request to TRS before the later of the date of application for retirement or the effective date of retirement. With respect to benefits payable after the death of a member, a beneficiary must submit a written request to TRS before any part of a death benefit is paid by TRS. To use USERRA service to meet other provisions of the TRS retirement plan that are conditioned on years of TRS service credit, the member must submit a written request to TRS before action is taken under that plan provision.

(b) The USERRA service described in subsection (a) of this section is usable only in determining eligibility for, but not the amount of, service or disability retirement benefits or death benefits, and eligibility for other retirement plan features conditioned on years of service credit, but in no event shall such service be used to calculate the amount due to the member under such plan features.

(c) The USERRA service described in subsection (a) of this section is usable in determining eligibility for TRS-Care and is applicable to other provisions of TRS-Care that are based on years of TRS service credit. To use USERRA service in this manner, the member must submit a written request to TRS before the later of the date of application for retirement or the effective date of retirement.

(d) USERRA service described in subsection (a) of this section shall not be eligible for use in the manner described in this section if the member has established military service credit under §25.61 of this title (relating to Service Credit for Eligible Military Duty) for the same service or has established military service credit or USERRA credit under any other Texas public retirement system for the same service.

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005943
Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 542-6438

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SUBCHAPTER G. PURCHASE OF CREDIT FOR OUT-OF-STATE SERVICE

34 TAC §25.82, §25.85

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.82 and §25.85, concerning the purchase of credit for out-of-state service. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter G, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter G establishes policies for eligible members to purchase up to 15 years of out-of-state service credit in the system.

Section 25.82 concerns the cost to purchase out-of-state service credit, and §25.85 concerns the amount of out-of-state service credit that can be purchased. The proposed amendments to both sections delete references to the Internal Revenue Code requirement that deposits must be paid in a manner consistent with the annual limitations on contributions from a member to the

plan. The tax code limitations still apply, but recent amendments to TRS rules §§29.50, 29.51, and 29.55, concerning plan limitations, adequately address the limitations, and the deletion of that language in §25.82 and §25.85 will eliminate redundancy.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments to §25.82 and §25.85 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to enhance the readability of the rules by eliminating redundancy.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board of trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendments affect §823.401 of the Government Code, which authorizes the purchase of out-of-state service credit.

§25.82. Cost.

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

~~[(f) Payments for out-of-state service credit shall be paid in a manner consistent with any applicable limitations of 26 U.S.C. §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made. A member, or a beneficiary of a member if service credit is sought to be established after the death of the member, may not be permitted to purchase TRS service credit under this section if payments exceed the applicable limitations on contributions.]~~

(f) [~~(g)~~] The date of first eligibility to purchase credit for any year of out-of-state service shall be the latest of the following dates:

(1) the date the member received 5 years' credit for service in the public schools of Texas;

(2) the date state law made the out-of-state service available for TRS service credit;

(3) the date in which the member qualified to deposit payment for each year of out-of-state service under the one for two rule in effect until March 20, 1975;

(4) the date the member completed one year of creditable service in the public schools of Texas after relevant out-of-state service.

(g) [~~(h)~~] No deposits for out-of-state service credit may be made before the member accumulates 5 years of credit for service in the public schools of Texas.

§25.85. Amount of Out-of-State Service Which Can Be Purchased.

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

(c) Not more than 15 years out-of-state service can be purchased in accordance with Government Code, §823.401, and any purchase is subject to applicable plan qualification requirements, including applicable plan limitations on member contributions [~~permissive service credit purchase restrictions under Government Code, §823.006 and/or the Internal Revenue Code of 1986, as amended from time to time~~].

~~[(d) Payments for the purchase of TRS service credit for out-of-state service shall be paid in a manner consistent with any applicable limitations of 26 United States Code, §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made, pursuant to Internal Revenue Code §415. A member, or a beneficiary of a member if service is sought to be established after the death of the member, may not be permitted to purchase TRS service credit for some or all years of out-of-state service if payments exceed applicable limitations on contributions.]~~

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

Filed with the Office of the Secretary of State on October 14, 2010.

TRD-201005863
Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 542-6438

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SUBCHAPTER H. JOINT SERVICE WITH EMPLOYEES RETIREMENT SYSTEM

34 TAC §25.113

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.113, concerning transfer of credit between TRS and the Employees Retirement System of Texas (ERS), the retirement plan for state employees. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter H, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter H implements the program allowing members of TRS or ERS who have service under both systems to consolidate their service credit and retire under one system.

TRS proposes amendments to §25.113 to provide more flexibility in the deadline for a beneficiary to transfer service credit after a member's death; to require certification of the last date of employment with an ERS-covered employer; and to make minor wording changes. Additionally, TRS proposes amending the way that the average salary is calculated when a member transferring credit does not have the minimum number of years of

service that is normally used to calculate a salary average as part of the determination of the annuity payable (three highest salary years for grandfathered members; five years for members not grandfathered). That change would allow TRS to use the number of years of credit available. The proposed amendments also would clarify that transferring members who purchase military or out-of-state service credit may purchase only the number of years allowed by law (five or fifteen years, respectively). The proposed amendments would further clarify that returning to work after retirement under the transfer law does not expand the total number of years allowed to be purchased.

The proposed amendments address the applicability of certain "grandfathered" TRS laws to members who retire under ERS but then return to work in a TRS-covered position and become eligible to accrue additional TRS benefits. The proposed amendments also address the applicability of the retirement eligibility changes enacted in 2005 for members joining TRS on or after September 1, 2007 - specifically, the amendments provide that the new retirement eligibility provisions apply to members retiring under ERS but then returning to work under TRS. The proposed amendments in new subsection (o), relating to return to TRS-covered employment, capture existing policy on the grandfathering and new member issues.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments to §25.113 will be in effect, there will be no measurable fiscal implications to state or local governments as a result of administering the proposed amended rule. Most of the proposed amendments reflect existing policies and thus would have no new fiscal implications. With respect to the proposed change in the method of calculating salary averages for members who transfer service credit but who do not have the number of years of service normally required for the calculation of a salary average, the estimated number of members who would be affected by the change in method is statistically insignificant and, therefore, the fiscal impact on TRS is insignificant.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to make the deadline for applying for a TRS-ERS credit transfer after a member's death more flexible and to clarify the administration of the TRS-ERS credit transfer program, including the application of grandfathering legislation and new statutory retirement eligibility provisions.

Mr. Welch and Mr. Jung have determined that any economic cost to entities or persons required to comply with the proposed rule already exists under TRS' policy for determining whether a retiring member will have benefits calculated using a three-year rather than a five-year highest average salary. With respect to the proposed change in policy for calculating the salary average for members who have fewer than the number of years normally required to calculate a salary average, the proposed change would correspond to the manner in which persons using the Proportionate Benefits Program have their salary average calculated. Persons affected by the proposed rule in transferring ERS service credit for retirement under TRS likely would realize an economic benefit with regard to average salary, as explained above, but the cost of the additional benefits would be fiscally insignificant for TRS. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code.

Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under the following sections of the Government Code: §805.008, which authorizes TRS and ERS to adopt rules for determining the value of the monthly annuity to be paid by the system from which service credit is transferred; §805.009, which authorizes TRS and ERS to adopt rules for the administration of the TRS-ERS service credit transfer program; and §825.102, which authorizes the TRS board of trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 805 of the Government Code, which establishes the program for service credit transfer between TRS and ERS.

§25.113. Transfer of Credit between TRS and ERS.

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

(d) Notice.

(1) A person electing to transfer service credit pursuant to this section [~~these rules~~] must file the appropriate form with the receiving system not later than the person's intended effective date of retirement or the last day of the month in which their retirement application is filed, whichever is later.

(2) A beneficiary eligible to transfer service to the receiving system for the payment of death benefits shall make the election on an application form not later than 90 days after the date of death of the member, unless both systems agree to extend the deadline for an election, but in any event the beneficiary shall make the election before either system has paid the death benefit.

(3) The receiving system will notify the transferring system of the pending transfer not later than 30 days following date of receipt of an application form.

(e) Manner of Transfer.

(1) Service credit and funds [~~assets~~] will be transferred through electronic and hard copy documentation pursuant to this section [~~these rules~~], and the receiving system will maintain records of such transfers permanently.

(2) The transferring system shall provide documentation of years of credit, periods of service, military service credit, average salary, method of calculation of service credit and average salary, information necessary to comply with all federal tax regulations, interest credited, fees and interest paid, and any other dollar amount which will be a part of the transfer.

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

(i) Service in the month following retirement. Both TRS and ERS laws require a separation from employment with any employer covered by the respective system for a period following a member's effective retirement date as a condition for retirement with a benefit from the respective system. A member retiring under TRS whose last place of employment is with an ERS-covered employer shall provide

a certification of termination of employment to TRS in the manner directed by the retirement system, specifying the last date of employment. With respect to a service or disability retirement by persons using credit transferred between the systems, the following provisions apply:

(1) An ERS retiree whose last place of employment is with a TRS-covered employer must be off the payroll of any TRS-covered employer for the first full calendar month following retirement under ERS, or the ERS retirement will be canceled. A TRS retiree whose last place of employment is with an ERS-covered employer must be off the payroll of any ERS-covered employer for the first full calendar month following retirement under the TRS, or the TRS retirement will be canceled.

(2) An ERS retiree whose last place of employment is with an ERS-covered employer[~~,~~] may begin work for a TRS-covered employer after retirement under ERS without a one month break in service. A retiree from the TRS whose last place of employment is with a TRS-covered employer[~~,~~] may begin work for an ERS-covered employer after retirement under TRS without a one month break in service.

(j) Average salary.

(1) In determining average salary used in computing benefits available to a person transferring credit under this section, the receiving system will use the higher of the average salary [~~compensation factors~~] derived solely from the service originally established in each system respectively. In comparing average salaries and determining benefits payable, the receiving system shall accept the transferring system's determination of its average salary, applying all laws and policies of the transferring system in the calculation of that system's average salary.

(2) Each system will be responsible for determining its respective average salary [~~factor~~]. The transferring system will certify its average salary [~~factor~~] to the receiving system.

(3) If there is less [~~insufficient~~] service than is required in the applicable formula to compute the [~~to determine an~~] average salary [~~factor~~] in TRS [~~the transferring system~~] under the laws and rules applicable to that system, the average salary will be computed using salaries for the service for which credit was established. This average salary shall be used in the comparison of average salaries to determine which system's average salary is higher [~~benefits will be based upon the average salary factor of the receiving system~~].

[~~(4) If there is insufficient service to determine an average salary factor in the receiving system under the laws and rules applicable to that system, benefits will be based upon the average salary factor of the transferring system.~~]

[~~(5) If there is insufficient service to determine an average salary factor under either the transferring system or the receiving system under the laws and rules applicable to each system, respectively, benefits will be based upon an average salary factor of the receiving system. The average salary factor shall be based on the number of years of service credit the member has in that system.~~]

(k) - (l) (No change.)

(m) Service credit.

(1) TRS will make and accept transfers of service credit in whole plan year increments based upon TRS rules for crediting service. No partial years will be transferred.

(2) TRS and ERS service in a plan year will not be combined to obtain a year of TRS service credit.

(3) A person who transfers credit to TRS or ERS may not receive more than a total of five years of service credit for military service. The retirement system from which credit is transferred may refund contributions made for military service, other than any amount that represents a fee, that exceeds the maximum amount creditable. A person who retires under Government Code, Chapter 805, who returns to work under TRS or ERS may not purchase additional military service credit if the purchase would cause the total of all military service credit to exceed five years.

(4) A person who purchased out of state service credit before retirement under Government Code, Chapter 805, may not purchase additional out of state service credit upon return to work under TRS if the purchase would cause the total of all out of state service credit to exceed fifteen years.

(n) (No change.)

(o) Return to TRS covered employment.

(1) A person who transferred service to ERS and retired under Government Code, Chapter 805, and who returns to employment in a position eligible for TRS membership continues to be governed by the provisions of state law as described under §51.12(a) of this title (relating to Applicability of Certain Laws in Effect Before September 1, 2005) upon resumption of TRS membership, if, while a member of TRS, the person met at least one of the requirements of §51.12(a) of this title by August 31, 2005.

(2) Regardless of status under paragraph (1) of this subsection, a person who transferred service to ERS and retired under Government Code, Chapter 805, and who returns to employment in a position eligible for TRS membership after August 31, 2007, is subject to the provisions of Government Code §824.202(a-1) and (d-1) and §29.1(a) of this title (relating to Eligibility for Service Retirement) for eligibility for retirement under TRS.

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

Filed with the Office of the Secretary of State on October 14, 2010.

TRD-201005868
Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 542-6438

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SUBCHAPTER I. VERIFICATION OF SERVICE OR COMPENSATION

34 TAC §25.121, §25.123

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.121 and §25.123, concerning the verification of service or compensation. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter I, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter I addresses how service or compensation may be verified by a member, either because it was originally unreported or because it was timely reported but more information is needed to determine whether it is creditable.

Section 25.121 concerns employer verification of service or compensation. The proposed amendments to §25.121 clarify that the requirements for verification apply not only to unreported service or compensation but also to service or compensation reported but in need of additional documentation in order to be creditable. Section 25.123 concerns certification of service and compensation of a member. In addition to making minor wording changes for clarification, the proposed amendments to §25.123 add a new provision explaining that, for schools no longer in operation, including a charter holder or charter school, verification is to be made by the Commissioner of Education or a designated custodian.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments to §25.121 and §25.123 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to clarify the application of rules concerning employer verification of service or compensation.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board of trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendments affect §825.403 of the Government Code, concerning collection of member's contributions, including the responsibilities of reporting entities and the commissioner of education.

§25.121. Employer Verification.

Verification of [~~unreported~~] service or compensation that was not reported to TRS or that was reported but requires further documentation in order to be creditable must be made by the employer on a form prescribed by TRS. At the request of TRS, employers shall provide copies of any records or information regarding service or compensation, including but not limited to contracts, work agreements, salary schedules or addenda, board minutes, payroll records, employment records, or other materials that will assist TRS in making a determination. TRS may rely upon employer verifications of service or compensation or may conduct an investigation to determine whether verified service or compensation is eligible.

§25.123. Certification.

The correctness of this affidavit must be certified by an official of the employer [~~school~~] where the service was rendered. This can be done by the superintendent, business manager, certified reporting official, secretary of the school board, or treasurer of the school board at the time the certification is made. The certification must be based upon the existing records maintained by the employer [~~school~~] and must be notarized. TRS shall determine whether the verified service or compensation is eligible for TRS purposes. For a public school employer that is no longer in operation, including a charter holder or charter school, verification shall be made by the Texas Commissioner of Education or the custodian designated under 19 TAC §100.1203(b) (relating to Records Management).

This 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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Brian Guthrie
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Teacher Retirement System of Texas
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SUBCHAPTER K. DEVELOPMENTAL LEAVE

34 TAC §25.152

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.152, concerning application and payment for developmental leave credit. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter K, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter K establishes processes for an eligible member to obtain up to two years of developmental leave service credit.

TRS proposes amendments to §25.152 by deleting subsection (g) relating to the Internal Revenue Code requirement that deposits must be paid consistent with the annual limitations on contributions from a member to the plan. The limitations still apply but recent amendments to 34 TAC §§29.50, 29.51, and 29.55 adequately address the limitations, and the proposed deletion will reduce repetition.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments to §25.152 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to enhance the readability of the rules by eliminating redundancy.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be

no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendment is proposed under §825.102 of the Government Code, which authorizes the TRS board of trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendment affects §823.402 of the Government Code, which concerns establishing membership service credit for developmental leave.

§25.152. Application and Payment for Developmental Leave Credit.

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

~~[(g) Payments for the purchase of TRS service credit for developmental leave shall be paid in a manner consistent with any applicable limitations of 26 U.S.C. §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made, pursuant to Internal Revenue Code §415. A member, or a beneficiary of a member if service is sought to be established after the death of the member, may not be permitted to purchase TRS service credit for some or all years of developmental leave if payments exceed applicable limitations on contributions.]~~

This 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. OTHER SPECIAL SERVICE CREDIT

34 TAC §§25.161 - 25.164

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §§25.161 - 25.164, concerning the purchase of special service credit. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter L, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter L addresses the purchase of various types of service credit by eligible members. An eligible member may purchase up to two years of work experience service credit, one year of unused state personal or sick leave credit, and one year of credit for service during a school year with a membership waiting period.

Section 25.161 concerns the purchase of work experience service credit, §25.162 concerns the purchase of state personal or sick leave credit, §25.163 concerns the use of purchased equivalent membership service credit to establish eligibility for retirement or health benefits, and §25.164 concerns the purchase of credit for service during a school year with a membership waiting period. Proposed amendments to all four sections delete provisions addressing whether the type of service credit covered by each rule may be used to establish eligibility for the retiree health benefit program, TRS-Care. Eligibility for TRS-Care is addressed in Chapter 41 of TRS' rules, and TRS elsewhere proposes amending the TRS-Care chapter to consolidate provisions like those proposed for deletion in §§25.161(g), 25.162(c), 25.163, and 25.164(i). Proposed amendments to all four sections also delete provisions relating to the Internal Revenue Code (IRC) requirement that deposits must be paid consistent with the annual limitations on contributions from a member to the plan. The limitations still apply but recent amendments to 34 TAC §§29.50, 29.51, and 29.55 adequately address the limitations, and the proposed deletions will reduce repetition. The proposed deletions regarding IRC contribution limitations are in §§25.161(a) and (h), 25.162(a) and (f), 25.163, and 25.164(j).

In addition, TRS proposes deleting the effective date of the ability to purchase state personal or sick leave credit in §25.162(a) because its appearance in the rule is no longer needed. A proposed amendment to §25.162(b) makes explicit existing policy, supported by the related statutory provision, §823.403 of the Government Code, that a member must have at least ten years of service credit for actual service to purchase state personal or sick leave credit.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments to §§25.161 - 25.164 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to clarify the application of rules concerning the purchase of special service credit and to make them more readable by eliminating redundancy.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §823.406 of the Government Code, which authorizes the TRS board of trustees (board) to adopt rules for administering the credit purchase option for service performed during a 90-day

waiting period to become a member after beginning employment, and §825.102 of the Government Code, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendments affect §823.403 of the Government Code, relating to credit for accumulated personal or sick leave, and §823.404 of the Government Code, relating to the purchase of equivalent service credit for work experience by a career or technology teacher.

§25.161. Work Experience Service Credit.

(a) An eligible member may purchase one or two years of equivalent membership service credit in the Teacher Retirement System of Texas ("TRS") for eligible work experience in accordance with Government Code, §823.404 and subject to the approval of TRS [~~and to any plan qualification requirements, including contribution limitations under Government Code, §823.006 or the Internal Revenue Code of 1986, as amended from time to time. For the purpose of limitations on contributions under the Internal Revenue Code, the service credit authorized under Government Code, §823.404 is non-qualified permissive service credit~~]. A member is eligible to establish up to two years of equivalent membership service credit for eligible work experience if, at the time of the purchase, the member has at least five years of membership service credit in TRS, the member is a certified career or technology education teacher, and the work experience was required for certification in a career or technological field.

(b) - (f) (No change.)

[~~(g) Service credit purchased under this section may be used to determine eligibility for the Texas Public School Retired Employees Group Insurance Program (TRS-Care) to the extent permitted under Insurance Code, Chapter 1575.~~]

[~~(h) Payments for the purchase of TRS service credit for eligible work experience shall be paid in a manner consistent with any applicable limitations of 26 United States Code §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made. A member, or a beneficiary of a member if service is sought to be established after the death of the member, may not be permitted to purchase TRS service credit for some or all years of work experience if payments exceed applicable limitations on contributions.~~]

§25.162. State Personal or Sick Leave Credit.

(a) An [~~Effective September 1, 2001, an~~] eligible member may purchase one year of service credit in the Teacher Retirement System of Texas ("TRS") for accumulated state personal or sick leave in accordance with Government Code §823.403 and subject to approval of TRS [~~and to any plan qualification requirements and limits under the Internal Revenue Code of 1986, as amended from time to time~~].

(b) A member is eligible to purchase one year of service credit if the member has at least ten years of TRS service credit for actual service with one or more employers [~~retires from an employer~~] defined by Government Code §821.001(7), retires from such an employer, [~~of the Government Code~~] and has at least 50 days or 400 hours of accumulated state personal or sick leave on the last day of employment before retirement. Not more than an aggregate of five days of unused state personal or sick leave may be accumulated per year. State personal and sick leave may be combined, if needed, for the purpose of calculating the necessary 50 days or 400 hours. No more than one year of service credit may be purchased even if more time has been accumulated.

(c) Credit purchased under this section may be used only for the purpose of calculating the amount of a retirement plan benefits but [~~and~~] may not be used to determine eligibility for retirement plan benefits [~~or for retirement, including eligibility for Texas Public School Retired Employees Group Insurance Program per Article 3.50-4, §2(10)(A) of the Insurance Code~~].

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

[~~(f) Payments for the purchase of TRS service credit for accumulated state personal or sick leave shall be paid in a manner consistent with any applicable limitations of 26 United States Code §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made, pursuant to Internal Revenue Code §415. A member, or a beneficiary of a member if service is sought to be established after the death of the member, may not be permitted to purchase TRS service credit for accumulated state personal or sick leave if payments exceed applicable limitations on contributions.~~]

§25.163. Service Credit Purchase.

Service credit purchased under the former provisions of Government Code §823.405, repealed effective January 1, 2006, may be used for retirement benefit purposes to the extent allowed by law. [~~Service credit purchased under the former provisions of Government Code §823.405, repealed effective January 1, 2006, may be used to determine eligibility for the Texas Public School Retired Employees Group Insurance Program (TRS-Care) to the extent permitted under Chapter 1575, Texas Insurance Code.~~]

§25.164. Credit for Service During School Year With Membership Waiting Period.

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

[~~(i) Service credit purchased under this section may be used to determine eligibility for Texas Public School Retired Employees Group Health Insurance (TRS-Care) to the extent permitted under Insurance Code, Chapter 1575.~~]

[~~(j) Payments for TRS service credit purchased under this section shall be paid in a manner consistent with any applicable limitations of United States Code, Title 26, §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made. A member, or a beneficiary of a member, if service credit is sought to be established after the death of the member, may not be permitted to purchase TRS service credit under this section if payments exceed applicable limitations on contributions.~~]

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

Filed with the Office of the Secretary of State on October 14, 2010.

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Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438

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SUBCHAPTER M. OPTIONAL RETIREMENT PROGRAM

34 TAC §25.172

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §25.172, concerning the optional retirement program (ORP) and TRS. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter M, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter M addresses the Optional Retirement Program (ORP), a defined contribution retirement plan available in lieu of TRS' defined benefit plan to eligible employees of Texas higher education institutions.

TRS proposes amending §25.172 to clarify how a person who elected ORP and participated in that program may again become a TRS member. Specifically, the proposed change clarifies that post-ORP employment in a public school in a position eligible for TRS membership generally requires a person to become a member of TRS. Consequently, the person is no longer eligible for ORP if subsequently employed in Texas higher education. If the person's intervening employment is in a public school but not in a position eligible for TRS, the person remains eligible for ORP upon re-employment in higher education and becomes ineligible for TRS in the higher education position. Similarly, another proposed amendment clarifies that, if a person elects and participates in ORP and then goes to work for a state agency that is not a TRS-covered employer, then that intervening state agency employment does not entitle the person to become a TRS member if an institution of higher education later employs the person.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments to §25.172 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to clarify what type and sequence of employment makes a person eligible or ineligible to participate in ORP or TRS.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendment is proposed under §825.102 of the Government Code, which authorizes the TRS board of trustees to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendments affect Chapter 830 of the Government Code, which establishes the optional retirement program.

§25.172. ORP and TRS.

(a) Except as provided in subsection (c) of this section, a person who has elected ORP participation must become a member of TRS if the person later becomes an employee of any Texas public educational institution other than a faculty member of an institution of higher education. The following persons are generally required to become TRS members under this subsection:

(1) ORP participants who become employed in a public school in a position eligible for TRS membership; and

(2) ORP participants with less than one year's participation in ORP who become employed in a nonfaculty position in an institution of higher education.

(b) (No change.)

(c) Subsection (a) of this section does not apply when:

(1) an ORP participant is simultaneously employed both as a faculty member of a Texas public institution of higher education and in a position in a Texas public educational institution otherwise eligible only for TRS membership; [~~or~~]

(2) a person, after a valid ORP election, becomes employed in an institution of higher education in a nonfaculty position if the person:

(A) participated in ORP for one year as a faculty member of a Texas public institution of higher education; and

(B) had no intervening employment that required TRS membership; or [~~.~~]

(3) a person, after a valid ORP election, becomes employed in a state agency that is not a TRS-covered employer and later becomes employed in an institution of higher education.

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

(g) In this section:

(1) employee means a person whose employment in one or more Texas institutions of public education is, disregarding any ORP election, sufficient to qualify for TRS membership coverage;

(2) faculty member means a person, including a professional librarian, who is employed by an institution of higher education on a full-time basis (at least one-half time) as a member of the faculty or staff and whose duties include teaching, research, administration, or the performance of professional services, but does not mean a person employed in a position in the institution's classified personnel system or a person employed in a similar type position if the institution does not have a classified personnel system;

(3) nonfaculty position means employment in a Texas institution of higher education that does not qualify the employee as a faculty member as defined in this subsection and includes a position that would otherwise be considered faculty but for the fact that it is less than one-half time and therefore is not eligible for membership [~~full-time~~];

(4) ORP participant means a person who has elected ORP pursuant to law, without regard to whether the person is currently employed and making deposits to ORP, and who has not been required to return to TRS membership;

(5) participation in ORP for one year or one year's participation in ORP means active ORP participation for a sufficient period to give the person vested ORP benefits;

(6) active ORP participation means participation in ORP by having required ORP deductions and contributions made;

(7) public school means an educational institution covered by TRS membership other than an institution of higher education;

(8) institution of higher education means an institution of higher education as defined in the Texas Education Code, §61.003 whose faculty members are eligible to elect ORP.

This 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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Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438

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SUBCHAPTER N. INSTALLMENT PAYMENTS

34 TAC §§25.182 - 25.184, 25.188

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §§25.182 - 25.184 and 25.188, concerning installment payments for the purchase of special service credit. The proposed amendments arise from TRS' four-year rule review of Chapter 25, Subchapter N, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter N establishes policies for payment of special service credit through a monthly installment plan of up to 60 months or the number of years being purchased, whichever is less. TRS proposes repealing §25.190 of Subchapter N elsewhere in this issue.

Section 25.182 concerns the purchase of special service credit in yearly increments. In that section, TRS proposes deletion of references to service purchased under former §823.405 of the Government Code, which allowed purchase of up to three years of credit without performance of service but is now repealed. In subsection (a) of §25.182, TRS proposes deleting the order in which a member must purchase years of credit because the bills TRS generates for the purchase of credit establish the required order of payment.

Section 25.183 concerns nonpayment of installment payments for special service credit. TRS proposes changing "district" to "employer" in §25.183(4) to conform the reference to current usage by the system. Section 25.184 concerns the refund of installment payments already made but not credited. TRS proposes deletion of references in §25.184 to service purchased under former §823.405 of the Government Code, which allowed purchase of up to three years of credit without performance of service but is now repealed.

Section 25.188 concerns the completion of installment payments for special service credit by a beneficiary. TRS proposes amending the section to establish a 12-month deadline for a beneficiary to complete installment payments after the death of a member who had initiated an installment payment plan and made at least one payment before the member's death. TRS also proposes other minor wording changes in §25.188 for clarity and conciseness.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments to §§25.182, 25.183, 25.184, and 25.188 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to clarify the application of rules concerning installment payments for the purchase of special service credit and to delete obsolete provisions.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under the following sections of the Government Code: §825.102, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board; §825.410, which authorizes the board to adopt rules to implement that statute concerning payroll deductions or installment payments for special service credit; and §825.411, which authorizes the system to adopt rules to administer that statute concerning payroll deductions for service credit.

Cross-Reference to Statute: The proposed amendments affect the following sections of the Government Code: §823.301 and §823.302, relating to military service credit; §823.304, relating to reemployed veteran's credit under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. §4301 *et seq.;* §823.401, relating to out-of-state service credit; and §823.404, relating to the purchase of equivalent service credit for work experience by a career or technology teacher.

§25.182. Yearly Increments of Credit.

(a) For out-of-state service credit, military service credit, work experience service credit purchased under Government Code §823.404, [~~service credit purchased under §823.405 of the Government Code,~~] and USERRA service credit, a member may choose to purchase fewer years of service credit than the total years of service credit which the member is eligible to purchase. The years of credit shall be purchased in the [~~following~~] order in which they appear on the TRS bill for the purchase.

[~~(1) For military service rendered prior to Teacher Retirement System of Texas (TRS) service, the member must purchase credit for the earliest years of military service first.~~]

[~~(2) For military service or the USERRA service rendered after TRS service, the member must purchase credit for the earliest years of military service credit first.~~]

[(3) For out-of-state service credit, the member must purchase service credit for the earliest years of service first.]

(b) For military service, work experience service credit purchased under Government Code §823.404, [service credit purchased under §823.405 of the Government Code,] and USERRA service, the member must complete payment for the number of years of credit that the member has chosen to purchase before purchasing additional years of the same kind of service credit by either lump sum payment or by additional installment payments. For out-of-state service credit, a member who has entered into an installment agreement may be billed for additional years of out-of-state service as he or she becomes eligible to purchase additional years.

(c) A member must purchase all withdrawn service credit and[/or] all unreported service credit and may not choose to purchase these types of service credit in yearly increments. A member will not receive any credit for withdrawn or unreported service until the entire balance due and all fees have been paid.

§25.183. Nonpayment.

The following occurrences shall be treated as nonpayment of installment payments that are due:

(1) a check returned for any reason;

(2) any bank draft which is not honored;

(3) payroll deductions not received by the retirement system; or

(4) a payment made by payroll deduction for which an employer [a district] making the deduction subsequently takes credit.

§25.184. Refund for Nonpayment.

(a) The Teacher Retirement System of Texas (TRS) may refund installment payments already made, but not credited towards service, if:

(1) an installment payment is not made in full within 60 days after the due date;

(2) two or more consecutive monthly payments have been made through a check on an account with insufficient funds or a closed account or through an automatic bank draft for which insufficient funds were available;

(3) a member notifies TRS in writing that he will no longer make payments pursuant to the installment schedule and requests a refund of amounts previously paid; or

(4) the number of partial payments becomes excessive.

(b) If TRS refunds payments pursuant to this section, the member is not permitted to use the installment payment method or the payroll deduction method of payment for the same service for a period of three years from the date of the refund. [If TRS refunds payments pursuant to this section to a member who was purchasing additional service credit under §25.163 of this title (relating to Service Credit Purchase) and §823.405, Government Code, the termination of the installment agreement results in the permanent loss of eligibility to purchase this service credit, whether through installments payments or any other kind of payment.]

(c) (No change.)

§25.188. Payment by Beneficiary.

A beneficiary who elects to complete installment payments under the Government Code, §825.410(d)(2), may complete payment only for the same type of service credit for which the member had made at least one payment prior to the member's death. If the member had elected to make installment payments on fewer years of service credit than he was eligible to purchase, the beneficiary may complete the installment payments only for the years of credit elected by the member and for which the member had made at least one payment. A beneficiary who elects to complete installment payments must do so in a single lump sum payment received by TRS no later than 12 months after the date of death of the member. Payments for TRS service credit shall be paid in a manner consistent with any applicable limitations on contributions under [of] 26 United States Code §415, including any applicable limitations on payments as a percentage of compensation of the participant from the employer for the school year in which the payments are sought to be made by a beneficiary[, pursuant to Internal Revenue Code §415]. A beneficiary may not purchase TRS service credit under this section if payments exceed applicable limitations on contributions.

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

Filed with the Office of the Secretary of State on October 14, 2010.

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Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438

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34 TAC §25.190

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

The Teacher Retirement System of Texas (TRS or system) proposes the repeal of §25.190 concerning the employer pick-up of installment payments for the purchase of special service credit. The proposed repeal arises from TRS' four-year rule review of Chapter 25, Subchapter N, in Title 34, Part 3, of the Texas Administrative Code. Chapter 25 concerns membership credit, and Subchapter N establishes policies for payment of special service credit through a monthly installment plan of up to 60 months or the number of years being purchased, whichever is less. TRS proposes amending §§25.182 - 25.184 and 25.188 of Subchapter N elsewhere in this issue.

TRS proposes repealing §25.190 because it is not used. The TRS Board of Trustees (board) adopted the rule in 1997 to provide TRS staff flexibility in meeting certain changes to federal tax code requirements then, including the option to implement an employer pick-up of installment payments for special service credit if needed. Because of subsequent tax code changes and feasibility issues, TRS never implemented an employer pick-up for special service credit purchases and does not anticipate doing so under current law. Consequently, the reasons for originally adopting §25.190 no longer exist.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed repeal of §25.190 will be in effect, there will be no fiscal implications to state or local governments as a result of the proposed repeal.

For each year of the first five years that the proposed repeal will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to delete an obsolete rule concerning an optional administrative process that was never implemented.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed repeal. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed repeal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed repeal; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The repeal is proposed under the following sections of the Government Code: §825.102, which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board; §825.410, which authorizes the board to adopt rules to implement that statute concerning payroll deductions or installment payments for special service credit; and §825.411, which authorizes the system to adopt rules to administer that statute concerning payroll deductions for service credit.

Cross-Reference to Statute: No other codes, articles, or sections are affected.

§25.190. Employer Pick-up of Installment Payments.

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

Filed with the Office of the Secretary of State on October 14, 2010.

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Brian Guthrie
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CHAPTER 29. BENEFITS
SUBCHAPTER A. RETIREMENT

34 TAC §§29.1, 29.7, 29.11, 29.15, 29.21, 29.24, 29.26

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 34 TAC §29.11(a) is not included in the print version of the Texas Register. The figure is available in the on-line version of the October 29, 2010, issue of the Texas Register.)

The Teacher Retirement System of Texas (TRS or system) proposes new §29.7 and amendments to §§29.1, 29.11, 29.15, 29.21, 29.24, and 29.26 concerning retirement benefits. The proposed new rule and rule amendments arise from TRS' four-year rule review of Chapter 29, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code. Chapter 29 concerns benefits, and Subchapter A establishes policies related to service and disability retirement eligibility, the application process, the calculation of benefits, the payment plans available, and actuarial tables supporting the calculation of early age retirement reductions, optional payment plan reductions, and other benefits.

Section 29.1 concerns eligibility for service retirement. TRS proposes amending the section in conformity with proposed amendments published elsewhere in this issue to TRS rule 34 TAC §51.12 regarding a member's eligibility to be grandfathered under former law for the purpose of taking advantage of certain benefit provisions (i.e., qualification for certain early retirement reduction factors, three-year salary average, and election of a partial lump-sum option).

Proposed new §29.7 concerns completion of the retirement application process. TRS proposes the new rule to establish a deadline for completing the application process for service or disability retirement. TRS proposes a 12-month period to require that all forms and information be submitted to TRS in order to complete the application process and preserve the retirement date originally selected.

Section 29.11 concerns the actuarial tables furnished by TRS' actuary for computing benefits. In addition to some minor wording changes, TRS proposed that, instead of adopting the actuarial tables "by reference," the tables be adopted as part of the rule itself. When the rule was first adopted, restrictions by the Secretary of State's office governing filing and publication of material in the *Texas Register* affected how the tables were addressed in §29.11. As technology has evolved, TRS now may include longer tables under a link to an "Attached Graphic" as part of the rule itself. The proposed change would permit members viewing this rule online also to view the actual tables instead of having to request the tables from TRS.

Section 29.15 concerns termination of employment. TRS proposes minor changes to the section to correct grammar and punctuation.

Section 29.21 concerns beneficiary tables. The proposed amendment to the section updates a reference to a renumbered statute.

Section 29.24 concerns purchase of credit. The proposed amendments to the section delete language relating to the Internal Revenue Code §415(c) limitations on annual contributions by a member. The limitations still apply but recent amendments to TRS rules 34 TAC §§29.50, 29.51, and 29.55 adequately address the limitations, and the deletion of language addressing the limitations in other rules will reduce repetition.

Section 29.26 concerns the discontinuance of disability benefits. TRS proposes amendments to the section to clarify when a disability retiree is considered restored to active service and no longer eligible for a monthly disability retirement benefit. A disability retiree would be required to actually return to a TRS-eligible position instead of simply notifying TRS of an intention to do so. Additionally, under the proposed amendments, a disability retiree who refuses to submit to a required medical examination or provide documents relating to a required examination for more than a year would be restored to active service.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that proposed new §29.7 and amended §§29.1, 29.11, 29.15, 29.21, 29.24, and 29.26 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed new or amended rules.

For each year of the first five years that the proposed new and amended rules will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to clarify rules concerning the restoration of a disability retiree to active service, update statutory references, delete redundant provisions, and facilitate access to and use of actuarial tables for computing benefits.

Mr. Welch and Mr. Jung have determined that there is no measurable economic cost to entities or persons required to comply with the proposed rules. Though the amendments to §29.26 may affect a disability retiree's status, which could affect eligibility for future service retirement following disability retirement, TRS cannot estimate the economic cost to such a retiree attributable to compliance with the proposed amendment because it will vary from person to person. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The new and amended rules are proposed under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, for the administration of the funds of the retirement system, and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendments to §29.1 affect the following sections of the Government Code: §822.003, concerning termination of membership; §822.004, concerning the effect of termination; §822.006, concerning the resumption of membership after termination; §823.501, concerning credit cancelled by membership termination; and §824.202, concerning eligibility for service retirement. Proposed new §29.7 affects §824.002 of the Government Code, concerning effective date of retirement. The proposed amendments to §29.11 affect the following sections of the Government Code: §824.202, concerning the determination of a member's eligibility for service retirement, including the adoption of actuarial tables for reduction of benefits for early-age retirement; §824.204, concerning optional service retirement benefits; and §824.308, concerning optional disability retirement benefits. The proposed amendments to §29.15 affect the following sections of the Government Code: §824.002, concerning effective date of retirement; §824.005, concerning revocation of retirement; §824.202, concerning the eligibility for service retirement, including early-age retirement; and §824.602, concerning exceptions to the loss of benefits on resumption of service. The proposed amendments to §29.21 affect §824.1013 of the Government Code, concerning change of beneficiary after retirement. The proposed amendment to §29.24 affects §824.304 of the Government Code, concerning disability retirement benefits. The proposed amendments to §29.26 affect §824.602 of the Government Code, concerning exceptions to the loss of benefits on resumption of service.

§29.1. Eligibility for Service Retirement.

(a) (No change.)

(b) A member who met at least one of the requirements of §51.12(a) of this title (relating to Applicability of Certain Laws in Effect Before September 1, 2005) on or before [~~by~~] August 31, 2005, while a member of the Teacher Retirement System before termination of membership through withdrawal of member contributions or absence from service shall be considered as continuing to be eligible to be governed by provisions of state law as described under §51.12(a) of this title upon resumption of membership on or after September 1, 2007.

(c) A person who was a member of the retirement system before September 1, 2007, but who terminates membership through withdrawal of accumulated contributions, then resumes membership on or after September 1, 2007, is subject to the provisions of subsections (a-1), [~~and~~] (b-1), and (d-1) of §824.202, Texas Government Code, regardless of whether the withdrawn service credit is reinstated.

(d) (No change.)

§29.7. Completion of Retirement Application Process.

An application for service or disability retirement is void if the member does not complete the application process as prescribed by the retirement system, including the submission of all required forms and information, within 12 months from the date that would be the effective date of retirement as specified in Government Code §824.002(a), if the retirement process were completed. An eligible member may submit a new application with a new effective date of retirement, but benefits are not payable for the months in which the previous application was pending but incomplete.

§29.11. Actuarial Tables.

(a) Actuarial tables furnished by the TRS actuary of record [~~(actuary)~~] will be used for computation of benefits. Factors for ages or types of annuities not included in the tables will be computed from the same data by the same general formulas. The Teacher Retirement System adopts [~~by reference~~] the actuary's June 1997 factors for retirement options and the early age reduction factors based on 8.0% interest, with modifications to the early age reduction factor table to reflect repeal of Government Code [~~Tex. Gov't Code~~] §824.202(c) effective September 1, 2005. These actuarial tables shall be effective beginning September 1, 1997, except for the early age reduction factor modifications, which shall be effective for retirements after September 1, 2005. The Teacher Retirement System also adopts [~~by reference~~] the actuary's June 1997 factors for disabled member retirement options based on 8.0% interest. These actuarial tables shall be effective beginning September 1, 1997. The factor tables are as follows:
Figure: 34 TAC §29.11(a)

(b) The board of trustees may change the tables or adopt new tables from time to time by amending this section; provided, however, that any such change does not result in any retiree or member eligible for service retirement with an unreduced annuity as of the date of the change receiving a smaller benefit than the benefit computed immediately before the change. [~~Information regarding and/or copies of these tables may be obtained by contacting Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698, (512) 542-6400.~~]

§29.15. Termination of Employment.

(a) Employment in any position by a TRS-covered employer, regardless of compensation, during the first month following a [~~that~~] person's effective date of retirement, or during the first two months following a person's effective date of retirement if the retirement was established by using Government Code §824.002(d), revokes the retirement and requires a return of any benefits received under retirement.

(b) A member who is eligible for normal age retirement and who has a contract or agreement for future employment that[~~, which~~] does not qualify for one of the exceptions in Government Code §824.602[~~,~~] has not ended all employment with a TRS covered employer[~~,~~] and may not retire and receive any benefits. Contracts or work agreements for employment that do not qualify for one of the exceptions in that section must be negotiated after the break in service required in Government Code §824.005.

(c) (No change.)

§29.21. Beneficiary Tables.

Tables for Unisex Joint Beneficiary Life furnished by the TRS actuary of record (actuary) will be used in calculating a life expectancy under §824.1013 [~~§824.1012~~] of the Government Code. A fraction of a year shall be converted to whole months with any partial month being rounded upward to a full month. Life expectancy shall be determined as of the date of the retirement in question and the age of the original beneficiary at that time. The Teacher Retirement System of Texas adopts the actuary's August 1997 Tables for Unisex Joint Beneficiary Life.

Figure: 34 TAC §29.21 (No change.)

§29.24. Purchase of Credit.

Members who are notified of their approval for disability benefits shall have 30 days from the date of the letter notifying them of their approval in which to purchase credit for withdrawn or any other applicable special service credit[~~, to the extent that payment for the special service credit is within the limitation of the Internal Revenue Code §415~~].

§29.26. Discontinuance of Disability Benefits.

(a) (No change.)

(b) A disability retiree is restored to active service in one of the following ways:

(1) by certification of the medical board as provided in Government Code §824.307(a);

(2) by notifying TRS in writing of the retiree's intention to return to active service and actually returning to a position eligible for TRS membership; [~~or~~]

(3) by working longer than allowed under the one-time trial period allowed in Government Code §824.602(g); or

(4) [~~(3)~~] by refusing to submit to a required medical examination or provide documents relating to a required examination for more than one year.

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

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

Filed with the Office of the Secretary of State on October 14, 2010.

TRD-201005865

Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438

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SUBCHAPTER B. DEATH BEFORE RETIREMENT

34 TAC §29.34

The Teacher Retirement System of Texas (TRS or system) proposes amending §29.34 concerning death and survivor benefits. The proposed amendment arises from TRS' four-year rule review of Chapter 29, Subchapter B, in Title 34, Part 3, of the Texas Administrative Code. Chapter 29 addresses retirement plan benefits, including service and disability retirement, active member death benefits, deferred retirement option plan (DROP), partial lump sum option (PLSO), and proportionate retirement. Subchapter B of Chapter 29 establishes policies relating to member death and survivor benefits when a TRS member dies before service or disability retirement.

Section 29.34 concerns events affecting payment of death and survivor benefits. TRS proposes deleting a requirement in the rule that a beneficiary select the benefit plan payment within 60 days after TRS provides the claim information. TRS regularly extends this period.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that proposed amended §29.34 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to reflect current practices concerning the timeframe in which a beneficiary may select a death or survivor benefit plan payment.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amended rule is proposed under the following sections of the Government Code: §824.402, Government Code, which authorizes the Board to prescribe by rule the manner of payment of benefits upon the death of an active member under §824.402; and §825.102, which authorizes the Board to adopt rules for eligibility for membership, for the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-Reference to Statute: The proposed amendment to §29.34 affects Chapter 824, Subchapter E, of the Government Code.

§29.34. Events Affecting Payment.

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

(e) [~~An adult beneficiary or guardian of a minor beneficiary is required to make a selection of payment within 60 days after the claim for benefits is provided by TRS. In circumstances of judicial or administrative proceedings or unusual hardship, the executive director or the executive director's designee may extend this period for a reasonable time.~~] A beneficiary may change a selection of payment before the issuance of any warrant or electronic payment to the beneficiary in full or partial payment of death or survivor benefits pursuant to the selection.

This 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. POSTRETIREMENT INCREASES

34 TAC §29.40

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

The Teacher Retirement System of Texas (TRS or system) proposes repealing Subchapter C and the lone section in that subchapter, §29.40, both of which concern postretirement increases. The repeal is proposed in connection with TRS' statutory four-year rule review of Chapter 29, Subchapter C, in Title 34, Part 3, of the Texas Administrative Code. Chapter 29 addresses retirement plan benefits, including service and disability retirement, active member death benefits, deferred retirement option plan (DROP), partial lump-sum option, and proportionate retirement. Subchapter C reflects legislative changes made in 1981 with respect to the recalculation of retirement annuities and cost of living adjustments.

Section 29.40 concerns the constructive election of recalculated benefits by eligible retirees and beneficiaries under the 1981 legislation. Adopted by TRS to administer that legislation, §29.40 presumed that the recalculation was elected if it resulted in a greater benefit than the percentage increase provided by the same legislation, unless the retiree or beneficiary waived the recalculation in writing. TRS proposes repealing Subchapter C and §29.40 because all the elections and recalculations associated with the 1981 legislation have been implemented.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that proposed repeal of Subchapter C and §29.40 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the repealed rule.

For each year of the first five years that the proposed repealed rule will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to delete an obsolete subchapter and section of TRS' rules.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed repealed rule because all the elections and recalculations associated with the 1981 legislation have been implemented. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The proposed repeal of Subchapter C and §29.40 is authorized under §825.102 of the Government Code, which authorizes the Board to adopt rules for eligibility for membership, for the administration of the funds of the retirement system, and for the transaction of the business of the Board.

Cross-Reference to Statute: No other codes, articles, or sections are affected.

§29.40. Election of Recalculation of Benefit.

This 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. DEFERRED RETIREMENT OPTION PLAN

34 TAC §29.63

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §29.63, concerning the Deferred Retirement Option Plan (DROP) and the deadline to purchase special service credit as a DROP participant. The proposed amendments arise from TRS' statutory four-year rule review of Chapter 29, Subchapter E, in Title 34, Part 3, of the Texas Administrative Code (TAC). Chapter 29 addresses retirement plan benefits, including service and disability retirement, active member

death benefits, DROP, partial lump sum option, and proportionate retirement. Subchapter E implements the DROP program. A member who elected to participate in DROP ceased to accrue additional retirement benefits during years of DROP participation. Instead, TRS transferred amounts representing a portion of the accrued retirement benefit into a DROP account for the member. The member can receive the accumulated amount including interest at retirement. DROP is no longer open to new participants; the deadline for an election to participate in DROP was December 31, 2005, but TRS retains rules to administer this benefit feature for members who elected DROP participation before the deadline and have not yet retired.

The proposed amendments to §29.63 clarify references to applicable provisions in the rule itself relating to foreclosed opportunities enacted by the legislature for members to elect to discontinue their DROP participation. Additionally, TRS proposes deleting language in subsection (d) of the rule relating to the Internal Revenue Code §415(c) limitations on annual contributions by a member. The limitations still apply, but in 2008 TRS amended its rules at 34 TAC §§29.50, 29.51, and 29.55 to adequately address those limitations. Deleting redundant language addressing the same limitations in §29.63 will reduce unnecessary repetition.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that proposed amendments to §29.63 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to clarify internal references to other provisions and to eliminate redundant language in the rule.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to Statute: The proposed amendments to §29.63 relate to §824.805 of the Government Code, which concerns the legislative windows for electing to discontinue DROP participation.

§29.63. Deadline for Purchase of Special Service Credit.

(a) Except as provided in subsection (b) of this section [~~Pursuant to Government Code §824.803(e)~~], a member who elects to participate in the Deferred Retirement Option Plan (DROP) but also desires to purchase special service credit must purchase all special service credit eligible for purchase on or before the effective date of the member's DROP participation. Special service credit that a member would otherwise become eligible to purchase during DROP participation may not be purchased after the effective date of DROP participation. Also, an election to participate in DROP disqualifies any state personal or sick leave accumulated at the time of the effective date of the member's DROP participation as well as such leave accumulated during participation in DROP from being used in calculating the number of days or hours required to purchase state personal or sick leave at the time of actual retirement.

(b) A member participating in DROP on September 1, 2001, was permitted to elect, before December 31, 2001, to discontinue participation in DROP on a form prescribed by and filed with TRS. Additionally, a member participating in DROP on September 1, 2005, or whose period of participation in the plan expired on or before September 1, 2005, but who has not retired on or before that date may, before December 31, 2005, elect to discontinue participation in DROP on a form prescribed by and filed with TRS. If a member discontinued participation in DROP as described in this subsection [~~pursuant to Government Code §824.805(b)~~], this rule shall not be deemed to bar the member from purchasing special service credit for which the requirements have been earned or met before or during the member's participation in DROP.

(c) A [~~Further, a~~] member who completes the period of participation in DROP and who returns to employment with a TRS-covered employer without having retired may purchase prior to retirement any special service credit for which the member is eligible and for which the requirements have been earned or met entirely after the member's participation in DROP.

[~~(d) The purchase of special service credit before or after participation in DROP shall comply with applicable plan qualification requirements, including the limits on annual contributions for purchase of service credit authorized under Government Code §823.006.~~]

This 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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Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
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SUBCHAPTER F. PARTIAL LUMP-SUM PAYMENT

34 TAC §29.70

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §29.70, concerning the distribution of a partial lump-sum option payment. The proposed amendments arise from TRS' statutory four-year rule review of Chapter 29, Subchapter F, in Title 34, Part 3, of the Texas Administrative Code (TAC). Chapter 29 addresses retirement plan benefits, including service and disability retirement, active member death

benefits, deferred retirement option plan, partial lump sum option, and proportionate retirement. Subchapter F implements statutory provisions concerning the partial lump-sum option. The rules in the subchapter establish policies and procedures for distributing a partial lump-sum option payment, provide factor tables for calculating the actuarially reduced annuity to reflect the selection of a partial lump-sum option, and implement eligibility requirements for the partial lump-sum option.

The proposed amendments to §29.70 clarify and provide additional notice that a member's election of a partial lump-sum option or failure to elect a partial lump-sum option may not be changed after the first annuity payment or the due date of the payment, whichever is later. The deadline also applies to the amount of the lump sum the member chooses to receive upon electing the partial lump-sum option. (A member electing the partial lump-sum option may choose to receive a lump sum equal to 12, 24, or 36 months of the standard service retirement annuity the member would have received if it were not actuarially reduced to reflect the lump-sum distribution.)

The proposed amendments reflect TRS administrative and Board of Trustees' decisions interpreting and applying the related enabling statute, §824.2045 of the Government Code, which allows the partial lump-sum option to be elected only once and only by a member; a retiree is not a member. Further, the proposed amendments are consistent with other provisions regarding a member's deadline to make, change, or revoke a decision regarding retirement or annuity payment options or plans. Under §824.201 of the Government Code, a member may revoke the member's retirement application or make, revoke, or change the available selection of an optional service retirement annuity before TRS makes the first annuity payment or the first annuity payment becomes due. Similarly, §824.206 of the Government Code provides that a retiree may not change the retiree's choice of service retirement annuity payment plans after the first payment has been made or has become due.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that proposed amendments to §29.70 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to clarify and provide additional notice to TRS members about the cut-off point for changing their election or non-election of the partial lump-sum option and, if elected, their choice of the amount of the lump sum distribution.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §824.2045(h) of the Government Code, which authorizes the Board to adopt rules for the implementation of the partial lump-sum option under §824.2045, and §825.102 of the Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to Statute: No other codes, articles, or sections are affected.

§29.70. Distribution.

(a) The election of the partial lump-sum option, including the selection of the amount of the lump-sum distribution, or an application for retirement without an election of the partial lump-sum option under §824.2045, Government Code, may not be changed after the later of the date on which the retirement system makes the first annuity payment or the date the first payment becomes due. The partial lump-sum option payment shall be made at the same time as the initial retirement annuity payment is made. For those retirees selecting two or three annual lump-sum payments, the second and third payment shall be made on the appropriate anniversary date of the due date of the initial lump-sum payment. No interest will be paid on any lump-sum amounts paid in the second year, third year, or at any other time.

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

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

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SUBCHAPTER G. PROPORTIONATE RETIREMENT

34 TAC §29.81, §29.82

The Teacher Retirement System of Texas (TRS or system) proposes new §29.81 and §29.82 concerning the determination of eligibility and calculation of final average salary by TRS under the Proportionate Retirement Program. The proposed new rules arise from TRS' statutory four-year rule review of Chapter 29, Subchapter G, in Title 34, Part 3, of the Texas Administrative Code. Chapter 29 addresses retirement plan benefits, including service and disability retirement, active member death benefits, deferred retirement option plan, partial lump sum option, and proportionate retirement. Subchapter G concerns the Proportionate Retirement Program.

Proposed new §29.81 concerns the determination of TRS service retirement eligibility under the Proportionate Retirement Program. The new rule clarifies that, to meet TRS service retirement eligibility, TRS members may combine their TRS service with that credited in other public retirement systems

under the Proportionate Retirement Program even if they do not simultaneously retire from any other system when they retire from TRS.

Proposed new §29.82 concerns the calculation of final average salary for members eligible for TRS service retirement under the Proportionate Retirement Program. The proposed new rule addresses the situation in which a TRS member is eligible to retire from TRS under the Proportionate Retirement Program but has fewer years of service credit than is otherwise required under the applicable formula to compute final average salary. The new rule clarifies that the final salary average of a member eligible to retire from TRS under the Proportionate Retirement Program will be computed using the salaries for the number of years credited in TRS.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that proposed new §29.81 and §29.82 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed new rules.

For each year of the first five years that the proposed new rules will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to clarify the methodologies used by TRS in determining eligibility and calculating final average salary under the Proportionate Retirement Program.

Mr. Welch and Mr. Jung have determined that there is no measurable economic cost to entities or persons required to comply with the proposed rules. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The new rules are proposed under the following statutes: §803.401(a) of the Government Code, which authorizes the TRS Board of Trustees (board) to adopt rules it finds necessary to implement the Proportionate Retirement Program provided by Chapter 803 of the Government Code; and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, for the administration of the funds of the retirement system, and for the transaction of the business of the board.

Cross-reference to Statute: The proposed new rules affect Chapter 803 of the Government Code, concerning the Proportionate Retirement Program.

§29.81. Eligibility of Member.

A member may use combined service under Chapter 803, Government Code, to meet TRS service retirement eligibility if the member is eligible for retirement in each of the other systems in which any of the combined service is credited, even if the member does not actually retire from any other system simultaneously with the retirement under TRS.

§29.82. Calculation of Salary Average.

When a member is eligible to retire from TRS under the Proportionate Retirement Program but has less TRS service credit than is required in the applicable formula to compute the final average salary, the final average salary will be computed using the salaries for the years of service credited in TRS.

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

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CHAPTER 35. PAYMENTS BY TRS

34 TAC §35.1, §35.2

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §35.1, concerning payment errors, and §35.2, concerning rollovers from TRS. The proposed amendments arise from TRS' statutory four-year rule review of Chapter 35 in Title 34, Part 3, of the Texas Administrative Code (TAC). Chapter 35 generally addresses payments by TRS, including the correction of payment errors and the payment of eligible rollover distributions from TRS.

Section 35.1 concerns computation errors by TRS in determining a payment amount. The rule implements TRS' authority to correct benefit processing errors, including errors in TRS participant files, and to adjust future payments accordingly. The first proposed amendment to §35.1 would clarify in subsection (a) that an error in TRS' making a payment in connection with a Qualified Domestic Relations Order (QDRO) under Chapter 804 of the Government Code could be corrected pursuant to the rule. Section 35.1 currently refers just to correcting an error made in paying an alternate payee who elects payment in lieu of a QDRO under §804.005 of the Government Code. The second proposed amendment to §35.1 would clarify in a new subsection (f) that the failure to timely notify TRS of an annuitant's death is not considered an error under the rule or the related statutes in the Government Code, §802.1024 and §802.1025. The recovery or payment-adjustment periods for TRS to correct the kind of payment "errors" intended under the rule generally are too brief in the case of untimely death notices. The administrative deadline to institute recovery of an overpayment (90 days) and the limitations period on how many years of overpayments TRS may recover (3 years before discovery of the overpayment) because of a payment error are often too short to enable TRS to collect overpayments made after an annuitant dies and the death is not timely reported to or discovered by TRS.

Section 35.2 allows an eligible distributee to elect to have any portion of an eligible rollover distribution made by TRS paid directly to an eligible retirement plan, a traditional or Roth IRA, or an individual retirement annuity. The proposed amendments would specify that any foreign bank to which the distributee directs TRS to make the rollover payment must satisfy related requirements under the federal tax code. The proposed amend-

ments also would align the TRS rule with the tax code terminology.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments to §35.1 and §35.2 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to clarify administrative provisions and provide additional public notice regarding the types of payment errors for which TRS is responsible and the types of trusts or custodial accounts to which TRS may pay a rollover distribution in compliance with federal tax law.

Mr. Welch and Mr. Jung have determined that any economic cost to entities or persons required to comply with the proposed rules will be none or negligible. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amended rules are proposed under §825.102 of the Government Code, which authorizes the TRS Board of Trustees (board) to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board. The amendments to §35.2 are also proposed under §825.506 of the Government Code, which authorizes the board to adopt rules to modify the retirement benefit plan to the extent necessary for it to be a qualified plan under federal law.

Cross-reference to Statute: The proposed amendments to §35.1 affect Chapter 804 of the Government Code and §802.1024 and §802.1025 of the Government Code.

§35.1. Payment Error.

(a) If any error in the records, including errors caused by the administrative process, results in any member, retiree, beneficiary, or alternate payee, as that term is defined under Chapter 804 of the Government Code, including an alternate payee under §804.005 of the Government Code, [~~under Gov't Code Section 804.005~~] receiving more or less than the recipient would have been entitled to receive had the records been correct, the Teacher Retirement System of Texas (TRS) shall correct such error and so far as practicable shall adjust any future payment in such a manner that the actuarial equivalent of the benefit to which the recipient was correctly entitled will be paid. The adjustment may be made to one or more future payments or to payments for as long as the life of the recipient, at the discretion of TRS.

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

(d) TRS may not recover from a person entitled to receive payments from TRS any overpayment made more than three years before the discovery of the overpayment. [~~This subsection does not apply to recovery of any payments made after the death of a retiree or beneficiary if such payments were not due because of the death of the recipient but were paid because TRS did not receive notice of the recipient's death.~~]

(e) (No change.)

(f) This section and §802.1024 and §802.1025 of the Government Code do not apply to the collection of any payment made after the death of an annuitant if such payment was not due because of the death of the annuitant but was paid because TRS did not discover or receive notice of the annuitant's death.

§35.2. Direct Rollovers from TRS.

(a) Notwithstanding any provision of the retirement plan to the contrary that would otherwise limit a distributee's election under this section, an eligible distributee of an eligible rollover distribution from the Teacher Retirement System of Texas (TRS) may elect, at the time and in the manner prescribed by TRS, to have any portion of the distribution paid directly to an eligible retirement plan or a Roth IRA specified by the distributee in a direct rollover, to the extent permitted by Internal Revenue Code of 1986 (IRC), as amended, and guidance issued thereunder.

(b) To the extent permitted under the IRC, as amended, an individual beneficiary of a TRS participant, other than a surviving spouse or alternate payee, who is an eligible distributee of an eligible rollover distribution from TRS may elect, at the time and in the manner prescribed by TRS, to have any portion of the distribution paid directly to a traditional or Roth individual retirement account (IRA) or individual retirement annuity established for the purpose of receiving the distribution, specified by the distributee in a direct rollover, that shall be treated as an inherited IRA or annuity. A trust that is a beneficiary may be treated as a beneficiary eligible to make such an election only to the extent permitted under the IRC, as amended.

(c) An eligible rollover distribution may generally only be transferred in a direct rollover to an "eligible retirement plan." An "eligible retirement plan" must use a trust established within the United States of America (U.S.) and maintained as a U.S. domestic trust, a custodial account that satisfies IRC §401(f)(2) (generally requiring a U.S. entity), or an annuity contract issued by an insurance company licensed to do business in the U.S.

(1) Notwithstanding the requirement of this subsection, a direct rollover may be made to a foreign trust that is part of a stock bonus, pension, or profit-sharing plan established outside the U.S. if the receiving foreign trust would qualify for exemption from tax under IRC §401(a) and §501(a), except for the fact that it is a trust created or organized outside the U.S. To claim this exemption, in addition to any other information required by TRS, the distributee must furnish a written statement by an authorized official of the foreign trust stating that the foreign trust is a trust described under IRC §402(d). TRS will not make a transfer to the foreign trust without this statement.

(2) For a rollover distribution to an IRA, the IRA must be a trust created or organized in the U.S. and must be maintained at all times as a domestic trust in the U.S., the trustee of which must be a U.S. bank as defined in IRC §408(n) and the regulations thereunder, or who is listed as an approved non-bank trustee or custodian under Announcement 2007-47 or any successor publication of the IRS thereto.

(3) For a rollover distribution to a 403(b) custodial account or a 401(a) or 457(b) plan, the assets of which are held in a custodial account, the trustee must be a U.S. bank as defined in IRC §408(n) and the regulations thereunder, or a non-bank trustee or custodian who is listed as an approved non-bank trustee or custodian under Announcement 2007-47 or any successor publication of the IRS thereto.

(d) [~~(c)~~] TRS shall develop procedures to implement this section in accordance with the IRC [~~Internal Revenue Code of 1986~~], §401(a)(31), as amended, and related regulations. Terms used in this section, including eligible rollover distribution, eligible retirement plan, distributee, and direct rollover, shall have the meaning assigned in the IRC, as amended, and guidance issued thereunder.

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

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CHAPTER 39. PROOF OF AGE

34 TAC §39.1

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §39.1, concerning the establishment of date of birth. The proposed amendments arise from TRS' statutory four-year rule review of Chapter 39 in Title 34, Part 3, of the Texas Administrative Code (TAC). Chapter 39 and the single rule in that chapter, §39.1, address the acceptable methods by which an individual may establish his or her date of birth with TRS. TRS proposes amending §39.1 to update the citation to the statutory provisions governing the delayed registration of a birth certificate.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that proposed amended §39.1 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to provide the current reference to applicable law.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amended rule is proposed under §825.102 of the Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-reference to Statute: The proposed rule affects Chapter 192, Subchapter B, of the Health and Safety Code.

§39.1. Establishment of Date of Birth.

(a) Date of birth may be established by any one of the following:

(1) (No change.)

(2) a delayed birth certificate in accordance with Chapter 192, Subchapter B, Health and Safety Code [~~Texas Civil Statutes, Article 4477, Rule 51a~~], or a legible unaltered copy provided by the Bureau of Vital Statistics;

(3) - (13) (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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CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.10

The Teacher Retirement System of Texas (TRS or system) proposes amendments to §41.10, concerning eligibility to enroll in the retiree health benefit plan (TRS-Care). The proposed amendments arise from TRS' four-year rule review of Chapter 41, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code. Chapter 41 addresses the health benefit programs administered by TRS as trustee of those programs and the responsibilities of school districts that do not participate in the active employee health benefit plan (TRS-ActiveCare) to determine the comparability of the health coverage offered to their respective employees. Subchapter A concerns TRS-Care.

TRS proposes amending §41.10 to clarify the types of service credit that may be purchased for equivalent or special service credit in establishing eligibility to enroll in TRS-Care under the Rule of 80 or with 30 or more years of service credit in the retirement system. TRS also proposes consolidating into §41.10 references in other TRS rules concerning service credit at 34 TAC §§25.161 - 25.164, rules that in part currently address whether a given type of service credit may be used to establish eligibility for TRS-Care. As published elsewhere in this issue of the *Texas Register,* references to §41.10 in §§25.161 - 25.164 are proposed for deletion because proposed amended §41.10, the rule which addresses eligibility for TRS-Care, will address them.

None of the proposed amendments to §41.10 represent substantive changes to current policy.

Ken Welch, Chief Financial Officer, estimates that, for each year of the first five years that the proposed amendments to §41.10 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Ronnie Jung, Executive Director, have determined that the public benefit will be to clarify the types of service credit that may be purchased for equivalent or special service credit in establishing eligibility to enroll in TRS-Care.

Mr. Welch and Mr. Jung have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Welch and Mr. Jung have determined that there will be no effect on a local economy because of the proposed rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Jung have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments to §41.10 are proposed under §1575.052 of the Insurance Code, which authorizes the TRS Board of Trustees to adopt rules it considers necessary to implement and administer the TRS-Care program.

Cross-Reference to Statute: The proposed amendments affect Chapter 1575 of the Insurance Code, which provides for the establishment and administration of TRS-Care.

§41.10. Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care).

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

(c) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2005 must meet the following requirements:

(1) at the time of retirement, a member has at least 10 years of service credit in the system, which can include only the following types of service credit:

(A) service credit for actual service in Texas public schools;

(B) service credit transferred to TRS from ERS;

(C) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(D) service credit for unreported service that the member has purchased and that has been credited to the member's account;

(E) service credit for substitute service that the member has purchased and that has been credited to the member's account;

(F) up to five years of military service credit or re-employed veteran's (USERRA) service credit that the member has purchased and that has been credited to the member's account; and

(2) at the time of retirement, a member either:

(A) meets the Rule of 80, which is determined by having the sum of the individual's age and the amount of service credit in the [~~retirement~~] system noted in subparagraph (C) of this paragraph [~~including all service credit purchased for equivalent or special service credit~~], equal or exceed 80, regardless of whether the member had a reduction in the retirement annuity for early age retirement; or

(B) has 30 or more years of service credit in the [~~retirement~~] system noted in subparagraph (C) of this paragraph[~~, including all service credit purchased for equivalent or special service credit~~].

(C) for purposes of this paragraph (2) of this subsection, service credit in the system includes the following:

(i) the types of service credit in the system listed in paragraph (1) of this subsection;

(ii) out-of-state service credit under §25.81 of this title (relating to Out-of-State Eligible for Credit);

(iii) credit for developmental leave under §25.151 of this title (relating to Developmental Leave, Eligibility, Cost);

(iv) work experience service credit under §25.161 of this title (relating to Work Experience Service Credit);

(v) state personal or sick leave credit under §25.162 of this title (relating to State Personal or Sick Leave Credit);

(vi) credit under the service credit purchase option under §25.163 of this title (relating to Service Credit Purchase);

(vii) credit for service during a school year with a membership waiting period under §25.164 of this title (relating to Credit for Service During School Year With Membership Waiting Period); and

(viii) any other type of service credit purchased for equivalent or special service credit allowed by law or by rule adopted by TRS.

(d) - (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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CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS

34 TAC §47.4, §47.17

The Teacher Retirement System of Texas (TRS) proposes amendments to §47.4 and §47.17, concerning qualified domes-

tic relations orders. The proposed amendments arise from TRS' four-year rule review of Chapter 47 in Title 34, Part 3, of the Texas Administrative Code. Chapter 47 addresses court orders that divide TRS benefit payments, usually in connection with a divorce, and direct payment of part or all of a benefit to an "alternate payee." A qualified domestic relations order (QDRO) is a court order that has been reviewed by TRS and found to meet applicable requirements to allow TRS to make direct payment to an alternate payee of the portion of the TRS benefit awarded to the alternate payee, if, as and when the TRS benefit is payable to the TRS participant.

Section 47.4 concerns payment pursuant to qualified orders, including the timing of such payment. TRS proposes a clarifying amendment to reference the other rule in Chapter 47 with proposed changes, §47.17. If §47.17 applies in a certain circumstance, then it will affect timing of the payment of benefits in accordance with a QDRO under §47.4.

Section 47.17 addresses the calculation for alternate payee benefits before the commencement of a member's benefits that are subject to partial payment under a QDRO. TRS proposes changes to address various scenarios presented in court orders dividing retirement plan benefits under a QDRO. The proposed changes will explain in more detail how TRS determines the actuarial equivalent of the portion of a benefit awarded under a QDRO, in the event an alternate payee elects to receive such payment under §804.005 of the Government Code. The added language provides the method for calculating the alternate payee's actuarial equivalent benefit when the QDRO gives a stated (static) amount of monthly benefit, a maximum amount of total benefit, or a "no more than" monthly benefit.

Brian Guthrie, Deputy Director, estimates that, for each year of the first five years that proposed amendments to §47.4 and §47.17 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules. The proposed amendments elucidate TRS' current administration of payments made pursuant to a QDRO and methods for calculating an alternate payee's benefits in certain circumstances before the member receives a benefit.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Guthrie has determined that the public benefit will be to elucidate provisions relating to payments made pursuant to a QDRO and methods for calculating an alternate payee's benefits before the member's benefits begin.

Mr. Guthrie has determined that there will be no anticipated economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under the following sections of the Government Code: §825.102, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the system and the transaction of business of the board; and §804.003(n), concerning QDROs, and §804.005(g), concerning payment in certain circumstances in lieu of benefits awarded by a QDRO, each of which authorizes TRS to adopt rules to administer that respective section.

Cross-Reference to Statute: The proposed amendments affect 26 U.S.C. §414(p) of the Internal Revenue Code, relating to QDROs and qualified plans.

§47.4. Payment Pursuant to Qualified Orders.

If the order is determined to be a QDRO, TRS shall, subject to the limitations of this chapter, pay benefits in accordance with the order at the time of distribution of benefits or withdrawn contributions to a member or prior to a distribution to the member as provided in §47.17 of this title (relating to Calculation for Alternate Payee Benefits Before a Member's Benefit Begins). Any determination that an order is a QDRO is voidable or subject to modification if TRS determines that the provisions of the order have been changed or that circumstances relevant to the determination have changed.

§47.17. Calculation for Alternate Payee Benefits Before a Member's Benefit Begins.

(a) - (i) (No change.)

(j) To calculate the member's adjusted standard annuity, there are two scenarios:

(1) the alternate payee elects a monthly income and survives until the member annuity commencement date (MACD); or

(2) the alternate payee elects monthly income and dies before the MACD [~~member annuity commencement date (MACD)~~].

(k) - (t) (No change.)

(u) In the event the total distribution amount awarded to the alternate payee in a QDRO is limited to a specific dollar amount, the following procedure will be followed to calculate the alternate payee's actuarial equivalent benefit:

(1) Determine the alternate payee's age as of the alternate payee's benefit commencement date.

(2) Calculate the alternate payee's actuarial equivalent monthly benefit by multiplying the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent. Compare the product to the specific dollar limit amount. If the specific dollar limit amount is the smaller amount, divide the specific dollar limit amount [~~dividing the total distribution amount, as limited,~~] awarded to the alternate payee by the life annuity factor at alternate payee's age to determine the alternate payee's monthly benefit. If the specific dollar limit amount is larger than the product of the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent, divide the product by life annuity factor at alternate payee's age to determine the alternate payee's monthly benefit.

(v) - (x) (No change.)

(y) In the event the amount of monthly retirement benefit awarded to the alternate payee in the QDRO is a stated monthly amount rather than a percentage, determine the alternate payee's actuarial equivalent benefit by dividing the stated monthly amount by the life annuity factor at the alternate payee's age.

(z) In the event the amount of monthly retirement benefit awarded to the alternate payee in the QDRO is a percentage of the

benefit but limited to no more than a stated monthly amount, determine the alternate payee's actuarial equivalent benefit by multiplying the member's accrued benefit times the life annuity factor at member's age times the alternate payee's percent, then dividing that product by the life annuity factor at alternate payee's age. If the amount derived from this calculation is smaller than the stated monthly amount, the amount calculated is the alternate payee's actuarial equivalent benefit. If the amount derived from this calculation is larger than the stated monthly amount, the alternate payee's actuarial equivalent benefit is calculated by dividing the stated monthly amount by the life annuity factor at the alternate payee's age.

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005945
Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 542-6438

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CHAPTER 51. GENERAL ADMINISTRATION

34 TAC §§51.1, 51.2, 51.7, 51.11, 51.12

The Teacher Retirement System of Texas (TRS) proposes amendments to §§51.1, 51.2, 51.7, 51.11, and 51.12, relating the general administration of the retirement system. The proposed amendments arise from TRS' four-year rule review of Chapter 51 in Title 34, Part 3, of the Texas Administrative Code. Chapter 51 addresses general administrative matters, including those relating to appointments to the Medical Board and Retirees Advisory Committee (RAC), vendor protests, waiver of employee-contribution deadline, TRS vehicles, Historically Underutilized Businesses (HUBs), and applicability of former laws on benefits (grandfathering provisions). The proposed amendments either update provisions to reflect current law or they elucidate TRS' current policies, procedures, or practices.

Section 51.1 concerns advisory and auxiliary committees. The section describes the committees that advise or otherwise serve the system and that are deemed necessary to assist the TRS Board of Trustees (board) in performing its duties, including the Medical Board, which reviews disability retirement matters, and the RAC, which reviews matters concerning the retiree health benefit program, TRS-Care. The Medical Board and RAC both make recommendations to the board. The rule does not apply to board committees composed of trustees; the board's bylaws address those committees. The proposed amendments update the sunset dates for the Medical Board and RAC and clarify a reference to the committees covered by the rule.

Section 51.2 concerns protest procedures for resolving vendor protests relating to purchasing issues. The proposed amendments reflect the Legislature's reorganization of purchasing functions administered by the Comptroller of Public Accounts (comptroller), Texas Facilities Commission, and Department of Information Resources. The proposed amendments update references to those agencies and their vendor protest rules that apply to the certain procurements for TRS, including those utilizing existing State of Texas master vendor agreements.

Section 51.7 concerns the assignment of TRS vehicles to staff. The proposed change corrects a typographical error in subsection (a) of the section.

Section 51.11 concerns efforts to procure goods or services utilizing HUBs. The proposed amendments reflect the legislative transfer of oversight of the state HUB program to the comptroller and would update references to the applicable HUB rules to those of the comptroller.

Section 51.12 concerns the applicability of certain benefits laws in effect before September 1, 2005. The section implements a 2005 legislative grandfathering provision (Senate Bill 1691, 79th Legislature, Regular Session) that preserves former law on three benefit provisions (i.e., qualifying for certain early-age retirement reduction factors, three-year salary average, and partial lump-sum option) for members who meet one or more of the following grandfathering requirements on or before August 31, 2005: attained at least age of 50; met the Rule of 70 (the sum of age plus years of service credit must equal 70 or greater); or had at least 25 years service credit. The proposed amendment in subsection (a) of §51.12 would clarify that, to be grandfathered, the retiring member must have met one of the grandfathering requirements while a member of TRS and may not qualify by meeting a requirement while a member of ERS or another Texas public retirement system. The retiring TRS member seeking to be grandfathered could apply previous service credited by ERS or another Texas public retirement system to be used under the ERS/TRS transfer program or proportionate retirement program. But the individual would have to meet one of the grandfathering requirements while a member of TRS. Consequently, a retiring TRS member could not be grandfathered if: (1) he or she was never a member of TRS on or before August 31, 2005, or (2) he or she had been a member of TRS on or before August 31, 2005, but did not meet any of the grandfather criteria at the time of termination of membership. This clarification in the rule reflects existing TRS policy.

Brian Guthrie, Deputy Director, estimates that, for each year of the first five years that proposed amendments to §§51.1, 51.2, 51.7, 51.11, and 51.12 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Guthrie has determined that the public benefit will be to update provisions in the affected sections to reflect current law or to elucidate provisions relating to the general administration of the retirement system.

Mr. Guthrie has determined that there will be no anticipated economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie has determined that there will be no effect on a local economy because of the proposed rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie has also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698.

Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board. Amended §51.1 is also proposed under §825.114 of the Government Code, which requires TRS by rule to determine the amount and manner of any compensation or expense reimbursement to be paid members of an advisory committee performing service for the retirement system on an advisory committee. Amended §51.11 is also proposed under §2161.003 of the Government Code, which authorizes TRS to adopt the rules of the comptroller concerning historically underutilized businesses. Amended §51.12 is also proposed under §824.2045 of the Government Code, which authorizes the Board to adopt rules for the implementation of §824.2045 relating to the partial lump-sum option.

Cross-Reference to Statute: The proposed amendments to §51.1 affect §825.204 of the Government Code, which requires the TRS Board to appoint a medical board; §825.114 of the Government Code, which authorizes the Board to establish advisory committees as it considers necessary; Chapter 1575, Subchapter H (§§1575.351 - 1575.363), of the Insurance Code, which addresses advisory committees and provides for the appointment of credentialing committees by TRS as trustee of TRS-Care; and Chapter 1575, Subchapter I (§§1575.401 - 1575.408), of the Insurance Code, which provides for the appointment and expense reimbursement of the Retirees Advisory Committee. The proposed amendments to §51.11 affect §825.514 of the Government Code, which states that the system is subject to provisions relating to historically underutilized businesses, including Chapter 2161 of the Government Code. The proposed amendments to §51.12 affect the following sections of the Government Code: §824.202 relating to eligibility for service retirement, §824.203 relating to standard service retirement benefits, and §824.2045 relating to the partial lump-sum option.

§51.1. Advisory and Auxiliary Committees.

(a) The following committees are created for a period which will expire at the end of the next sunset review for the Teacher Retirement System of Texas (TRS) which is September 1, 2019 [~~2007~~], unless continued by the outcome of the sunset process, to advise or otherwise serve the retirement system and are deemed necessary to assist the Board of Trustees in performing its duties:

(1) a Medical Board, composed of three licensed physicians as provided by §825.204, Government Code; and

(2) a Retirees Advisory Committee for the health benefits program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care), composed as provided by Subchapter I of Chapter 1575, Insurance Code.

(b) The duties of a committee under this section [~~these committees~~] are established by applicable statute or policies of the Board of Trustees.

(c) The members of the Medical Board shall be paid, as independent contractors, fees and expenses in accordance with contracts negotiated by the executive director or his designee subject to the applicable resolutions, policies, and annual budget adopted by the Board of Trustees. To the extent advisory committees are composed of independent contractors they are to be considered consultants employed by the retirement system under the authority recognized by §2254.024, Government Code.

(d) Members of the Retirees Advisory Committee for TRS-Care do not serve as independent contractors and are entitled only to reimbursement for actual and reasonable expenses incurred in performing functions as members of the committee.

§51.2. Vendor Protests, Dispute Resolution, and Hearing.

(a) The purpose of this section is to provide a procedure for vendors to protest purchases made by the Teacher Retirement System of Texas (TRS). Protests of purchases [~~Purchases~~] made by the Texas Facilities Commission (facilities commission) [~~Building and Procurement Commission~~] on behalf of TRS are addressed in 1 Texas Administrative Code Chapter 111, Subchapter C (relating to Complaints and Dispute Resolution). Protests of purchases [~~Texas Administrative Code, Title 1, Chapter 111. Purchases~~] made by the Department of Information Resources (DIR) on behalf of TRS are addressed in 1 Texas Administrative Code Chapter 201, §201.2 (relating to Procedures for Complaints, Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures). Protests of purchases made by Texas Procurement and Support Services of the Comptroller of Public Accounts (comptroller's office) on behalf of TRS are addressed in 34 Texas Administrative Code Chapter 20, §20.384 (relating to Protests). The rules of the facilities commission, DIR, and the comptroller's office are in the Texas Administrative Code, which is on the Internet website of the Office of the Secretary of State, Texas Register Division at: www.sos.state.tx.us/tac/index.shtml [~~Texas Administrative Code, Title 1, Chapter 201~~].

(b) (No change.)

(c) A formal protest must be sworn and contain:

(1) (No change.)

(2) a specific description of each act alleged to have violated the statutory provision(s) identified in paragraph (1) of this subsection [~~section~~];

(3) - (6) (No change.)

(d) - (k) (No change.)

§51.7. Assignment of TRS Vehicles.

(a) TRS vehicles are assets of the Teacher Retirement System of Texas (TRS) pension fund and, except as provided in subsection [~~subsections~~] (b) of this section, are assigned to the TRS motor pool, available for checkout and use in accordance with the provisions of the TRS vehicle policy adopted by TRS staff and in effect at the time of checkout or use.

(b) (No change.)

§51.11. Historically Underutilized Businesses.

For the purpose of making purchases with funds appropriated to it, the Teacher Retirement System of Texas (TRS) adopts by reference the rules of the Comptroller of Public Accounts (comptroller's office) in 34 Texas Administrative Code Chapter 20, Subchapter B (relating to Historically Underutilized Business Program). The rules of the comptroller's office are in the Texas Administrative Code, which is on the Internet website of the Office of the Secretary of State, Texas Register Division at: www.sos.state.tx.us/tac/index.shtml [~~promulgated by the Texas Building and Procurement Commission regarding historically underutilized businesses set forth in 1 TAC §§111.11-111.28 and the rule promulgated by the Department of Information Resources (DIR) set forth in 1 TAC §201.4~~].

§51.12. Applicability of Certain Laws in Effect Before September 1, 2005.

(a) A person who retires under the Teacher Retirement System of Texas (TRS) on or after September 1, 2005, and who meets

one or more of the following requirements on or before August 31, 2005, while a member of TRS is governed by provisions of state law relating to early retirement with at least twenty years of service credit under §824.202(c), Government Code, three year salary average under §824.203, Government Code, and the partial lump-sum [~~lump sum~~] option (PLSO) under §824.2045, Government Code, as those provisions existed prior to September 1, 2005:

(1) the person has attained age 50;

(2) the sum of the person's age and amount of service credit in the retirement system equals 70 or greater; or

(3) the person has at least 25 years of service credit in the retirement system.

(b) A member who meets at least one of the requirements of subsection (a) of this section by August 31, 2005, before termination of membership through withdrawal of member contributions or absence from service shall be considered as continuing to be eligible under subsection (a) of this section upon resumption of membership.

(c) Service that is credited on or before August 31, 2005 with another Texas public retirement system and that meets all requirements to be used for retirement eligibility under the proportionate retirement program or the ERS/TRS transfer program may be considered to determine eligibility of a TRS member under [~~paragraphs (2) and (3) of~~] subsection (a)(2) and (3) of this section.

(d) Purchased or reinstated service credit in the retirement system may be considered to determine eligibility of a TRS member under [~~paragraphs (2) and (3) of~~] subsection (a)(2) and (3) of this section if credited in accordance with uniform administrative requirements, including payment deadlines, established by the retirement system in order to complete processing for members who request purchase of service credit before August 31, 2005.

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005946
Brian Guthrie
Deputy Director
Teacher Retirement System of Texas
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 542-6438

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES
SUBCHAPTER D. HEALTH CARE SERVICES

The Texas Youth Commission (TYC) simultaneously proposes the repeal of §91.97, concerning Acquired Immune Deficiency Syndrome/HIV and new §91.97, concerning Acquired Immune Deficiency Syndrome/HIV.

The new rule has been restructured to provide better organization of sections relating to testing, confidentiality, reporting, housing, treatment, education, training, and access to services. Additionally, in accordance with recommendations of the United States Centers for Disease Control and Prevention, the new rule establishes that HIV/AIDS testing is part of routine laboratory testing upon admission to TYC.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

Rajendra Parikh, M.D., Medical Director, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be to provide for a safe and healthy environment for youth in TYC regarding HIV/AIDS education, testing, confidentiality, reporting, and counseling/treatment.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to policy.proposals@tyc.state.tx.us.

37 TAC §91.97

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

The repeal of this rule is proposed under Human Resources Code §61.034, which provides TYC with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed repeal implements Human Resources Code, §61.034.

§91.97. Acquired Immune Deficiency Syndrome/HIV.

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

Filed with the Office of the Secretary of State on October 12, 2010.

TRD-201005797
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 424-6475

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37 TAC §91.97

The new rule is proposed under: (1) Human Resources Code §61.034, which provides TYC with the authority to make rules appropriate to the proper accomplishment of its functions; and (2) Human Resources Code §61.076, which authorizes the commission to provide any necessary medical or psychiatric treatment to youth committed to its care.

The proposed rule implements Human Resources Code, §61.034.

§91.97. Acquired Immune Deficiency Syndrome/HIV.

(a) Purpose. The purpose of this rule is to provide for a safe and healthy environment for youth in Texas Youth Commission (TYC) residential facilities regarding HIV/AIDS education, testing, confidentiality, reporting, and counseling/treatment. Every individual is treated equally and every individual's right to privacy is respected.

(b) Definitions.

(1) AIDS--Acquired Immune Deficiency Syndrome as defined by the United States Centers for Disease Control (CDC).

(2) HIV--Human Immunodeficiency Virus.

(3) Test Result--Any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.

(c) Testing.

(1) Testing for HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS is part of routine laboratory testing upon admission to TYC and does not require a specific consent form.

(2) Except as provided by law, youth have the right to refuse HIV testing in writing, including routine HIV testing performed during admission.

(3) HIV/AIDS testing shall not be performed routinely as a result of an assault.

(4) HIV/AIDS testing may be performed on a youth under the following circumstances only:

(A) Upon admission to TYC;

(B) Upon request and/or consent by the youth after admission to TYC;

(C) As compelled by court order, following a request made by staff in accordance with Health and Safety Code §81.050 and agency policy relating to occupational exposure to reportable diseases, including AIDS/HIV infection; and

(D) Pursuant to a warrant obtained by the Office of Inspector General or other law enforcement.

(5) Blood may be collected for HIV testing only by nurses, medical providers, or by the Texas Department of State Health Services (DSHS) or its local testing designee.

(6) Post-test counseling shall be provided for youth with positive HIV/AIDS test results. Pre-test counseling shall be provided for any HIV test conducted after admission to TYC.

(d) Confidentiality. HIV/AIDS test results or a youth's HIV/AIDS status are confidential and may not be released or disclosed except to:

(1) the TYC medical director;

(2) the TYC director of nursing;

(3) a physician, nurse, or other health care personnel who has a legitimate need to know the information in order to provide for the youth's health and welfare;

(4) the youth's parent/guardian if the youth is under 18 years of age or with the youth's consent if the youth is over 18 years of age;

(5) any medical professional with a signed release from the youth or the youth's parent/guardian, as appropriate. The release must specifically state that test results are released;

(6) a TYC employee for a result obtained in accordance with Health and Safety Code §81.050 and subsection (c)(4)(C) of this section; or

(7) pursuant to law, any person with a legal right to obtain the information.

(e) Reporting. As required by state law, TYC reports any AIDS cases or HIV positivity of a youth diagnosed by a physician in accordance with the CDC standards to the appropriate DSHS authority through the facility medical provider.

(f) Housing. HIV positive youth will not be segregated from the general population based solely on positive HIV status. Housing assignments are made in accordance with §85.24 of this title.

(g) Treatment. HIV positive youth will be referred immediately to appropriate health care facilities or specialists for further evaluation, treatment, and counseling.

(h) Access to Services. Youth in TYC facilities shall not be denied equal access to appropriate medical services because of their AIDS/HIV status.

(i) Education.

(1) TYC provides ongoing training regarding AIDS to youth.

(A) All youth participate in an education session upon admission to TYC.

(B) Education continues as a routine segment of the academic program.

(2) HIV/AIDS education for youth is based on current, accurate scientific information provided by officially recognized authorities on public health. Information is communicated in a manner that youth comprehend and is sensitive to cultural and other differences.

(3) Education programs address topics including, but not limited to:

(A) disease and disease process;

(B) signs and symptoms;

(C) modes of HIV transmission, including high risk and criminal behaviors that are a potential risk for HIV transmission during confinement and after release;

(D) methods of prevention of HIV transmission;

(E) infection control procedures;

(F) comprehensive services available including treatment;

(G) confidentiality of medical information and the civil and criminal penalties for failing to adhere; and

(H) occupational precautions.

(j) Training.

(1) All direct care staff receive training initially at orientation and annually for review.

(2) Staff at district offices and Central Office receive educational pamphlets annually.

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

Filed with the Office of the Secretary of State on October 12, 2010.

TRD-201005798
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 424-6166

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 153. INTERNAL INQUIRIES

SUBCHAPTER A. INVESTIGATIONS OF ABUSE, NEGLECT, OR EXPLOITATION IN A FACILITY OPERATED BY THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

37 TAC §§153.1 - 153.7

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

The Texas Board of Criminal Justice proposes the repeal of §§153.1 - 153.7, concerning Investigations of Abuse, Neglect, or Exploitation in a Facility Operated by the Texas Department of Criminal Justice.

The purpose of the repeal is to eliminate a duplicative process for the investigation of allegations of abuse, neglect, or exploitation of an elderly or disabled offender in a facility operated by the Texas Department of Criminal Justice (TDCJ).

Jerry McGinty, Chief Financial Officer for the TDCJ, has determined that for the first five years after the repeal, there will be no fiscal implications for state or local government.

Mr. McGinty has also determined that for the first five years after the repeal, there will not be an economic impact on the public because of the repeal. There will be no anticipated effect on small or micro businesses. The anticipated public benefit will be to ensure that any allegation of abuse, neglect, or exploitation of an elderly or disabled offender is referred for investigation in accordance with TDCJ existing procedures.

Comments on the proposed repeal should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Comments will be accepted for 30 days, following publication of the proposal in the *Texas Register.*

The repeal is proposed under Texas Human Resources Code §48.301.

Cross Reference to Statutes: Texas Government Code §492.013.

§153.1. Purpose.
§153.2. Application.
§153.3. Definitions.
§153.4. Abuse, Neglect, and Exploitation Defined.
§153.5. Reports and Investigations.
§153.6. Completion of Investigations.
§153.7. Confidentiality of Investigative Process and Report.

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

Filed with the Office of the Secretary of State on October 18, 2010.

TRD-201005949
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: November 28, 2010
For further information, please call: (936) 437-6003

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SUBCHAPTER B. PRIVATE REAL PROPERTY RIGHTS PRESERVATION

37 TAC §153.20

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

The Texas Board of Criminal Justice proposes the repeal of §153.20, concerning Private Real Property Rights Affected by Governmental Action.

The purpose of the repeal is to eliminate an unnecessary rule. The rule is unnecessary because the *Private Real Property Preservation Act* sets forth a procedure a governmental entity must follow to take real property that is privately owned, and requires the Office of the Attorney General to publish guidelines that must be followed in the event of such taking.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice (TDCJ), has determined that for the first five years after the repeal, there will be no fiscal implications for state or local government.

Mr. McGinty has also determined that for the first five years after the repeal, there will not be an economic impact on the public because of the repeal. There will be no anticipated effect on small or micro businesses. The anticipated public benefit will be to ensure that private real property rights affected by the TDCJ are governed by the *Private Real Property Preservation Act.*

Comments on the proposed repeal should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Comments will be accepted for 30 days, following publication of the proposal in the *Texas Register.*

The repeal is proposed under Texas Government Code §§2007.001 - 2007.045.

Cross Reference to Statutes: Texas Government Code §492.013.

§153.20. Private Real Property Rights Affected by Governmental Action.

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

Filed with the Office of the Secretary of State on October 18, 2010.

TRD-201005948
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: November 28, 2010
For further information, please call: (936) 437-6003

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CHAPTER 156. INVESTIGATIONS

37 TAC §156.1

The Texas Board of Criminal Justice proposes new §156.1, concerning Investigations of Allegations of Abuse, Neglect, or Exploitation of an Elderly or Disabled Offender.

The purpose of the new rule is to clarify the process for the investigation of allegations of abuse, neglect, or exploitation of an elderly or disabled offender received from the Texas Department of Family and Protective Services.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to ensure allegations of abuse, neglect, or exploitation of an elderly or disabled offender are promptly investigated.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The new rule is proposed under Texas Human Resources Code §48.301.

Cross Reference to Statutes: Texas Government Code §492.013.

§156.1. Investigations of Allegations of Abuse, Neglect, or Exploitation of an Elderly or Disabled Offender.

The Texas Department of Criminal Justice (TDCJ) shall investigate all allegations of abuse, neglect, or exploitation of an elderly or disabled offender received from the Texas Department of Family and Protective Services in accordance with ED-02.03, "TDCJ Ombudsman Program," ED-03.03, "Safe Prisons Program," and AD-16.20, "Reporting Incidents/Crimes to the Office of Inspector 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.

Filed with the Office of the Secretary of State on October 18, 2010.

TRD-201005947
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: November 28, 2010
For further information, please call: (936) 437-6003

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §215.109

The Texas Department of Motor Vehicles (department) proposes amendments to §215.109, concerning replacement dealerships.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments to §215.109 are proposed to expand the distance that a replacement dealership may be placed from the location of a closed dealership without being subject to protest by surrounding eligible same line-make dealers and to clarify notice requirements. During the 2009, 81st Legislature, Regular Session, House Bill 2640 made changes to the Occupations Code allowing dealers to file applications to relocate their dealerships up to two miles from an existing location without being subject to protest. These proposed amendments to §215.109 governing replacement dealers will bring this section into conformity with the changes previously made to protest parameters for relocated dealers. The Board expects that this will benefit regulated entities by increasing clarity and reducing confusion over the application of the protest rules in the two circumstances.

The proposed amendments to §215.109(4) will change the language of this section to allow a replacement dealership up to two miles from the location of a closed dealership without risk of protest, instead of only one mile from that dealership as the current language allows. Thus, the distance exempt from protest under §215.109 will be consistent with the distance exempt from protest under Occupations Code, §2301.652(c)(1) and 43 TAC §215.105. This consistency will promote clarity amongst manufacturers and distributors and dealers that wish to file applications or protests under either rule.

Also, the language of §215.109(2) is amended to clarify the notice requirements that manufacturers or distributors must meet in order to designate a replacement dealer in the market. The proposed language specifies that the manufacturer or distributor must notice all like-line dealerships within the county or a 15-mile radius from where the replaced dealership was located.

To ensure that the dealer and manufacturer/distributor communities are clear regarding the intended application of the rule, the Board announces that the proposed language regarding the change from one mile to two miles, if adopted, will apply to dealership closures that occur on or after February 1, 2011. The designated replacement dealership for a dealership closed prior to February 1, 2011 can only be within one mile of the closed location to be designated exempt from protest.

Additional proposed changes to this section are grammar and punctuation changes intended to improve the clarity of the section.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no significant fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Molly Cost, Director, Motor Vehicle Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Ms. Cost has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be increased clarity and reduced confusion for regulated entities regarding the application of the protest rules. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §215.109 may be submitted to Molly Cost, Director, Motor Vehicle Division, Texas Department of Motor Vehicles, Motor Vehicle Division, P.O. Box 2293, Austin, Texas 78768-2293. The deadline for receipt of comments is 5:00 p.m. on November 29, 2010.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.153 which provides the Board with the authority to adopt rules relating to Motor Vehicle Distribution.

CROSS REFERENCE TO STATUTE

Occupations Code, §§2301.453 and 2301.652.

§215.109. Replacement Dealership.

An application for a new motor vehicle dealer's license for a dealership intended as a replacement for a previously existing dealership shall be deemed to be an application for a "replacement dealership" required to be established pursuant to Occupations Code, §2301.453, and shall not be subject to protest under the provisions of §215.105 of this subchapter (relating to Notification of License Application; Protest Requirements), provided that:

(1) (No change.)

(2) the manufacturer or distributor [~~the franchisor~~] of the line-make gives [~~vehicle to be sold shall have given~~] notice to the division and to its other like-line dealers pursuant to Occupations Code, §2301.652(b) [~~in the area~~] within 60 days following the closing of the prior dealership[~~, that it intends to replace the prior dealership~~];

(3) (No change.)

(4) the location of the applicant's proposed dealership is not greater than two miles [~~one mile~~] from the location of the prior dealership.

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

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005912
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: November 28, 2010
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 11. SURFACE MINING AND RECLAMATION DIVISION

SUBCHAPTER C. SUBSTANTIVE RULES--URANIUM EXPLORATION AND SURFACE MINING

DIVISION 5. URANIUM EXPLORATION PERMITS AND PERMIT FEES

16 TAC §11.136

The Railroad Commission of Texas withdraws the proposed new §11.136 which appeared in the May 7, 2010, issue of the *Texas Register* (35 TexReg 3566).

Filed with the Office of the Secretary of State on October 12, 2010.

TRD-201005803
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: October 12, 2010
For further information, please call: (512) 475-1295

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 252. ADMINISTRATION

1 TAC §252.5

The Commission on State Emergency Communications (CSEC) adopts new §252.5, concerning employee training and education, without changes to the proposed text as published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6605).

The new section relates to the eligibility and obligations of CSEC's employees for training and education supported by CSEC.

No comments were received regarding proposed §252.5.

The new section is adopted as required by Government Code §656.048.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 13, 2010.

TRD-201005845
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Effective date: November 2, 2010
Proposal publication date: July 30, 2010
For further information, please call: (512) 305-6930

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1 TAC §252.8

The Commission on State Emergency Communications (CSEC) adopts an amendment to §252.8, concerning the State-level ESInet Advisory Council, without changes to the proposed text as published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6606).

The amendment changes the terms of council members from 2 to 3 years in order to implement staggered terms.

No comments were received regarding amended §252.8.

The amendment is adopted pursuant to Health and Safety Code §771.051(a)(1), (2), (4), (7), (8), (9), (10) and §771.052; and Government Code Chapter 2110.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 13, 2010.

TRD-201005846
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Effective date: November 2, 2010
Proposal publication date: July 30, 2010
For further information, please call: (512) 305-6930

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CHAPTER 253. PRACTICE AND PROCEDURE

1 TAC §253.2

The Commission on State Emergency Communications (CSEC) adopts new §253.2, concerning bid opening and tabulation, without changes to the proposed text as published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6609).

The new section is required by the state's Contract Purchase Procedure act of state agencies that make purchases (Texas Government Code §§2156.001 -2156.181).

No comments were received regarding proposed §252.5.

The new section is adopted as required by Government Code §2156.005(d).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 13, 2010.

TRD-201005847
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Effective date: November 2, 2010
Proposal publication date: July 30, 2010
For further information, please call: (512) 305-6930

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1 TAC §253.3

The Commission on State Emergency Communications (CSEC) adopts new §253.3, concerning contracting protest procedures,

without changes to the proposed text as published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6610).

The new section satisfies the requirements of the state's Purchasing: General Rules and Procedures act (Government Code §§2155.001 - 2155.510) to adopt procedures for resolving protests related to contract purchases.

No comments were received regarding proposed §253.3.

The section is adopted as required by Government Code §2155.076(a).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 13, 2010.

TRD-201005848
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Effective date: November 2, 2010
Proposal publication date: July 30, 2010
For further information, please call: (512) 305-6930

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8052

The Texas Health and Human Services Commission (HHSC) adopts an amendment to Title 1, Part 15, Subchapter J, Division 4, §355.8052, concerning Inpatient Hospital Reimbursement with changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8209). The text of the rule will be republished. The amendment updates the Medicaid inpatient hospital reimbursement methodology for state fiscal year 2011.

Background and Justification

The 2010-11 General Appropriations Act (Article II, HHSC, Rider 68, S.B. 1, 81st Legislature, Regular Session, 2009) requires HHSC to rebase acute care hospital rates within available funds. Specifically, the legislation requires HHSC to update the payment division standard dollar amounts (PDSDAs) and diagnosis related group (DRG) factors with more recent cost data. Rider 68 further instructs HHSC to proportionately reduce the rebased PDSDA rates to remain within available funds. The current rule was amended and adopted on August 9, 2010 to include these legislative provisions.

The PDSDA is a component of the Medicaid inpatient reimbursement formula for hospitals. The PDSDA is the weighted average dollar amount per claim calculated for all hospitals in a payment division, which is a grouping of hospital-specific standard dollar amounts (HSDAs). The HSDA is based on each hospital's average cost per claim for a designated base year, adjusted by the hospital's case mix index and a cost-of-living index.

HHSC was scheduled to implement the PDSDA rebased, proportionately reduced rates for services provided effective September 1, 2010, however the rebased rates would have resulted in some hospitals' SDA payments decreasing and some hospitals' SDA payments increasing, thus having positive and negative fiscal impacts. HHSC received feedback that hospitals were concerned about the substantial financial impact to their hospital as well as other hospitals in their geographic region if the rule adopted on August 9, 2010 were implemented.

Based on the comments received, HHSC believes that the implementation of proportional rebased SDAs may have unintended consequences to the provision of inpatient services in the state, and it is therefore necessary to adjust those SDAs in order to achieve the objectives of the Medicaid program. As a result, an amendment to this rule is being adopted that updates rates to more accurately reflect current costs, while allowing potentially adversely impacted hospitals time to adapt their business operations in a way that does not jeopardize the provision of services or otherwise restrict Medicaid recipients' access to care in their communities.

The methodology described in the amended rule limits to 10 percent the reduction of revenue to impacted hospitals. In order to achieve the objectives of Rider 68, the rule also proposes the adjustment of the proportional rebased SDAs to limit the increases in Medicaid revenue (for those hospitals that would receive an increase), to remain within appropriated funds.

In this adoption, HHSC has changed the language from the proposed rule to specify that HHSC will discontinue the application of the adjustments in subsection (d)(12)(B) and will transition to fully-rebased proportional PDSDAs beginning September 1, 2011. This transition plan has been added in subsection (d)(12)(B) and new clause (viii). The transition period will ensure access to care for Medicaid recipients statewide by mitigating the sudden reduction of revenue to impacted hospitals, while also ensuring hospital rates will be aligned with their most recent cost experience beginning in state fiscal year 2012. The transition period also will enable HHSC to review and, where necessary, revise the reimbursement methodology in accordance with future changes in state or federal law.

This adoption includes other minor, non-substantive changes to clarify the proposed rule in subsection (d)(2)(B)(iii) and (d)(12).

The rule changes described above will not result in a fiscal impact to the state. However, individual hospitals will experience changes in their reimbursement.

Comments

The 30-day comment period following publication of the proposed rule ended on October 11, 2010. During this period, HHSC received comments from 27 different entities regarding the amended rule. A summary of comments relating to the rule and HHSC's responses follows.

Comment: HHSC received six comments recommending that a specific transition plan to the proportional rebasing be included in the adopted rule. Some stated that the adopted rule should include the specific timing and computations of the transition plan. There were several suggested proposals on an acceptable transition plan, including only allowing the methodology in the rule to

be effective for three months, having the methodology end with the current state fiscal year, developing a three year transition plan with full proportional rebasing in the third year and allowing the proposed rebasing plan continue on until a new reimbursement system for inpatient services is developed.

Response: HHSC agrees with commenters that a transition plan should be developed and described in the rule. A transition plan has been added in subsection (d)(12)(B) and new clause (viii) providing that proportional rebased rates will be implemented in fiscal year 2012. HHSC believes that this transition period will accommodate hospitals that may experience reductions in Medicaid revenue and need time to adjust business operations without jeopardizing critical services. This transition schedule also restores predictability in the rate-setting process and enables HHSC to schedule rebasing efforts in 2013 for implementation in fiscal year 2014, as described elsewhere in this rule.

Comment: HHSC received one comment that recommended transitioning to the fully-rebased, proportionately reduced rates in three phases. The proposal would stop the estimated revenue reduction at 33% in the first year and 66% in the second year. In the third year, all hospitals would be paid at the proportionately-reduced rates. Another comment was received that recommended stopping the estimated revenue reduction at 25% the first year, 50% the second year and 75% the third year.

Response: HHSC disagrees that a longer transition plan is necessary. In order to achieve the objectives of Rider 68, HHSC believes that a shorter transition period is warranted. HHSC believes that the transition plan that has been added to the rule in subsection (d)(12)(B) is sufficient to mitigate the reduction of revenue of the impacted hospitals while also allowing for some increase in revenues for the positively impacted hospitals.

Comment: HHSC received 20 comments that were in favor of the amendment. These commenters indicated that the new amendment limiting revenue reductions resulting from the proportional rebasing would help avoid to the reduction or elimination of critical patient services. In addition, some comments stated that the proportional rebasing is punitive and disproportionately impacts efficient hospitals and those hospitals that provide a high volume of services to women and children. One comment stated that cost containment and limited growth should be rewarded over cost growth that greatly exceeds the rate of inflation.

Response: HHSC disagrees with comments that the proportional rebasing initiative is inequitable. Pursuant to applicable statutes and rules, inpatient rates are aligned with hospitals' costs of providing Medicaid services. HHSC believes that the potentially negative effects of rebasing that are described in these comments are a result of policies that are not addressed in this rulemaking.

Comment: HHSC received five comments indicating opposition to the rule amendment citing inequity of the rule proposal and urging HHSC to revoke the rule. These commenters indicated the main focus of Rider 68 was to rebase all hospitals' PDSDAs to a more recent cost basis and then equitably and proportionately reduce this amount across all hospitals to available funds. Commenters also testified that the previously adopted rule was developed through a public rule making process that this proposed rule did not go through. The public rule process for the rule adopted August 9, 2010 included vetting with the Hospital Payment Advisory Committee, Medical Care Advisory Committee and Health and Human Services Council, and during this process HHSC received comments and incorporated recommended changes into the current rule. The commenters indicated the proposed rule is not equitable and maintains rates that overpay certain hospitals at 90 percent of their computed overpayment, while continuing to underpay certain hospitals below 62 percent of their hospital cost.

Response: HHSC has determined that the transition plan that has been added to the rule in subsection (d)(12)(B) will ensure that hospital rates are proportional by state fiscal year 2012. The large financial impact to some hospitals under the proportional rebasing methodology could have jeopardized the provision of Medicaid services in those facilities and the access to care by Medicaid recipients in those communities. This rule mitigates the impact of the rate reductions that would have occurred under the proportional rebasing methodology by providing a transition period ending on August 31, 2011.

Comment: The following comments were received that did not specifically address the text of the rule amendment being considered:

Include Medicaid capitated managed care patient data in the rebasing computations.

Use departmental cost to charge ratios in the rebasing computations.

Recalibrate diagnostic related group weights for grouper changes in the MS-DRG system.

Adopt a new reimbursement methodology for Medicaid inpatient hospital services. There were several suggestions for changing the reimbursement methodology including implementing a system that more closely resembles the system Medicare uses to reimburse inpatient hospital services or developing a statewide rate with regional cost adjustments. Commenters stated that a new payment system needs to be developed that rewards efficient hospitals that provide quality care.

Request the State of Texas fully fund the inpatient hospital reimbursement methodology with increased appropriations.

Establishing a secure, user login website to publish and report hospital specific data available for all hospitals. The website should include preliminary and final MS-DRG weights, outlier thresholds, standard dollar amounts and other rebasing details.

Inflating the base-year cost on a midpoint-to-midpoint basis.

Incorporating the budget neutrality adjusted mean in calculating outlier thresholds.

Response: Because these comments did not address the specific proposed language in the rule amendment, HHSC did not amend the proposed language in response to these comments. HHSC may review these comments when it considers future rule amendments to the reimbursement methodology.

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021, and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§355.8052. Inpatient Hospital Reimbursement.

(a) Application and general reimbursement method.

(1) The prospective payment system described in this section applies to inpatient hospital payments.

(2) HHSC calculates reimbursement for a covered inpatient hospital service, determined in subsection (g) of this section, by multiplying the hospital's payment division standard dollar amount or final standard dollar amount, determined in subsection (d) of this section, by the relative weight for the appropriate diagnosis-related group, determined in subsection (e) of this section.

(3) HHSC will send a hospital an initial notification letter describing the hospital-specific and payment division standard dollar amounts resulting from the rebasing process referenced in subsection (d)(1) of this section. HHSC will send a hospital a final notification letter reporting the hospital's payment division standard dollar amount or final standard dollar amount for a given fiscal year or any portion thereof designated by HHSC, which may include any adjustment described in subsection (d) of this section.

(4) HHSC will rebase hospital-specific and payment division standard dollar amounts when funds are appropriated for that purpose or at its discretion.

(5) HHSC will rebase hospital-specific and payment division standard dollar amounts during the state fiscal year that is three years after the last rebasing year.

(b) Exceptions. The prospective payment system described in this section does not apply to the following types of hospitals for covered inpatient hospital services:

(1) In-state and out-of-state children's hospitals. In-state and out-of-state children's hospitals are reimbursed using the methodology described in §355.8054 of this title (relating to Children's Hospital Reimbursement Methodology).

(2) State-owned teaching hospitals. A state-owned teaching hospital is reimbursed in accordance with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) principles using the methodology described in §355.8056 of this title (relating to State-Owned Teaching Hospital Reimbursement Methodology).

(3) Freestanding psychiatric hospitals. A freestanding psychiatric hospital is reimbursed under the methodology described in §355.8060 of this title (relating to Reimbursement Methodology for Freestanding Psychiatric Facilities).

(c) Definitions. When used in this section, and §355.8054 and §355.8056 of this title, the following words and terms will have the following meanings, unless the context clearly indicates otherwise.

(1) Adjudicated--The approval or denial of an inpatient hospital claim by HHSC.

(2) Average base year cost per claim--One factor used in arriving at the hospital-specific standard dollar amount; the arithmetic mean of base year costs per claim for a hospital, obtained by dividing the sum of all base year costs per claim for that hospital by the number of base year claims in the set.

(3) Base year--A period of 12 consecutive months selected by HHSC.

(4) Base year claims--All Medicaid traditional fee-for-service (FFS) and Primary Care Case Management (PCCM) inpatient hospital claims for reimbursement filed by a hospital that:

(A) Have a date of admission occurring within the base year;

(B) Are adjudicated and approved for payment during the base year and the six-month grace period that immediately follows the base year or another grace period designated by HHSC and communicated in writing to all hospitals, except for such claims that have zero inpatient days;

(C) Are not claims for patients who are covered by Medicare; and

(D) Are not Medicaid spend-down claims.

(5) Base year cost per claim--One factor used in arriving at the hospital-specific standard dollar amount; the cost for a claim that would have been made to a hospital if HHSC reimbursed the hospital under methods and procedures used in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), also called the TEFRA cost for rebasing, described in subsection (d)(10) of this section, without the application of the TEFRA target cap. See also definition of TEFRA cost for rebasing in paragraph (34) of this subsection.

(6) Case mix index--The average relative weight of a hospital's base year claims, obtained by summing the hospital's relative weights for all base year claims divided by the total number of that hospital's base year claims.

(7) Cost-of-Living Index--An adjustment applied to hospital-specific standard dollar amounts based on the Market Basket Index to account for changes in cost of living.

(8) Cost outlier payment adjustment--A payment adjustment for a claim with extraordinarily high costs.

(9) Cost outlier threshold--One factor used in determining the cost outlier payment adjustment.

(10) Data entry error--An error resulting from mis-keyed or mistyped data that is different from the intended entry. This type of error does not include the omission of claims approved for payment after the base year and grace period.

(11) Day outlier threshold--One factor used in determining the day outlier payment adjustment.

(12) Day outlier payment adjustment--A payment adjustment for a claim with an extended length of stay.

(13) Diagnosis-related group (DRG)--The classification of medical diagnoses as defined in the Medicare DRG system or as otherwise specified by HHSC.

(14) Final settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year end cost report performed by HHSC within six months after HHSC receives the cost report audited by a Medicare intermediary, or in the case of children's hospitals, audited by HHSC.

(15) Final Standard Dollar Amount (SDA)--the PDSDA or other rate assigned to a hospital after application of all of the PDSDA adjustments described in this section.

(16) HHSC--The Texas Health and Human Services Commission or its designee.

(17) Hospital-specific standard dollar amount (HSDA)--One factor used in arriving at the payment division standard dollar amount; the average base year cost per claim for a hospital, adjusted by the case mix index and cost-of-living index.

(18) In-state children's hospital--A hospital located within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(19) Interim payment--An initial payment made to a hospital that is later settled to Medicaid-allowable costs, for hospitals reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(20) Interim rate--The ratio of Medicaid allowed inpatient costs to Medicaid allowed inpatient charges filed on a hospital's Medicare/Medicaid cost report, expressed as a percentage. The interim rate established during a cost report settlement for a DRG reimbursed hospital reimbursed under this section excludes the application of TEFRA target caps and the resulting incentive and penalty payments for a hospital's fiscal years ending on or after October 1, 2007.

(21) Market Basket Index--The Centers for Medicare and Medicaid Services (CMS) projection of the annual percentage increase in hospital inpatient operating costs, as defined in 42 C.F.R. §413.40.

(22) Mathematical error--An error that results from the erroneous application of variables, quotients, or functions within a methodology formula resulting in a different result than intended methodology results. This type of error does not include the omission of claims approved for payment after the base year and grace period.

(23) Mean length of stay (MLOS)--One factor used in determining the payment amount calculated for each diagnosis related group; for each diagnosis related group, the average number of days that a patient stays in the hospital.

(24) Military hospital--A hospital operated by the armed forces of the United States.

(25) New hospital--A hospital that was newly constructed and enrolled as a Medicaid provider after the end of the base year.

(26) Newly enrolled hospital--A hospital that was assigned a new Texas Provider Identification number (TPI) and was enrolled as a Medicaid provider after the end of the base year.

(27) Out-of-state children's hospital--A hospital located outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(28) Payment division--A group of hospitals whose calculated hospital-specific standard dollar amounts fall within a $100 range, where the $100 increments begin at zero.

(29) Payment division index (PDI)--A list of all payment divisions and their corresponding valid payment division standard dollar amounts.

(30) Payment division standard dollar amount (PDSDA)--The weighted average dollar amount per claim calculated for all hospitals in a payment division, adjusted pursuant to §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission), if necessary.

(31) Rebasing--Calculation of the TEFRA cost for base year claims for each Medicaid inpatient hospital. The TEFRA costs for base year claims will be used to recalculate HSDAs, PDSDAs, and DRG statistics (relative weight, mean length of stay, and day outlier threshold) using the methods described in this section.

(32) Relative weight--The weighting factor HHSC assigns to a diagnosis related group representing the time and resources associated with providing services for that diagnosis related group.

(33) State-owned teaching hospital--The following hospitals: University of Texas Medical Branch (UTMB); University of Texas Health Center Tyler; and M.D. Anderson Hospital.

(34) TEFRA cost for rebasing--One factor used in arriving at the hospital-specific standard dollar amount; Medicaid allowable charges for base year claims adjusted to cost by the interim rate derived from tentative or final settlement of cost reports that cover time periods in the base year, or a prior period, if a base year cost report is not available.

(35) TEFRA target cap--A limit set under the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) and applied to the cost settlement for a hospital reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA target cap is not applied to patients under age 21, and incentive and penalty payments associated with this limit are not applicable to patients under age 21.

(36) Tentative settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year-end cost report performed by HHSC within six months after HHSC receives an acceptable cost report filed by a hospital.

(37) Universal mean--Average base year cost per claim for all hospitals.

(38) Weighted hospital-specific standard dollar amount (HSDA)--One factor used in arriving at the payment division standard dollar amount; the product obtained by multiplying a hospital's hospital-specific standard dollar amount by the number of its base year claims.

(d) Payment Division Standard Dollar Amount (PDSDA) Calculations. HHSC will use the methodologies described in this subsection to determine the PDSDA for a hospital.

(1) Rebasing PDSDAs. HHSC may recalculate a hospital's PDSDA using base year claims. HHSC will not include claims that are adjudicated and approved for payment after the base year and subsequent six-month grace period. The six-month grace period is intended to allow HHSC to include as many base year claims as possible, given practical time constraints.

(2) Adjustment of PDSDAs.

(A) HHSC may adjust a hospital's PDSDA in accordance with §355.201 of this title using one or more of the methods described in paragraph (12) of this subsection.

(B) For a hospital that was inactive for reimbursement purposes during any period in which HHSC made an adjustment:

(i) HHSC will adjust the hospital's PDSDA accordingly; and

(ii) HHSC will assign the hospital to a payment division within the PDI that corresponds to the PDSDA as determined in clause (i) of this subparagraph; or

(iii) HHSC will assign the hospital a final SDA if adjustments are made to the hospital's PDSDA under paragraph (12) of this subsection.

(3) Hospital-specific standard dollar amount (HSDA). Using base year claims, HHSC calculates an HSDA for each hospital as follows:

(A) Determines the base year cost per claim, also called the TEFRA cost for rebasing, in accordance with paragraph (10) of this subsection;

(B) Sums the dollar amount for each hospital's base year costs per claim determined in subparagraph (A) of this paragraph;

(C) Calculates the average base year cost per claim by dividing the result in subparagraph (B) of this paragraph by the total number of base year claims for the hospital;

(D) Calculates the case mix index by summing the hospital's newly calculated relative weights for all base year claims divided by the total number of that hospital's base year claims;

(E) Divides the average base year cost per claim determined in subparagraph (C) of this paragraph by the hospital's case mix index determined in subparagraph (D) of this paragraph; and

(F) Multiplies the result in subparagraph (E) of this paragraph by the cost-of-living index described in paragraph (4) of this subsection to adjust costs from the base year to the rebased-rate year, which results in the HSDA.

(4) Cost-of-Living Index. HHSC updates HSDAs by applying a cost-of-living index to the HSDA established for the base year. HHSC uses the CMS Prospective Payment System Hospital Market Basket Index based on a federal fiscal year adjusted to a state fiscal year.

(5) Payment Divisions. HHSC groups hospital HSDAs into payment divisions by one-hundred-dollar ($100) increments beginning at zero. Each payment division is assigned a number in the PDI. For example, all hospitals with HSDAs between $1,700.00 and $1,799.99 are grouped together in payment division number 18 within the PDI.

(6) Payment Division Standard Dollar Amount (PDSDA).

(A) HHSC computes a PDSDA for all hospitals within a payment division as follows:

(i) multiplies each hospital's HSDA by the hospital's total number of base year claims, resulting in a weighted HSDA;

(ii) sums the weighted HSDAs determined in clause (i) of this subparagraph for all hospitals within a payment division; and

(iii) divides the result in clause (ii) of this subparagraph by the total number of base year claims for all hospitals within a payment division, which results in the PDSDA.

(B) The PDSDA calculation does not include data from the following types of hospitals:

(i) out-of-state hospitals;

(ii) military hospitals;

(iii) new or newly enrolled hospitals;

(iv) in-state and out-of-state children's hospitals;

(v) inpatient psychiatric hospitals; and

(vi) state-owned teaching hospitals.

(C) If a payment division has fewer than 20 total base year claims, HHSC considers that payment division to be invalid. Hospitals within that payment division are assigned a PDSDA equal to the mathematically closest valid PDSDA.

(D) Minimum PDSDA. The minimum PDSDA of $1,600.00 is applied to any hospital with an HSDA equal to or less than $1,600.00.

(7) Payment Division Index (PDI).

(A) After all hospitals have been assigned a payment division number, HHSC will adjust the standard dollar amount for that payment division in accordance with paragraph (12) of this subsection. The resulting PDSDA is the reimbursement rate for all hospitals assigned that payment division number, unless a hospital in that payment division is assigned a final SDA as a result of additional adjustments described in paragraph (12) of this subsection. The PDI is the list of all payment division numbers and the corresponding valid PDSDAs.

(B) If the resulting PDSDA is less than $1,600.00, the minimum PDSDA is applied.

(C) HHSC will assign a payment division designation to the universal mean plus the cost-of-living update used in the most recent rebasing calculation and will apply any adjustments under subparagraph (A) of this paragraph. The resulting amount is the PDSDA for the payment division assigned to hospitals listed in paragraph (8)(A) of this subsection.

(D) HHSC will assign a payment division designation to be used for a new hospital reimbursement rate. HHSC will calculate the rate as described in paragraph (8)(B) of this subsection and will apply any adjustments under subparagraph (A) of this paragraph, which will be the PDSDA for this designation.

(8) PDSDAs for specific types of hospitals.

(A) The following types of hospitals are assigned the PDSDA described in paragraph (7)(C) of this subsection:

(i) military hospitals;

(ii) out-of-state hospitals; and

(iii) newly enrolled hospitals.

(B) New Hospitals.

(i) For a new hospital, HHSC will locate the universal mean in an array of all hospitals' base year costs per claim from lowest to highest. HHSC will then determine the group of claims located three percentile points above the universal mean. The new hospital is assigned the lowest dollar value claim within that percentile group, plus the cost-of-living update calculated at the most recent rebasing, as its PDSDA.

(ii) This rate is effective for five years or until HHSC recalculates PDSDAs, whichever is earlier. After five years from the date HHSC applied the rate determined under clause (i) of this subparagraph, HHSC will assign the hospital the PDSDA described in subparagraph (A) of this paragraph if HHSC has not recalculated PDSDAs.

(iii) A replacement facility constructed for a hospital that is currently enrolled as a Medicaid provider is reimbursed using either the PDSDA or final SDA of the existing provider or the PDSDA for new hospitals, whichever is greater.

(iv) Any PDSDA assigned under this subparagraph is subject to paragraph (7) of this subsection.

(9) Merged hospitals.

(A) Notice. When two or more Medicaid participating hospitals merge to become one participating provider and the participating provider is recognized by Medicare, the participating provider must submit written notification to HHSC's provider enrollment contact, including documents verifying the merger status with Medicare. HHSC will assign to the merged entity a PDSDA, including adjustments, determined using a methodology described in subparagraph (B) of this paragraph for all hospitals involved in the merger.

(B) Determining a merged entity's PDSDA or final SDA. HHSC will use the following process to determine a merged entity's PDSDA or final SDA:

(i) When HHSC recognizes a merged entity after HHSC has completed a rebasing in which each of the merging hospitals

had been a participating provider and after which none of the merging hospitals were a replacement facility receiving the new-hospital rate as referenced in paragraph (8)(B)(iii) of this subsection, HHSC will determine the merged entity's PDSDA as follows:

(I) HHSC will calculate a new HSDA for the entity by combining the original base year cost per claim determined in paragraph (3)(A) of this subsection from the rebasing period for all hospitals involved in the merger;

(II) Using the resulting HSDA, HHSC will assign the merged entity to a payment division as described in paragraph (5) of this subsection. HHSC will reimburse the merged entity at the PDSDA corresponding to that payment division number within the PDI described in paragraph (7) of this subsection;

(III) HHSC will apply the resulting PDSDA to the surviving and terminated entities' Texas provider numbers retroactive to the date on which Medicare recognized the merged participating provider; and

(IV) HHSC will notify the merged entity of the PDSDA and the effective and termination dates of the Texas provider numbers for the involved hospitals.

(ii) When HHSC recognizes a merged entity involving at least one hospital having a PDSDA that is not based on the average base year cost per claim for that hospital, HHSC will assign the merged entity's PDSDA using the methodology in clause (iii) of this subparagraph. Hospitals in this category may include:

(I) New hospitals;

(II) Newly enrolled hospitals; and

(III) Hospitals assigned the new-hospital PDSDA based on construction of a replacement facility.

(iii) When HHSC recognizes a merged entity described in clause (ii) of this subparagraph, HHSC will determine the merged entity's PDSDA as follows:

(I) For each merging hospital, multiply the hospital's pre-merger PDSDA by the hospital's total number of claims for the state fiscal year claims file preceding the Medicare effective date of the merger;

(II) Sum the results of subclause (I) of this clause for all merging hospitals;

(III) Divide the result of subclause (II) of this clause by the total number of claims for all merging hospitals;

(IV) HHSC will assign the hospital to the payment division within the PDI that corresponds to the result of the calculation in subclause (III) of this clause;

(V) HHSC will apply the resulting PDSDA to the surviving and terminated entities' Texas provider numbers retroactive to the date on which Medicare recognized the merged participating provider; and

(VI) HHSC will notify the merged entity of the PDSDA and the effective and termination dates of the Texas provider numbers for the involved hospitals.

(iv) When HHSC recognizes a merged entity involving at least one hospital having a final SDA as a result of adjustments made to the entity's PDSDA under paragraph (12) of this subsection, HHSC will determine the merged entity's final SDA as follows:

(I) HHSC will multiply the PDSDA or final SDA of each merging hospital by the case mix from the most recent rebasing file for that hospital;

(II) HHSC will sum the results obtained in subclause (I) of this clause for all merging hospitals;

(III) HHSC will sum the case mix from the most recent rebasing file for all merging hospitals;

(IV) HHSC will divide the result obtained in subclause (II) of this clause by the result obtained in subclause (III) of this clause to determine the final SDA for the merged entity;

(V) HHSC will apply the resulting final SDA to the surviving and terminated entities' Texas provider numbers retroactive to the date on which Medicare recognized the merged participating provider; and

(VI) HHSC will notify the merged entity of the final SDA and the effective and termination dates of the Texas provider numbers for the involved hospitals.

(v) When HHSC recognizes a merged entity during a rebasing in which each of the merging hospitals had been a participating provider:

(I) HHSC will calculate a new HSDA by combining the amounts determined in paragraph (3)(A) of this subsection for all hospitals involved in the merger;

(II) Using the resulting HSDA, HHSC will assign a PDSDA or final SDA for the merged entity as described for all other hospitals in this subsection;

(III) For any concurrent or retroactive reimbursements prior to the effective date of a rebasing, HHSC will assign the merged entity's PDSDA or final SDA determined using either the methodology described in clause (i), (iii) or (iv) of this subparagraph.

(C) HHSC will not recalculate the PDSDA or final SDA of a hospital acquired in an acquisition or buyout unless the acquisition or buyout resulted in the purchased or acquired hospital becoming part of another Medicaid participating provider. HHSC will continue to reimburse the acquired hospital based on the PDSDA or final SDA applied before the acquisition or buyout.

(10) TEFRA Cost for Rebasing. HHSC applies the cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), to calculate the TEFRA cost for rebasing as follows:

(A) HHSC applies an interim rate for rebasing derived from tentative or final cost reports covering the base year. The interim rates for rebasing are applied to claims in months within the base year that coincide with months within the hospital's cost reporting periods.

(i) For cost report periods ending before October 1, 2007, HHSC calculates the interim rate by dividing a hospital's reported costs for providing Medicaid fee-for-service inpatient services by its allowed charges for those services.

(ii) For cost report periods ending on or after October 1, 2007, HHSC calculates the interim rate by:

(I) combining the hospital's reported costs for providing Medicaid fee-for service and Primary Care Case Management (PCCM) inpatient services;

(II) combining the hospital's allowed charges for providing Medicaid fee-for-service and PCCM inpatient services; and

(III) dividing the amount determined in subclause (I) of this clause by the amount determined in subclause (II) of this clause.

(B) The TEFRA cost for rebasing is calculated by multiplying the Medicaid allowed charges for each base year claim by the interim rate described in subparagraph (A) of this paragraph.

(C) HHSC uses the tentative or final cost report settlement that is complete and available on the date HHSC sends the initial PDSDA notification letter to the hospital. The results of a tentative or final cost report settlement completed after the date HHSC sends the initial PDSDA notification letter to the hospital are not considered for purposes of this subsection.

(D) If there is no tentative or final cost report settlement available that coincides with any month of the base year, the TEFRA cost for rebasing is calculated using the latest available cost report period preceding the base year.

(E) If there is no tentative or final cost report settlement available for a provider, the TEFRA cost for rebasing is not calculated for this provider. In this instance the provider will be assigned a PDSDA as described in paragraph (8) of this subsection.

(11) Correction of payment division error and reprocessing of claims.

(A) HHSC will place a hospital in the correct payment division if HHSC determines that the hospital was incorrectly assigned to a payment division due to a mathematical error or data entry error by HHSC.

(B) HHSC will reprocess all claims adjudicated during that state fiscal year that were paid to the hospital using the incorrect PDSDA by applying the corrected PDSDA to the claims. No corrections are made for claims adjudicated in previous state fiscal years.

(12) Adjustment of PDSDAs.

(A) HHSC may adjust PDSDAs pursuant to §355.201 of this title using one or more of the following methods.

(i) HHSC may reduce the PDSDAs of all hospitals under the circumstances outlined in §355.201 of this title; and

(ii) HHSC may otherwise adjust hospitals' PDSDAs under the circumstances outlined in §355.201 of this title.

(B) Transition Period. For claims with dates of admission between November 1, 2010, and August 31, 2011, HHSC will first calculate a proportionate reduction to the PDSDAs of all hospitals in accordance with subparagraph (A)(i) of this paragraph. HHSC will then calculate a final SDA for each hospital using the following methodology:

(i) Calculate an estimated total revenue earned by each hospital using base year claims, PDSDAs and DRG relative weights in effect in federal fiscal year 2008;

(ii) Calculate an estimated total revenue that would have been earned by each hospital using base year claims for federal fiscal year 2008, PDSDAs proportionately adjusted under subparagraph (A)(i) of this paragraph, and DRG relative weights calculated under subsection (e) of this section;

(iii) Calculate the difference between clause (i) and (ii) of this subparagraph for each hospital;

(iv) For each hospital where the result in clause (iii) of this subparagraph is negative, calculate a final SDA that limits the difference to ten percent of the result in clause (iii) of this subparagraph subject to limitations in clause (vi) of this subparagraph. The limitation to ten percent of the result in clause (iii) of this subparagraph is intended to approximate total revenue from the base year and does not entitle the hospital to additional reimbursement if actual revenue reduction during the transition period is greater than ten percent;

(v) For each hospital where the result in clause (iii) of this subparagraph is positive, calculate a final SDA that will limit the difference to the percent of the result in clause (iii) of this subparagraph as necessary to stay within the limits of appropriated state and federal funding for Medicaid reimbursement, in accordance with §355.201 of this title.

(vi) Notwithstanding any other provision, HHSC will not assign to any hospital a final SDA that will reimburse the hospital more than its estimated cost of providing Medicaid services, using base year claims for federal fiscal year 2008.

(vii) The hospitals described in paragraph (8) of this subsection will be assigned a PDSDA that is adjusted as described in subparagraph (A)(i) of this paragraph.

(viii) This subparagraph expires August 31, 2011. For claims with dates of admission on or after September 1, 2011, HHSC will implement the proportionate PDSDA that was calculated in accordance with subparagraph (A)(i) of this paragraph.

(C) No adjustment to a hospital's PDSDA under this paragraph can result in a final SDA that is below the minimum PDSDA described in paragraph (6)(D) of this subsection.

(e) Diagnosis Related Groups (DRGs) Statistical Calculations. HHSC adopts the classification of diagnoses defined in the Medicare DRG prospective payment system unless a revision is required based on Texas claims data or other factors, as determined by HHSC. HHSC recalibrates the relative weights, mean length of stay, and day outlier threshold whenever the PDSDAs are recalculated.

(1) Recalibration of relative weights. HHSC calculates a relative weight for each DRG as follows:

(A) Base year claims are grouped by DRG;

(B) For each DRG, HHSC:

(i) sums the base year costs per claim as determined in subsection (d)(3)(A) of this section;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the universal mean, resulting in the relative weight for the DRG.

(2) Recalibration of mean length of stay (MLOS). HHSC calculates a mean length of stay (MLOS) for each DRG as follows:

(A) Base year claims are grouped by DRG;

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(3) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows:

(A) Calculates for all claims the standard deviations from the MLOS in paragraph (2) of this subsection;

(B) Removes each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS;

(C) Sums the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph;

(D) Divides the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph;

(E) Calculates one standard deviation for the result in subparagraph (D) of this paragraph; and

(F) Multiplies the result in subparagraph (E) of this paragraph by two and adds that to the result in subparagraph (D) of this paragraph; resulting in the day outlier threshold for the DRG.

(4) If a DRG has fewer than ten base year claims, HHSC will assign the corresponding Medicare relative weight and Medicare mean length of stay and will calculate the day outlier threshold based on the Medicare mean length of stay and standard deviation.

(5) If one of the DRGs specific to an organ transplant has less than five base year claims, HHSC will assign the corresponding Medicare relative weight and Medicare mean length of stay and will calculate the day outlier threshold based on the Medicare mean length of stay and standard deviation. In addition, HHSC adds a relative weight to account for the cost of procuring the organ to the Medicare relative weight for the DRG. HHSC uses the organ procurement costs published by the Acquisition of Organ Procurement Organization (AOPO). To calculate the relative weight for procurement, HHSC divides the average cost of organ procurement by the universal mean for all claims.

(f) Request for Review. Except as otherwise provided in this subsection, HHSC uses the following process for reviews and appeals.

(1) If a hospital believes that HHSC made a mathematical error or data entry error in calculating the hospital's PDSDA, the hospital may request a review of the disputed calculation.

(A) A review of the calculation of a hospital's PDSDA will not be granted if the disputed calculation is the result of the hospital's submission of incorrect data or the result of the use of an interim rate derived from a cost reporting period occurring before the base year.

(B) The hospital must submit to HHSC a written request for review and appropriate specific documentation supporting its contention that there has been a mathematical or data entry error. The written request for review must be printed on the hospital's letterhead. HHSC Rate Analysis must receive a written request for an informal review by hand delivery, United States (U.S.) mail, or special mail delivery no later than 45 calendar days from the date of the initial PDSDA notification letter. If the 45th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 45th calendar day is the final day the receipt of the written request will be accepted. HHSC will not grant extensions of the 45-day deadline.

(C) If the hospital disagrees with the outcome of the review, the hospital may formally appeal in accordance with §§357.481 - 357.490 of this title (relating to Hearings Under the Administrative Procedure Act).

(2) A hospital may not request a review pursuant to this paragraph regarding the elements of the prospective payment methodology used by HHSC, including:

(A) the payment division methodologies, including the HSDA, PDI, and PDSDA calculations;

(B) the DRGs assigned through claims adjudication;

(C) the DRGs assigned to base year claims as a result of HHSC updating to a new version of the Medicare DRGs;

(D) the relative weights assigned to the DRGs;

(E) the adequacy of payments;

(F) the exclusion of claims that were not adjudicated and paid within the base year or six-month grace period;

(G) the interim rate, computed as a result of tentative or final cost reports covering the base year that are completed after the date HHSC sends the initial PDSDA notification letter to the hospital; and

(H) the final SDA resulting from adjustments to a hospital's PDSDA made pursuant to subsection (d)(12) of this section.

(g) Reimbursements.

(1) Calculating the payment amount. HHSC reimburses a hospital a prospective payment for covered inpatient hospital services by multiplying the hospital's PDSDA or final SDA if adjustments were made under subsection (d)(12) of this section by the relative weight for the DRG assigned to the adjudicated claim. The resulting amount is the payment amount to the hospital.

(2) The prospective payment as described in paragraph (1) of this subsection is considered full payment for covered inpatient hospital services. A hospital's request for payment in an amount higher than the prospective payment will be denied. The PDSDA or final SDA result in subsection (d) of this section includes but is not limited to the following:

(A) capital costs;

(B) cost of indirect medical education;

(C) cost of malpractice insurance; and

(D) return on equity.

(3) Day and cost outlier adjustments. HHSC pays a day outlier or a cost outlier for medically necessary inpatient services provided to clients under age 21 in all Medicaid participating hospitals that are reimbursed under the prospective payment system. If a patient age 20 is admitted to and remains in a hospital past his or her twenty-first (21st) birthday, inpatient days and hospital charges after the patient reaches age 21 are included in calculating the amount of any day outlier or cost outlier payment adjustment.

(A) Day outlier payment adjustment. HHSC calculates a day outlier payment adjustment for each claim as follows:

(i) determines whether the number of medically necessary days allowed for a claim exceeds:

(I) the MLOS by more than two days; and

(II) the DRG day outlier threshold as calculated in subsection (e)(3)(F) of this section;

(ii) if clause (i) of this subparagraph is true, subtracts the DRG day outlier threshold from the number of medically necessary days allowed for the claim;

(iii) multiplies the DRG relative weight by the PDSDA or final SDA if adjustments were made under subsection (d)(12) of this section;

(iv) divides the result in clause (iii) of this subparagraph by the DRG MLOS described in subsection (e)(2) of this section, to arrive at the DRG per diem amount;

(v) multiplies the number of days in clause (ii) of this subparagraph by the result in clause (iv) of this subparagraph; and

(vi) multiplies the result in clause (v) of this subparagraph by 70 percent.

(B) Cost outlier payment adjustment. HHSC makes a cost outlier payment adjustment for an extraordinarily high-cost claim as follows:

(i) to establish a cost outlier, the cost outlier threshold must be determined by first selecting the lesser of the universal mean of base year claims multiplied by 11.14 or the hospital's PDSDA or final SDA multiplied by 11.14;

(ii) the full DRG prospective payment amount is multiplied by 1.5;

(iii) the cost outlier threshold is the greater of clause (i) or (ii) of this subparagraph;

(iv) the cost outlier threshold is subtracted from the amount of reimbursement for the claim established under cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA); and

(v) the result in clause (iv) of this subparagraph is multiplied by 70 percent to determine the amount of the cost outlier payment.

(C) If an admission qualifies for both a day outlier and a cost outlier payment adjustment, HHSC pays the higher outlier payment.

(D) If the hospital claim resulted in a downgrade of the DRG related to reimbursement denials or reductions for preventable adverse events, the outlier payment will be determined by the lesser of the calculated outlier payment for the non-downgraded DRG or the downgraded DRG.

(4) A hospital may submit a claim to HHSC before a patient is discharged, but only the first claim for that patient will be reimbursed the prospective payment described in paragraph (1) of this subsection. Subsequent claims for that stay are paid zero dollars. When the patient is discharged and the hospital submits a final claim to ensure accurate calculation for potential outlier payments for clients younger than 21 years of age, HHSC recoups the first prospective payment and issues a final payment in accordance with paragraphs (1) and (3) of this subsection.

(5) Patient transfers and split billing. If a patient is transferred, HHSC establishes payment amounts as specified in subparagraphs (A) - (D) of this paragraph. HHSC manually reviews transfers for medical necessity and payment.

(A) If the patient is transferred from a hospital to a nursing facility, HHSC pays the transferring hospital the total payment amount of the patient's DRG.

(B) If the patient is transferred from one hospital (transferring hospital) to another hospital (discharging hospital), HHSC pays the discharging hospital the total payment amount of the patient's DRG. HHSC calculates a DRG per diem and a payment amount for the transferring hospital as follows:

(i) multiplies the DRG relative weight by the PDSDA or final SDA;

(ii) divides the result in clause (i) of this subparagraph by the DRG MLOS described in subsection (e)(2) of this section, to arrive at the DRG per diem amount; and

(iii) to arrive at the transferring hospital's payment amount:

(I) multiplies the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS, the transferring hospital's number of medically necessary days allowed for the claim, or 30 days; or

(II) for a patient under age 21, multiplies the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS or the transferring hospital's number of medically necessary days allowed for the claim.

(C) HHSC makes payments to multiple hospitals transferring the same patient by applying the per diem formula in subparagraph (B) of this paragraph to all the transferring hospitals and the total DRG payment amount to the discharging hospital.

(D) HHSC performs a post-payment review to determine if the hospital that provided the most significant amount of care received the total DRG payment. If the review reveals that the hospital that provided the most significant amount of care did not receive the total DRG payment, an adjustment is initiated to reverse the payment amounts. The transferring hospital is paid the total DRG payment amount and the discharging hospital is paid the DRG per diem.

(h) Cost reports. Each hospital must submit an initial cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by HHSC.

(1) Each hospital must send a copy of all cost reports audited and amended by a Medicare intermediary to HHSC within 30 days after the hospital's receipt of the cost report. Failure to submit copies or respond to inquiries on the status of the Medicare cost report will result in provider vendor hold.

(2) HHSC uses data from these reports in rebasing rate years to recalculate PDSDAs and make adjustments as described in subsection (d) of this section, and to complete cost settlements for children's hospitals and state-owned teaching hospitals as outlined in §355.8054 and §355.8056 of this title.

(3) HHSC may require a hospital to provide additional data in a format and at a time specified as otherwise prescribed by HHSC.

(4) Except as otherwise specified in subsection (i) of this section, there are no cost settlements for inpatient services under the prospective payment system in this section.

(5) For hospitals reimbursed under this section, the cost settlement process is not limited by the TEFRA target cap.

(i) Hospitals in counties with 50,000 or fewer persons and certain other hospitals.

(1) Hospitals are reimbursed under this subsection if, as of the most recent decentennial census, the hospital is:

(A) located in a county with 50,000 or fewer persons;

(B) a Medicare-designated Rural Referral Center (RRC) or Sole Community Hospital (SCH) not located in a metropolitan statistical area (MSA), as defined by the U.S. Office of Management and Budget; or

(C) a Medicare-designated Critical Access Hospital (CAH).

(2) A hospital that qualifies under this subsection is reimbursed for a cost reporting period the greater of:

(A) All Medicaid payments based on the prospective payment system; or

(B) The cost-reimbursement methodology described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) without the imposition of the TEFRA target cap described in subsection (c)(35) of this section.

(3) The amounts in this subsection are calculated using the most recent data for Medicaid Fee-for-Service (FFS) and Primary Care Case Management (PCCM) inpatient services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 2010.

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 38. TRICHOMONIASIS

4 TAC §§38.1 - 38.3

The Texas Animal Health Commission (Commission) adopts amendments to §38.1, concerning Definitions, §38.2, concerning General Requirements, and §38.3, concerning Infected Bulls and Herds. Section 38.2 is adopted with changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 5991) and will be republished. Section 38.1 and §38.3 are adopted without changes and will not be republished.

As noted in the explanation of the proposed rule one of the proposed changes was to make the test document valid for 60 days rather than the current 30 days. However, in review of the entire rule package we have determined that in order to make the entire chapter consistent with this intent of the proposal, the requirement in §38.2(a)(2) that the RT-PCR test be conducted within 30 days of sale or movement of a breeding bull should be 60 days to make it consistent with the intent of the Commission and that change is made in this adoption action.

The Trichomoniasis Working Group met on May 12, 2010, to evaluate the recently implemented Trichomoniasis program. The group discussed educational outreach, program overview to date, the management of infected herds, as well as to consider rule changes.

The group wanted to make virgin certificates be valid for the same length of time as test charts, as well as transferrable within the same time frame. The Commission concurred and has added to the definition of the certificate that they are valid for sixty (60) days. Also, the certificates may be transferred with the original signature of the reconsignor. The Commission had been evaluating the movement of untested bulls to feedlots for slaughter and the group agreed with that option. Therefore, in §38.2(d) the Commission has added that untested bulls may be moved to a feedlot. Also, the group felt like we should not require a Trichomoniasis test for bulls entering Texas from CSS certified artificial insemination facilities. That exemption will be added to Chapter 51, Entry Requirements.

Also, a subcommittee was created by the group to develop voluntary guidelines for management of female cattle in infected herds and the best practices for biosecurity of same, which will be given to all infected and adjacent herd owners. The group felt that education and outreach are still considered critical to the success of the program and they will meet again next year.

No comments were received regarding adoption of the amendments.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized by §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission, by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

§38.2. General Requirements.

(a) Test Requirements: All Texas origin bulls sold, leased, gifted, exchanged or otherwise change possession for breeding purposes in the State of Texas shall meet the following testing or certification requirements prior to sale or change of ownership in the state:

(1) Be certified as virgin, by the breeder or his representative, on and accompanied by a breeder's certificate of virgin status; or

(2) If from a herd of unknown status (a herd that has not had a whole herd test), be tested negative on three consecutive culture tests conducted not less than seven (7) days apart or one RT-PCR test conducted within 60 days of sale or movement, be held separate from all female cattle since the test sample was collected, and be accompanied by a Trich test record showing the negative test results.

(b) Identification of Bulls: All bulls certified as virgin bulls shall be identified by an official identification device or method on the breeder's certification of virgin status. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. Official identification includes: Official Alpha-numerical USDA metal ear tags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands. That identification shall be recorded on the test documents prior to submittal.

(c) Confirmatory Test: The owner of any bull which tests positive for Trichomoniasis may request in writing, within five (5) days of the positive test, that the Commission allow a confirmatory test be performed on the positive bull. If the confirmatory test is positive the bull will be classified as infected with Trichomoniasis. If the confirmatory test is negative the bull shall be retested in not less than seven days to determine its disease status. If the confirmatory test reveals that the bull is only infected with fecal trichomonads, the test may be considered negative.

(d) Untested Bulls: Bulls presented for sale without a breeder's certification of virgin status or a Trich test record showing negative test results may:

(1) Be sold for movement only directly to slaughter;

(2) Sold for movement to a feedlot and then to slaughter; or

(3) Be sold and moved under a Hold Order to such place as specified by the Commission for testing to change status from a slaughter bull to a breeding bull. Such bulls shall be officially individually identified with a permanent form of identification prior to movement, move to the designated location on a VS 1-27 permit, be held in isolation from female cattle at the designated location for not less than 21 days where the bull shall undergo three culture tests or for not less than 7 days where the bull shall undergo one RT-PCR test. If the results of any test are positive the bull shall be classified as infected and be permitted for movement only directly to slaughter or to a market for sale directly to slaughter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 13, 2010.

TRD-201005841
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: November 2, 2010
Proposal publication date: July 9, 2010
For further information, please call: (512) 719-0724

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CHAPTER 41. FEVER TICKS

4 TAC §41.1, §41.8

The Texas Animal Health Commission (Commission) adopts amendments to §41.1, concerning Definition of Terms, and §41.8, concerning Dipping and Treatment of Livestock, with changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 5994) and will be republished.

This amendment will add definitions for a "Designated Fever Tick Epidemiologist (DFTE)" as well as an "Individual Herd Plan." The amendment is also adding the procedure for implementing individual herd plans and provides a protest procedure. There are two points of grammatical clarification made to the rule. In §41.8(c) the proposal had stated that "[e]ach premise within a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area will be classified by the commission as an infested, exposed, adjacent, or check premise and are is required to execute a herd management plan and remain under restrictions until the no evidence of fever ticks is disclosed or a complete epidemiologic investigation fails to disclose evidence of exposure to fever ticks, with the concurrence of the DFTE." As denoted in the change the verb should have been singular (is) versus plural (are) and the change in made to reflect that correction. In §41.8(c) it states that "{a} person may protest an initial test or a herd plan for each premise classified as increased risk for Fever Ticks". For grammatical clarity "for" is added between "plan" and "each".

The Texas Cattle Fever Tick Eradication Program (Program) is currently undergoing some re-evaluation in order to make it more effective in the efforts to eradicate the Texas Cattle Fever Tick. The Program is in the process of implementing the use of individual herd plans.

An individual herd plan is a written disease management plan that is developed with the herd or land owner(s) and/or their representative(s), and a State or Federal DFTE to eradicate fever ticks or potential exposure to fever ticks from an affected herd or property. The herd plan will include appropriate treatment frequencies, treatments to be employed, and any additional disease management or herd management practices deemed necessary to eradicate fever ticks from the herd in an efficient and effective manner. A DFTE is a State or Federal epidemiologist designated to make decisions concerning the use and interpretation of exposure to fever ticks.

Herd plans are disease management tools used in a variety of disease eradication programs such as Tuberculosis and Brucellosis. It is a very helpful tool for defining the appropriate treatment frequencies, treatments to be employed, and any additional disease management or herd management practices deemed necessary to eradicate fever ticks from the herd in an efficient and effective manner. Part of the execution and implementation of individual herd plans includes the participation of an epidemiologist.

Animal Epidemiology is the study of factors affecting the animal health and transmission of disease. It is considered a cornerstone methodology of animal health research, for identifying risk factors for disease transmission. The work of epidemiologists ranges from outbreak investigation to study design, data collection and analysis including the development of statistical models to test hypotheses and the documentation of results for study. Epidemiologists also study the interaction of diseases in a animal population.

For most national disease eradication programs the epidemiologist makes decisions concerning the use and interpretation of exposure of animals to specific diseases. With the Fever Tick Program, the DFTE will have responsibility to determine the scope of epidemiologic investigations, determine the status of herds, assist in development of individual herd plans, and coordinate response for eradicating the Texas Cattle Fever Tick.

No comments were received regarding adoption of the amendments.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Agriculture Code, Chapter 167, §167.003, which provides for general powers and duties of the Commission to eradicate fever ticks and provides authority for adopting the necessary rules to fulfill those duties. Section 167.004 authorizes the Commission by rule to define what animals can be classified as exposed to ticks. Section 167.006 authorizes the Commission to designate for tick eradication any county or part of a county that the Commission believes contains ticks. Section 167.007 authorizes the Commission to conduct tick eradication in the free area. Section 167.021 entitled "General Quarantine Power" provides that "[t]he Commission may establish quarantines on land, premises, and livestock as necessary for tick eradication." Section 167.022 entitled "Quarantine of Tick Eradication Area" provides the Commission authority designating a county or part of a county for tick eradication. Section 167.023 entitled "Quarantine of Free Area" provides the Commission authority to establish quarantine in the Free Area. Section 167.024 entitled "Movement In or From Quarantined Area" provides the requirement to get appropriate authorization and compliance with the requirements prior to movement. Section 167.032 provides the Commission may restrict movement of commodities that are carrying ticks.

The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized by §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061. As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.007 provides that if a veterinarian employed by the Commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the Commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the Commission. Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire Commission.

§41.1. Definition of Terms.

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

(1) Adjacent premise--A premise that borders an exposed or infested premise, including premises separated by roads, double fences, or fordable streams. A premise that would normally be classified as adjacent may be exempted from adjacent premise requirements by a State or Federal epidemiologist if the premise is separated from the exposed or infested premise by double fencing, sufficient to prevent the spread of ticks, with one of the fences being game-proof.

(2) Certificate--A document authorizing movement of livestock issued by an authorized representative of the commission after the livestock have been treated in a manner prescribed by the commission for the area and premise from which they originate.

(3) Check premise--A premise located in a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area that is not classified as an infested, exposed, or adjacent premise.

(4) Control purpose quarantine area--A premise or property designated by the commission for a systematic inspection of livestock and premises and control of the movement of livestock in order to investigate and control a suspected exposure of animals to ticks outside the tick eradication quarantine area. The boundaries of the area will be determined by evaluation of the barriers to the potential spread of ticks.

(5) Designated Fever Tick Epidemiologist (DFTE)--A State or Federal epidemiologist designated to make decisions concerning the use and interpretation of exposure to fever ticks and to manage the Fever Tick program. The DFTE must be selected jointly by the Executive Director of the Commission and the AVIC for Texas. The DFTE has the responsibility to determine the scope of epidemiologic investigations, determine the status of herds, assist in development of individual herd plans, and coordinate fever tick surveillance and eradication programs within his or her geographic area of responsibility. The DFTE has authority to make independent decisions concerning the management of herds and use of property and limiting the impact of wildlife when those decisions are supported by sound fever tick eradication principles.

(6) Dipping or treating--If the Commission requires livestock to be dipped, the livestock shall be submerged in a vat. A spray-dip machine may be used in areas where a vat is not reasonably available. Careful hand spraying may be used for easily restrained horses and show cattle, and when specifically authorized, certain zoo or domestic animals. Livestock unable to go through a dipping vat because of size or physical condition may be hand sprayed. The treatment must be paint marked so that it can be identified for at least 17 days. If the Commission determines that free-ranging wildlife and exotic animals, which are capable of hosting fever ticks, require treatment, they shall be treated by methods and for the duration of time approved by the Commission.

(7) Exposed livestock--Any of the following factors shall constitute livestock as being exposed:

(A) Livestock that have entered an infested or exposed premise and have not been dipped and removed from the infested or exposed premise within 14 days after entry.

(B) Livestock that have occupied an exposed premise and have not completed treatment required for movement from an exposed premise.

(C) Livestock that have entered Texas from Mexico without a certificate from the United States Department of Agriculture.

(8) Exposed premise--A premise shall be considered exposed if systematic treatment has not been completed and if either of the following conditions apply:

(A) Ticks have been found on livestock that have been on the premise for less than 14 days.

(B) A premise that has received exposed livestock, or equipment or material capable of carrying ticks from an infested or exposed premise.

(9) Free area--An area designated by the commission as being free of ticks or exposure to ticks. The extent of the area will be determined by the appropriate barriers to the potential spread of ticks.

(10) Game proof fence--A fence that has a minimum height of eight feet, consisting of wire mesh of sufficiently small size to prevent or impede the movement of domestic or exotic wildlife over, under, or through the fenced area.

(11) Individual herd plan--A written disease management plan that is developed by the herd or land owner(s) and/or their representative(s), and a State or Federal DFTE to eradicate fever ticks or potential exposure to fever ticks from an affected herd or property. The herd plan will include appropriate treatment frequencies, treatments to be employed, and any additional fever tick management or herd management practices deemed necessary to eradicate fever ticks from the herd or on a infected or exposed premise in an efficient and effective manner. The plan must be approved by the Executive Director of the Commission and AVIC, and have the concurrence of the DFTE.

(12) Infested livestock--Livestock shall be considered infested if eradication treatment for movement from an infested premise has not been completed and if either of the following conditions apply:

(A) Ticks have been found on livestock.

(B) Livestock which occupy a premise where ticks have been found on livestock that have been on the premise more than 14 days.

(13) Infested premise--A premise where ticks have been found on livestock that have been on the premise for more than 14 days, and systematic treatment has not been completed.

(14) Livestock--Any domestic animal or any free ranging animals found on a premise or captured wild animal that is capable of hosting or transporting ticks capable of carrying babesia (the causative agent of cattle tick fever), including, but not limited to, cattle, horses, mules, jacks, jennets, zebras, buffalo, giraffe, and deer.

(15) Permit--A document issued by an authorized representative of the commission allowing specified movement of livestock.

(16) Premise--An area which can be defined by boundaries of recognizable physical barriers that prevent livestock from crossing the boundaries under ordinary circumstances; or an area that livestock do not ordinarily inhabit that the commission defines by recognizable features.

(17) Premise inspection--A routine inspection by an authorized representative of the commission of premise boundaries and the livestock within for the purpose of documenting exposure of the premise.

(18) Premise under vacation--A premise from which all livestock have been removed as prescribed by the commission.

(19) Range inspection of livestock--An inspection of livestock to see the animal close enough to detect ticks on the animal.

(20) Scratch inspection of livestock--An inspection of livestock by an authorized representative of the commission in an approved facility that allows the inspector to touch and see all parts of the livestock.

(21) Temporary preventative quarantine area--An area designated by the commission for systematic inspection and treatment of livestock and premises, and control of movement of livestock, in order to detect and eradicate infestation and exposure from infested or exposed premises outside the tick eradication quarantine area. The extent of the area will be determined by evaluating the barriers to the potential spread of ticks. This is also designated as a "Blanket Disease Quarantine."

(22) The commission--The Texas Animal Health Commission.

(23) Tick--Any tick capable of transmitting bovine Babesiosis (cattle tick fever or bovine piroplasmosis).

(24) Tick eradication quarantine area--An area designated by the commission for systematic inspection and treatment of livestock and premises, and control of movement of livestock, in order to detect and eradicate infestation from infested or exposed premises. The extent of the area will be determined by evaluating the barriers to the potential spread of ticks. This is the permanent quarantine area which is designated in §§41.14 - 41.22 of this chapter (relating to Quarantine Line; Defining and Establishing Tick Eradication Areas), and in the United States Department of Agriculture Code of Federal Regulations Part 72.5, parallel to the Rio Grande River, commonly known as the buffer zone or systematic area.

§41.8. Dipping and Treatment of Livestock.

(a) Dipping and treatment of livestock; general. All dipping prescribed in this section must be done under the supervision of a representative authorized by the commission. The commission will authorize for use in dipping only those dips that have been approved by the Animal and Plant Health Inspection Service of the United States Department of Agriculture and the Texas Animal Health Commission for use in official dipping to rid animals of the tick. The concentration of the dipping chemical used must be maintained in the percentage specified for official use by means of the approved vat management techniques established for the use of the agent; or, if applicable, by an officially approved vat side test or field test of the commission. The owner or caretaker of the livestock is responsible for presenting the livestock to the dipping vat, dipping the livestock, and removing the livestock, and will provide such labor as is necessary to perform all required functions. If the Commission requires livestock to be dipped, the livestock shall be submerged in a vat. A spray-dip machine may be used in areas where a vat is not reasonably available. Careful hand spraying may be used for easily restrained horses and show cattle, and when specifically authorized, certain zoo or domestic animals. Livestock unable to go through a dipping vat because of size or physical condition may be hand sprayed. The treatment must be paint marked so that it can be identified for at least 17 days. The Commission may specifically authorize other treatment methods for free-ranging wildlife or exotic species.

(b) Required Dipping or treatment of Livestock.

(1) The owner or caretaker of livestock on infested or exposed premises in the tick eradication quarantine area, or infested or exposed premises in the temporary preventative quarantined area must present them to be scratch inspected and dipped with subsequent dipping every seven to 14 days until the livestock are moved from the premise in accordance with these regulations, except as provided in paragraph (5) of this subsection.

(2) The 14-day interval may be extended due to circumstances beyond the control of the owner upon approval by an authorized representative of the commission. In no event will the extension be more than three days. If the extension is granted, no certificate for movement will be issued after the 14th day, and the next dip must be on the original 14-day schedule.

(3) All scratch inspection and dipping must be done under instructions issued by the commission. All requirements will be in written form directed to the owner or caretaker. An inspector for the Commission will deliver the instructions in person along with a copy of these regulations. All premise boundaries will be listed in the instructions.

(4) The scratch inspection and first dip must be within 14 days from the date infestation or exposure is discovered unless otherwise approved by the commission.

(5) The starting date for infested premises for Table I (Pasture Vacation Schedule, South of Highway 90) and Table II (Pasture Vacation Schedule, North of Highway 90), is the date of the first clean dipping of 100% of the livestock. The starting date for exposed premises for Table I and Table II is when 100% of the livestock on the premise have been dipped. Copies of Table I (Pasture Vacation Schedule, South of Highway 90) and Table II (Pasture Vacation Schedule, North of Highway 90) may be obtained from the Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.
Figure: 4 TAC §41.8(b)(5) (No change.)

(6) A dip is not official unless 100% of the livestock within the premise affected are dipped on schedule.

(7) Free-ranging wildlife or exotics that are found on infested, exposed or vacated premises, and which are capable of hosting fever ticks will be treated by methods approved by the Commission and for the length of time specified by the Commission.

(c) Each premise within a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area will be classified by the commission as an infested, exposed, adjacent, or check premise and is required to execute a herd management plan and remain under restrictions until the no evidence of fever ticks is disclosed or a complete epidemiologic investigation fails to disclose evidence of exposure to fever ticks, with the concurrence of the DFTE. A person may protest an initial test or a herd plan for each premise classified as increased risk for Fever Ticks:

(1) To protest, the responsible person must request a meeting, in writing, with the Executive Director of the Commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:

(A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;

(B) the meeting or meetings shall be held in Austin; and

(C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.

(2) Upon receipt of a decision or order by the executive director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the Chairman of the Commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.

(3) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(4) If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 13, 2010.

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Gene Snelson
General Counsel
Texas Animal Health Commission
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Proposal publication date: July 9, 2010
For further information, please call: (512) 719-0724

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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.8

The Texas Animal Health Commission (Commission) adopts amendments to §51.8, concerning Entry Requirements, with changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 5997) and will be republished.

This amendment is for the purpose of clarifying the Tuberculosis entry requirement for cattle, as well as to add an exemption for breeding bulls entering Texas from CSS certified artificial insemination facilities. A change is made based on the intent of the Commission as declared in the "Explanation of the Proposed Rule," discussing changing the bovine tuberculosis entry requirements to conform to the issuance of a federal order which redefined the interstate movements requirements for cattle. This modification is discussed below in the explanation. Also, there is a grammatical clarification made to the rule. In §51.8(c)(1), the proposal states that "breeding bulls, entering Texas from CCS certified artificial insemination facilities where it the animal(s) was isolated from female cattle and accompanied by documents with an original signature by the veterinarian or manager of the facility, are exempt from the test requirements." The use of "it" is changed to "the animal(s)" for grammatical correctness.

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) issued a federal order on April 15, 2010, that modifies certain elements of the bovine tuberculosis (TB) eradication program. The Federal Order is intended as an interim measure until federal revised bovine tuberculosis regulations can be proposed for review and public comment, and final rules issued. In the interim, APHIS will not downgrade an accredited-free State or zone or any part of an accredited-

free State or zone in which tuberculosis affected herds are confirmed, provided the Administrator determines that the State Animal Health Officials are meeting certain criteria. Modified Accredited Advanced (MAA) status states with a wildlife reservoir or that have never been "Free" do not qualify for the relief of this order. The immediate result of this order is that Texas will now accept beef cattle from the MAA state of California and the MAA zone of New Mexico without previously imposed restrictions, as if they are originating from a TB "Free" state. In modifying the existing rule the proposal omitted the states with "wildlife reservoirs of bovine tuberculosis" being ineligible for entry into Texas without a tuberculosis test. This is consistent with the federal order as well as the agency's position as indicated in the preamble explaining the intent of the proposed rule. However, the rule was not clear in carrying forward that intent and therefore additional language is added to clearly bring the language of the rule in line with the stated intent of the Commission.

Therefore, we are modifying our specifically stated test requirements in §51.8(b)(2) and thereby making our requirements conform to the standards established through the Federal Order.

Also, the Trichomoniasis Working Group met on May 12, 2010, to evaluate the recently implemented Trichomoniasis Program. The group discussed educational outreach, program overview to date, the management of an infected herd, as well as to consider rule changes. The group decided that a Trichomoniasis test is not going to be required for bulls entering Texas from CSS certified artificial insemination facilities. That exemption is being added to §51.8(c)(1).

No comments were received regarding adoption of the amendment.

STATUTORY AUTHORITY

The amendment is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission, by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

§51.8 Entry Requirements.

(a) Brucellosis requirements. All cattle must meet the requirements contained in §35.4 of this title (relating to Entry, Movement, and Change of Ownership). Cattle, which are parturient, postparturient, or 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers, being shipped to a feedyard prior to slaughter shall be officially individually identified with a permanent identification device prior to leaving the state of origin.

(b) Tuberculosis requirements.

(1) All beef cattle, bison and sexually neutered dairy cattle originating from a federally recognized accredited tuberculosis free state, or zone, as provided by Title 9 of the Code of Federal Regulations, Part 77, Section 77.8, or from a tuberculosis accredited herd are exempt from tuberculosis testing requirements.

(2) All beef cattle, bison and sexually neutered dairy cattle originating from a state or zone with anything less than a tuberculosis free state status and having an identified wildlife reservoir for tuberculosis or that have never been declared free from tuberculosis shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, prior to entry with results of this test recorded on the certificate of veterinary inspection. All beef cattle, bison and sexually neutered dairy cattle originating from any other states or zones with anything less than free from tuberculosis shall be accompanied by a certificate of veterinary inspection.

(3) All dairy breed animals, including steers and spayed heifers, shall be officially identified prior to entry into the state. All sexually intact dairy cattle, that are two (2) months of age or older may enter provided that they are officially identified, and are accompanied by a certificate stating that they were negative to an official tuberculosis test conducted within 60 days prior to the date of entry. All sexually intact dairy cattle that are less than two (2) months of age must obtain a entry permit from the Commission, as provided in §51.2(a) of this chapter (relating to General Requirements), to a designated facility where the animals will be held until they are tested negative at the age of two (2) months. Animals which originate from a tuberculosis accredited herd, and/or animals moving directly to an approved slaughtering establishment are exempt from the test requirement. Dairy cattle delivered to an approved feedlot for feeding for slaughter by the owner or consigned there and accompanied by certificate of veterinary inspection with a entry permit issued by the commission are exempt from testing unless from a restricted herd. In addition all sexually intact dairy cattle originating from a state or area with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate requirements for states or zones with a status as provided by Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, for that status, prior to entry with results of the test recorded on the certificate of veterinary inspection.

(4) All "M" brand steers, which are recognized as potential rodeo and/or roping stock, being imported into Texas from another state shall obtain a permit, prior to entry into the state, in accordance with §51.2(a) of this chapter and be accompanied by a certificate of veterinary inspection which indicates that the animal(s) were tested negative for tuberculosis within twelve months prior to entry into the state.

(5) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with com-

parable tuberculosis status, would enter by meeting the requirements for a state with similar status as stated in paragraphs (1), (2) and (3) of this subsection.

(6) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status.

(A) To be held for purposes other than for immediate slaughter or feeding for slaughter in an approved feedyard or approved pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed by a veterinarian employed by the TAHC or APHIS/VS.

(B) When destined for feeding for slaughter in an approved feedyard, cattle must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; moved directly to the approved feedyard only in sealed trucks; accompanied with a VS 1-27 permit issued by TAHC or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.

(7) Cattle originating from Mexico.

(A) All sexually intact cattle shall meet the requirements provided for in paragraph (6) of this subsection.

(B) Steers and spayed heifers from Mexico shall meet the federal importation requirements as provided in Title 9 of the Code of Federal Regulations, Part 93, Section 93.427, regarding importation of cattle from Mexico. In addition to the federal requirements, steers and spayed heifers must be moved under permit to an approved pasture, approved feedlot, or approved pens.

(C) Cattle utilized as rodeo and/or roping stock shall meet the requirements set out in paragraph (6)(A) of this subsection and the applicable requirement listed in clauses (i) and (ii) of this subparagraph:

(i) All sexually intact cattle shall be retested annually for tuberculosis at the owner's expense and the test records shall be maintained with the animal and available for review.

(ii) All sexually neutered horned cattle imported from Mexico are recognized as potential rodeo and/or roping stock and must:

(I) be tested for tuberculosis at the port of entry under the supervision of the USDA port veterinarian;

(II) be moved by permit to a premise of destination and remain under Hold-Order, which restricts movement, until permanently identified by methods approved by the commission, and retested for tuberculosis between 60 and 120 days after entry at the owner's expense. The cattle may be allowed movement to and from events/activities in which commingling with other cattle will not occur and with specific permission by the TAHC until confirmation of the negative post entry retest for tuberculosis can be conducted; and

(III) be retested for tuberculosis annually at the owner's expense and the test records shall be maintained with the animal and available for review.

(D) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.

(E) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas.

(F) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

(c) Trichomoniasis Requirements:

(1) All breeding bulls entering the state shall be virgin bulls not more than 24 months of age as determined by the presence of both permanent central incisor teeth in wear, or by breed registry papers; or be tested negative for Trichomoniasis with an official culture test or official Polymerase Chain Reaction (PCR) test within 30 days prior to entry into the state. Bulls that have had contact with female cattle subsequent to testing must be retested prior to entry. If the breeding bulls are virgin bulls they shall be individually identified by an official identification device and be accompanied with a breeders certification of virgin status signed by the breeder or his representative attesting that they are virgin bulls. The official identification number shall be written on the breeder's certificate. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. Official identification includes: Official Alpha-numeric USDA metal eartags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands, or official state of origin Trichomoniasis tags. The identification shall be recorded on the test documents or the breeder's certificate and the certificate of veterinary inspection prior to entry. Non-virgin bulls shall be tested three times not less than one week apart, for each test, by official culture test or one time by official PCR test prior to entry into Texas. Breeding bulls, entering Texas from CSS certified artificial insemination facilities where the animal(s) was isolated from female cattle and accompanied by documents with an original signature by the veterinarian or manager of the facility, are exempt from the test requirements.

(2) All bulls entering Texas for the purpose of participating at fairs, shows, exhibitions and/or rodeos, which are twelve (12) months of age or older and capable of breeding may enter the state without testing or certification for Trichomoniasis, but shall obtain a permit, in accordance with §51.2(a) of this chapter, prior to entry into the state. Bulls permitted for entry into the State of Texas under the provisions of this subsection shall not be commingled with female cattle or used for breeding. Bulls that stay in the state more than sixty (60) days must be tested negative for Trichomoniasis with an official culture test or official PCR test.

(3) All breeding bulls entering from Mexico or from any country that does not have an established Trichomoniasis testing program, shall enter on and be moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this chapter, to a premises of destination in Texas and remain under Hold Order until tested negative for Trichomoniasis with not less than three official culture tests conducted not less than seven (7) days apart, or an official PCR test, within thirty (30) days after entry into the state. All bulls shall be maintained separate from female cattle until tested negative for Trichomoniasis. The Hold Order shall not be released until all other post entry disease testing requirements have been completed. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. The identification shall be recorded on the test documents.

(4) All breeding bulls entering from Canada or from any country that has an established Trichomoniasis testing program but for which the animals are not tested to meet the certification and testing requirements of paragraph (1) of this subsection, shall enter on and be moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this chapter, to a premises of destination

in Texas and remain under Hold Order until tested negative for Trichomoniasis with not less than three (3) official culture tests conducted not less than seven (7) days apart, or an official PCR test within thirty (30) days of entry into the state. All bulls shall be maintained separate from female cattle until tested negative for Trichomoniasis. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. The identification shall be recorded on the test documents.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 13, 2010.

TRD-201005843
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: November 2, 2010
Proposal publication date: July 9, 2010
For further information, please call: (512) 719-0724

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION

SUBCHAPTER B. GENERAL

7 TAC §3.22

The Finance Commission of Texas (the Commission), on behalf of the Texas Department of Banking (the Department), adopts the amendment to §3.22, concerning sale or lease agreements with an officer, director, or principal shareholder of the bank or of an affiliate of the bank, without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 7972). The amended rule is adopted to correct references to Financial Accounting Statements issued by the Financial Accounting Standards Board.

The adopted amendment to §3.22 arises from the codification of accounting standards by the Financial Accounting Standards Board (FASB). On June 29, 2009, the FASB issued Statement No. 168, which reorganized all accounting standards and guidance relating to Generally Accepted Accounting Principles (GAAP), in order to provide a single source of authoritative GAAP literature. As part of this reorganization, the FASB changed citation syntax to, and renumbered its Statements. As a result, the reference in §3.22 to FASB Statement Number 13 is now incorrect. The adopted amendment updates the reference to conform with the FASB's codification.

The Department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code, §31.003, which authorizes the Commission to adopt rules to accomplish the purposes of the Texas Banking Act and Finance Code, Chapters 11, 12, and 13, and under Finance Code, §11.012(a), which authorizes the Commission to adopt rules to preserve or protect the safety and soundness of state banks.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005885
A. Kaylene Ray
General Counsel
Finance Commission of Texas
Effective date: November 4, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 475-1300

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CHAPTER 10. CONTRACT PROCEDURES

The Finance Commission of Texas (the Commission), on behalf of the Commission, and the three Finance Agencies, the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, the Finance Agencies), adopts new Chapter 10, §§10.1 - 10.21 and 10.30, concerning contract procedures. The new rules provide a formal procedure for alternate dispute resolution of disputes arising from contracts awarded by the Commission and any of the Finance Agencies and for protest of any solicitation or award of a contract to provide goods or services to the Commission or any of the Finance Agencies. The Commission adopts the new rules without changes to the proposed text as published in the September 3, 2010, issue of the*Texas Register* (35 TexReg 7973).

The Commission received no written comments on the proposal.

The Commission and Finance Agencies adopt these new rules to replace any formal or informal policies or procedures governing resolution of contract disputes and to carry out the requirements of Government Code, Chapter 2260 concerning alternate dispute resolution of claims by contractors for breach of contract against state agencies and Government Code §2155.076 concerning resolution of vendor protests concerning purchasing issues. Chapter 2260 of the Government Code directs each state agency or other unit of state government with rulemaking authority to adopt rules providing for alternate dispute resolution of claims by contractors for breach of contract against such state agency. Section 2155.076 of the Government Code requires each state agency by rule to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues.

New §§10.1 - 10.21 are based on model rules adopted by the Office of the Attorney General. Section 10.1 states that the purpose of the rules is the implementation of Government Code, Chapter 2260. Section 10.2 contains the definitions of terms used in the new rules. Section 10.3 establishes that the procedures in the rules are a prerequisite to suit under the Civil Practice and Remedies Code, Chapter 107, and the Government Code, Chapter 2260. Section 10.4 states that the provisions do not waive sovereign immunity to suit or liability.

Section 10.5 sets out the procedures for a contractor to file a claim with the Commission or any Finance Agency. Section 10.6

sets out the procedures for the Commission or Finance Agency to assert a counterclaim against the contractor.

Section 10.7 requires that the parties, in accordance with the timetable set out in §10.8, negotiate to attempt to resolve claims and counterclaims. Section 10.9 describes the conduct of negotiation. Section 10.10 requires the parties to disclose their settlement approval procedures prior to negotiations, and §10.11 provides that an agreement to settle a claim must be in writing, signed by authorized representatives of the contractor and the unit of state government. Section 10.12 provides that each party is responsible for its own costs incurred during negotiations.

Section 10.13 describes the process by which a contractor may request a contested case hearing before the State Office of Administrative Hearings on an unresolved claim. Section 10.14 describes the timetable for mediation of a claim and §§10.15 - 10.21 describe the mediation process and procedures.

New §10.30 is based upon the rules adopted by the Comptroller of Public Accounts concerning contract protests and provides a procedure for an actual or proposed bidder, offeror or contractor to follow to protest the solicitation, evaluation, or award of a contract. The contents of the protest, time period for filing a protest, and notice required are set out in the new rule. The Commission and the Finance Agencies are given the authority to settle the protest, or if it is not resolved, to issue a written determination on the protest. The new rule provides a procedure for the appeal of the decision and requires that in the event of a protest, documents collected in association with the solicitation, evaluation, and/or award of a contract be maintained in accordance with the applicable retention schedule.

SUBCHAPTER A. NEGOTIATION AND MEDIATION

7 TAC §§10.1 - 10.21

New §§10.1 - 10.21 are adopted under Government Code, Chapter 2260, which requires in §2260.052(c) that each unit of state government with rulemaking authority develop rules to govern the negotiation and mediation of a claim for breach of contract and permits each unit to voluntarily adopt a model rule provided through the coordinated efforts of the State Office of Administrative Hearings and the Office of the Attorney General. New §§10.1 - 10.21 follow the published model rule of the Office of the Attorney General.

Government Code, Chapter 2260 is affected by the adopted new sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 18, 2010.

TRD-201005974
Leslie L. Pettijohn
Executive Director
Finance Commission of Texas
Effective date: November 7, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 936-6222

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SUBCHAPTER B. CONTRACT PROTESTS

7 TAC §10.30

New §10.30 is adopted under Government Code, §2155.076(a) which requires each state agency by rule to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues which are consistent with the rules of the Texas Comptroller of Public Accounts. Section 2155.076(a) also requires the rules to include standards for maintaining documentation about the purchasing process to be used in the event of a protest. New §10.30 is based on rules adopted by the Comptroller of Public Accounts for contract protests and subsection (h) includes the required standards for maintaining documentation.

Government Code, §2155.076 is affected by the adopted new section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 18, 2010.

TRD-201005975
Leslie L. Pettijohn
Executive Director
Finance Commission of Texas
Effective date: November 7, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 936-6222

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 11. MISCELLANEOUS
SUBCHAPTER A. GENERAL

7 TAC §11.37

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to §11.37, concerning providing information to customers about filing complaints, without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 7977). The amended rule is adopted to update department contact information.

The adopted amendment to §11.37 arises from a change in the internet domain name of the department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website, www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the department's email and web page addresses have changed from banking.state.tx.us to dob.texas.gov. As a result, the references in §11.37 to the department's website and email address are now incorrect, and eventually will be inoperative. Though DIR and the department have implemented the department's domain name change, all old domain addresses will remain functional for an extended transitional period. However, eventually the old addresses

will be disconnected. The adopted amendment updates the reference to the department's website.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code, §11.307, which requires the commission to adopt rules specifying the manner in which banks, foreign banks, bank holding companies, and trust companies provide consumers with information on how to file complaints with the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005886
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 4, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 475-1300

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CHAPTER 17. TRUST COMPANY REGULATION

SUBCHAPTER A. GENERAL

7 TAC §17.3

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to §17.3, concerning sale or lease agreements with an officer, director, principal shareholder, or affiliate of the trust company, without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 7978). The amended rule is adopted to correct references to Financial Accounting Statements issued by the Financial Accounting Standards Board.

The adopted amendment to §17.3 arises from the codification of accounting standards by the Financial Accounting Standards Board (FASB). On June 29, 2009, the FASB issued Statement No. 168, which reorganized all accounting standards and guidance relating to Generally Accepted Accounting Principles (GAAP), in order to provide a single source of authoritative GAAP literature. As part of this reorganization, the FASB changed citation syntax to, and renumbered its Statements. As a result, the reference in §17.3 to FASB Statement Number 13 is now incorrect. The adopted amendment updates the reference to conform with the FASB's codification.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code, §181.003, which authorizes the commission to adopt rules to accomplish the purposes of the Texas Trust Company 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 October 15, 2010.

TRD-201005887
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 4, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 475-1300

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CHAPTER 25. PREPAID FUNERAL CONTRACTS

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendments to §25.2 and §25.3, concerning contract forms for sale of prepaid funeral benefits; and §25.41, concerning providing information to prepaid funeral contract customers about filing complaints, without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 7978). The amended rules are adopted to update department contact information.

The adopted amendments to §§25.2, 25.3 and 25.41 arise from a change in the internet domain name of the department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website, www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the department's email and web page addresses have changed from banking.state.tx.us to dob.texas.gov. As a result, the references in Chapter 25 to the department's website and email address are now incorrect, and eventually will be inoperative. Though DIR and the department have implemented the department's domain name change, all old domain addresses will remain functional for an extended transitional period. However, eventually the old addresses will be disconnected. The adopted amendments update the references to the department's website.

The department received no comments regarding the proposed amendments.

SUBCHAPTER A. CONTRACT FORMS

7 TAC §25.2, §25.3

The amendments to §25.2 and §25.3 are adopted pursuant to Finance Code, §154.051, which authorizes the commission to adopt rules to enforce and administer Finance Code, Chapter 154.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005888

A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 4, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 475-1300

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SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §25.41

The amendment to §25.41 is adopted pursuant to Finance Code, §11.307, which requires the commission to adopt rules specifying the manner in which prepaid funeral benefits contract sellers provide consumers with information on how to file complaints with the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005889
A. Kaylene Ray
General Counsel
Texas Department of Banking
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Proposal publication date: September 3, 2010
For further information, please call: (512) 475-1300

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CHAPTER 26. PERPETUAL CARE CEMETERIES

7 TAC §26.11

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to §26.11, concerning providing information to perpetual care cemetery customers about filing complaints, without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 7980). The amended rule is adopted to update department contact information.

The adopted amendment to §26.11 arises from a change in the internet domain name of the department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website, www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the department's email and web page addresses have changed from banking.state.tx.us to dob.texas.gov. As a result, the reference in §26.11 to www.banking.state.tx.us is now incorrect, and eventually will be inoperative. Though DIR and the department have implemented the department's domain name change, all old domain addresses will remain functional for an extended transitional period. However, eventually the old addresses will be disconnected. The adopted amendment updates the reference to the department's website.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Health and Safety Code, §712.008, which authorizes the commission to adopt rules to enforce and administer Health and Safety Code, Chapter 712.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005890
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 4, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 475-1300

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CHAPTER 31. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendments to §31.14, concerning contract requirements; and §31.73, concerning administrative investigation of complaints without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 7980). The amended rules are adopted to update department contact information.

The adopted amendments to §31.14 and §31.73 arise from a change in the internet domain name of the department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website, www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the department's email and web page addresses have changed from banking.state.tx.us to dob.texas.gov. As a result, the reference in §31.14 and §31.73 to the department's website and email address are now incorrect, and eventually will be inoperative. Though DIR and the department have implemented the department's domain name change, all old domain addresses will remain functional for an extended transitional period. However, eventually the old addresses will be disconnected. The adopted amendments update the reference to the department's website.

The department received no comments regarding the proposed amendments.

SUBCHAPTER B. HOW DO I REGISTER MY AGENCY TO ENGAGE IN THE BUSINESS OF CHILD SUPPORT ENFORCEMENT?

7 TAC §31.14

The amendment to §31.14 is adopted pursuant to Finance Code §396.051, which requires the commission to adopt rules for the

enforcement and administration of Finance Code, Chapter 396, entitled Private Child Support Enforcement Agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005891
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 4, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 475-1300

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SUBCHAPTER E. HOW DOES THE DEPARTMENT EXERCISE ITS ENFORCEMENT AUTHORITY?

7 TAC §31.73

The amendment to §31.73 is adopted pursuant to Finance Code, §11.307, which requires the commission to adopt rules specifying the manner in which child support enforcement agencies provide consumers with information on how to file complaints with the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005892
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 4, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 475-1300

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CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.51

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to §33.51, concerning providing information to MSB customers about filing complaints, without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 7981). The amended rule is adopted to update department contact information.

The adopted amendment to §33.51 arises from a change in the internet domain name of the department. In June, 2010, the Department of Information Resources (DIR) unveiled a new official state website, www.Texas.gov. In conjunction with this initiative, all state agencies have changed or will change their respective domain names from the current state.tx.us address to Texas.gov. Accordingly, all of the department's email and web page addresses have changed from banking.state.tx.us to dob.texas.gov. As a result, the reference in §33.51 to www.banking.state.tx.us is now incorrect, and eventually will be inoperative. Though DIR and the department have implemented the department's domain name change, all old domain addresses will remain functional for an extended transitional period. However, eventually the old addresses will be disconnected. The adopted amendment updates the reference to the department's website.

The department received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code, §151.101, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151, and under Finance Code, §11.307, which directs the commission to adopt rules regarding consumer complaint notices.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005893
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: November 4, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 475-1300

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. CONSUMER LOANS

The Finance Commission of Texas (commission) adopts amendments, new rules, and repeals regarding 7 TAC Chapter 83, §§83.101, 83.102, 83.202 - 83.205, 83.301 - 83.311, 83.404 - 83.408, 83.501, 83.502, 83.504, 83.505, 83.602, 83.604, 83.701 - 83.708, 83.751 - 83.754, 83.756, 83.757, 83.801 - 83.810, 83.812, 83.826 - 83.831, 83.833, 83.834, 83.836, 83.837, and 83.851 - 83.862, concerning Consumer Loans. The adopted changes affect rules contained in Subchapter A, concerning General Provisions; Subchapter B, concerning Authorized Activities; Subchapter C, concerning Application Procedures; Subchapter D, concerning License; Subchapter E, concerning Interest Charges on Loans; Subchapter F, concerning Alternate Charges for Consumer Loans; Subchapter G, concerning Interest and Other Charges on Secondary Mortgage Loans; Subchapter H, concerning Refunds for Precomputed Loans; Subchapter I, concerning Insurance; Subchapter J, concerning Duties and Authority of Authorized Lenders; and Subchapter K, Prohibitions on Authorized Lenders. The commission adopts the amendments to §§83.302, 83.303, and 83.756 with changes, and adopts the amendments, new rules, and repeals to §§83.101, 83.102, 83.202 - 83.205, 83.301, 83.304 - 83.311, 83.404 - 83.408, 83.501, 83.502, 83.504, 83.505, 83.602,

83.604, 83.701 - 83.708, 83.751 - 83.754, 83.757, 83.801 - 83.810, 83.812, 83.826 - 83.831, 83.833, 83.834, 83.836, 83.837, and 83.851 - 83.862 without changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 7982).

The commission received no written comments on the proposal.

The majority of the rules in Chapter 83 are being amended. Due to the nature and extent of the changes required, two sections are being repealed and replaced with new rules in accordance with *Texas Register* recommendations. The sections being repealed and replaced with new rules are §83.830, Files and Records Required (Subchapter G Mortgage Brokers), with the new title: "Secondary Mortgage Loan Record Retention Requirement"; and §83.833, Correction of Errors or Violations. Aside from these two sections, any rules experiencing changes contained in 7 TAC Chapter 83 are being amended. Any Chapter 83 rule not included in this adoption will be maintained in its current form.

In general, the purpose of the amendments, new rules, and repeals regarding 7 TAC Chapter 83 is to implement changes resulting from the commission's review of Chapter 83 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 83 was published in the May 7, 2010, issue of the *Texas Register* (35 TexReg 3653). The agency circulated an early draft of the changes to interested stakeholders and did not receive any informal precomments. The agency also did not receive any comments on the notice of intention to review.

Most of the changes are technical in nature and relate to improvements in consistency, grammar, punctuation, capitalization, and formatting. Additional changes provide clarification, more precise legal citations, and improved internal regulation references. The individual purposes of the amendments to each section (or revised new rules and corresponding repeals) are provided in the following paragraphs. Specific explanation is included with regard to new substantive language, substantive changes in language, and significant formatting amendments. The remaining changes throughout all sections consist of minor technical revisions and will be summarized more generally.

The changes to the following sections involve technical corrections to improve grammar and punctuation, to increase consistency in formatting, and to provide more precise internal regulation references and legal citations: §83.101, Purpose and Scope; §83.102, Definitions; §83.202, Knowledge of Laws and Regulations Required; §83.203, Attempted Evasion of Applicability of Chapter; and §83.204, Multiple Licenses.

In the definition of "Authorized lender" contained in §83.102(5), the word "commissioner" has been replaced with the full name of the agency, "Office of Consumer Credit Commissioner" (later defined with the acronym: "OCCC"). Changes of this nature have been made throughout the rules in order to more appropriately refer to either the "OCCC" or "OCCC staff," as opposed to the "agency," the "commissioner," or the "commissioner's representative." The agency believes that references to the OCCC or OCCC staff taking certain actions or requiring certain items provides better clarity and a more plain language approach in regulations.

The title to §83.205 has been amended by adding the words "and Internet" after "Loans by Mail." This section currently contains subsection (d), which states: "a loan made, negotiated, arranged, or collected by or through the Internet is considered a 'loan by mail.'" The "Internet" reference in the title is intended to assist Internet lenders in locating this regulation with more ease. In addition, §83.205 includes revisions related to grammar and use of the term OCCC, as described in the preceding paragraph.

Section 83.301, which contains the licensing definitions, has experienced several minor revisions relating to grammar and punctuation. Two of these changes are recurring throughout the rules. First, the verb "shall" has been changed to "will" in the introductory paragraph and to "must" in paragraph (2)(E). Similar changes have been made to numerous rules in Chapter 83 by replacing "shall" with either "will" or "must," as appropriate, as the latter language is reflective of a more modern and plain language approach in regulations. Second, the hyphens have been removed from the phrases "privately held" and "publicly held," as these hyphens are deemed unnecessary by modern usage guides. This section also includes corrections to an internal reference and business terminology.

Section 83.302 regarding the filing of new applications has been revised and reorganized. For consistency, plural terms have been added to §83.302(1)(B), one of which is a corrected citation. The reorganization involves moving the provisions concerning Statement of Experience and Business Operation Plan to paragraph (1), "Required application information," and moving the Fingerprints language to paragraph (2), "Other required filings." The agency believes that the first two documents, which involve completing OCCC licensing forms about the background of the company and its principal parties, are more appropriately included with the application information. In contrast, the submission of fingerprints, a tangible item forwarded to law enforcement agencies, is more suitable for inclusion under other required filings. Updates have been made to §83.302(1)(J) to include the revised citations to the Texas Business and Commerce Code provisions concerning assumed name certificates, as relocated during the 2009 legislative session. Additionally, throughout §83.302, other technical changes have been made, as follows: language revised regarding fees filed with the application, title of licensing form updated, taglines clarified, internal references updated, business terminology corrected, and term OCCC used for consistency.

Section 83.303 concerning transfer applications has experienced revisions to help both applicants and agency staff streamline the application process. In particular, new subparagraphs (A) and (B) have been added to paragraph (1), designating information required of new licensees filing transfers and of existing licensees filing transfers. Similar language has been utilized in the agency's other regulated areas and serves to better explain exactly what is required of different types of applicants. Much of this language was already contained in the former rule, but has been relocated and reorganized in this adoption for clarity. As with §83.302, §83.303 also includes several other technical corrections to revise fee language, clarify taglines, improve punctuation and grammar, continue the use of OCCC, and correct internal references and terminology.

Since the proposal, a technical correction to the same language has been made in the introductory paragraph of §83.302 and §83.303(c) by deleting a redundant "the" in each rule preceding the word "following."

The changes to the following sections involve technical corrections: §83.304, Change in Form or Proportionate Ownership; §83.305, Amendments to Pending Application; §83.306, Reportable Actions After Application; §83.307, Processing of Application, and §83.308, Relocation. In particular, these revisions improve grammar and punctuation, use the term OCCC,

provide parallel formatting, and revise internal regulation references and legal citations.

Section 83.307 regarding the processing of an application has experienced revisions in subsection (a) regarding initial review. The response timeline in §83.307(a) has been revised for this adoption to be "10 business days," as opposed to the former phrase, "14 calendar days." In most instances, these two timeframes are the same.

Section 83.309, relating to License Status includes technical amendments to improve clarity and grammar. Clarification has been added with regard to license expiration in §83.309(d) in order to better track the statutory provisions found in Texas Finance Code, §342.155.

The following sections contain technical corrections: §83.310, Fees; §83.311, Applications and Notices as Public Records; §83.404, Effect of Criminal History Information on Applicants and Licensees; §83.405, Crimes Directly Related to Fitness for License; Mitigating Factors; §83.406, Effect of Revocation, Suspension, or Surrender of License; §83.407, Application Process After Surrender or Revocation; §83.408, License Reissuance; §83.501, Maximum Interest Charge; §83.502, Treatment of Periods Less than a Full Month Before the First Installment Date; §83.504, Default Charges; §83.505, Deferment; and §83.602, Default Charges. Of note, the revisions remove unnecessary language, continue use of the term OCCC, revise internal regulation references, provide more precise legal citations, update examples, provide parallel formatting, and improve grammar, punctuation, and capitalization.

Subsection (e) of §83.604 regarding payday loans has experienced several revisions in order to improve clarity and formatting. Descriptive taglines have been added to all existing paragraphs, former paragraph (2) has been separated into two paragraphs, and the remaining paragraphs have been renumbered accordingly. Furthermore, §83.604(e)(2) has been divided into subparagraphs (A) - (E), outlining the requirements of the written agreement. The details concerning the required notices are now included in paragraph (3) in order to visually separate these two important issues. The word "bank" has been replaced with "depository institution" for better accuracy. Additionally, other changes throughout §83.604 involve revised internal references, improved grammar, and more precise legal citations.

The changes to the following sections involve technical corrections to revise internal regulation references, provide more precise legal citations, update examples, provide parallel formatting, and improve grammar, punctuation, and capitalization: §83.701, Maximum Interest Charge; §83.702, Treatment of Periods Less than a Full Month; §83.703, Default Charges; §83.704, Deferment; and §83.705, Amounts Authorized to Be Charged After Consummation.

Both §83.706, concerning Amounts Authorized to Be Collected on or Before Closing, and §83.707, concerning Other Fees, include specific points of clarification. First, in §83.706(a), the phrase "of the eight categories" has been deleted, as the statute no longer contains eight categories (currently nine). As opposed to merely replacing "eight" with "nine," this adoption deletes the number reference and states that the lender "may collect any one or more of the charges [in the statute]." Second, in subsection (c) of §83.706, the word "credit" has been deleted and replaced with "consumer" to be consistent with the defined term "consumer reporting agency" found in the Fair Credit Reporting Act.

In §83.707(b), additional examples of unauthorized fees have been added, as follows: "settlement or closing fees, tax certificates, [and] expedited payments . . . ." These unauthorized fees have been encountered often during the examination process. The agency believes that inclusion of these items in the rule will better inform licensees and address questions that may arise about these particular unauthorized fees. In addition, §83.706 and §83.707 contain revisions related to improvements in capitalization and grammar.

The following sections contain technical corrections: §83.708, Balloon Payments; §83.751, Scope; §83.753, Refund of Precomputed Interest for Regular Subchapter E Loans; and §83.754, Refund of Precomputed Interest for Subchapter G Loans. In particular, these amendments improve grammar and provide: more precise legal citations, more descriptive taglines, and more parallel formatting.

Section 83.756, concerning Refund of Precomputed Interest for Subchapter F Loans; Prepayment in Full Before the First Installment Due Date, includes an important clarification along with improvements in grammar. The clarification is contained in subsection (b), where the introductory phrase as adopted reads: "If the first installment due date is more than one month from the contract date but less than or equal to one month and 15 days from the contract date, ..." The latter phrase beginning with "but less than" has been added to clarify that the calculation cannot go beyond one month and 15 days, as that would be an irregular transaction governed by different rules. Since the proposal, the words "or equal to" have been inserted before "one month" in order to provide the most accurate description of the calculation.

The changes to the following sections involve technical corrections to improve grammar, punctuation, and clarity: §83.757, Refund of Precomputed Interest for Subchapter F Loans; Prepayment in Full After the First Installment Due Date and Before the Final Installment Due Date; and §83.801, Definitions.

Subsection (c) and its accompanying figure have been added to §83.802, regarding Authorized Property Insurance. New §83.802(c) memorializes the agency's policy regarding licensees who offer or provide property insurance on a loan at a rate not approved by the Texas Department of Insurance. Over time, the agency had developed a range of acceptable rates that are now contained in Figure §83.802(c). The agency believes having a published table of approved rates will allow licensees to choose whether they wish to charge a higher rate requiring commissioner approval, or charge the preapproved rates contained in the figure. In addition, this section includes minor changes relating to grammar and use of OCCC, as well as appropriate relettering of the subsections after the insertion of new subsection (c).

The following sections contain technical corrections: §83.803, Limitations on Property Insurance; §83.804, Claim Provisions for Property Insurance Other than Insurance Covering Motor Vehicles; §83.805, Authorized Credit Insurance, and §83.806, Provision of Policy or Certificate. Of note, the revisions improve grammar, correct capitalization, remove unnecessary language, and incorporate plain language.

Revisions to §83.807 and §83.808 provide clarification regarding insurance that may be offered by the lender. Collateral protection insurance is most commonly single-interest insurance; however, collateral protection can also include dual-interest insurance. The agency does not want to appear to limit what the lender could sell by regulation. In recognition of the lender's op-

tion for single- or dual-interest insurance, the title of §83.807 has been revised to read: "Collateral Protection Insurance," with the same change being made in the first line of that rule. Likewise, in §§83.808, 83.809, 83.810, 83.812, and 83.828, conforming changes have been made by replacing "single-interest" with "collateral protection." Section 83.808 also includes improvements in grammar.

Technical corrections have been made to the following sections: §83.809, Prepayment of Loan from Insurance Proceeds; §83.810, Evidence of Equal Insurance Coverage; and §83.812, Gap Waiver Agreement. In particular, these amendments improve grammar and punctuation, provide more accurate references to resources used for calculations, add clarifying language, provide consistency in formatting, and revise internal references.

Section 83.826, regarding Quotation of Net Pay-Offs has experienced clarifying revisions and been reorganized in order to group information regarding Chapter 342, Subchapter G loans into new subsection (b) and likewise provide a separate subsection for Chapter 342, Subchapter E and F loans (new §83.826(c)). The agency believes that this reorganization will enable lenders in each respective category to locate the relevant information in a more efficient manner. Additionally, regarding the reasonable response time for secondary mortgage loans under Subchapter G, language has been added after the timeline of seven calendar days, stating: "unless federal law requires a shorter response time." This phrase is intended to avoid any potential conflict with federal provisions and interpretations relating to Regulation Z - Truth in Lending, 12 C.F.R. §226.36(c)(iii).

Reorganization has also occurred in §83.827, Return of Instruments to Borrower with the reordering of subsections (a) and (b). To better aid the reader, the definition of "Collected funds" is now contained in subsection (a), prior to its use in §83.827(b). Aside from these formatting changes, §83.827 also includes minor changes to improve grammar.

The recordkeeping sections for Subchapter E and F lenders (§83.828) and Subchapter G lenders (§83.829) have both been revised with the following corresponding changes: improvements in grammar and clarity, revisions to achieve parallel formatting, and the addition of a sentence concerning federal law recordkeeping requirements prevailing in the case of a conflict with the rules.

In §83.828(12), the adverse action records provision has been revised in order to maintain consistency with regulations in other areas and to provide more clarity. Also in §83.828, changes have been made to include more precise legal citations and continue use of the term OCCC.

New §83.830 (repeal and replace) provides the record retention requirement for persons who engage in secondary mortgage loans subject to Chapter 342. Former §83.830 contained specific recordkeeping requirements for mortgage brokers. This term is being phased out and parties who engage in these loans are no longer required to hold separate licenses under Chapter 342. Thus, it is no longer necessary for the agency to have a detailed recordkeeping regulation for non-licensees; however, the statute continues to mandate the appropriate record retention requirement for secondary mortgage loans under Chapter 342 regardless of the licensing status of the originator. As a result, the detailed requirements are being repealed and replaced with a general statement that records must be maintained in accordance with Texas Finance Code, §342.558.

Section 83.831 concerning approval of electronic recordkeeping systems includes minor technical amendments to provide parallel formatting, improve grammar, and use the term OCCC.

New §83.833 (repeal and replace), regarding Correction of Errors or Violations has experienced several revisions in order to improve clarity and organization. Former §83.833 was relatively brief, whereas §83.833 as adopted provides much greater detail and guidance to licensees as to how errors and violations may be corrected.

Section 83.834, regarding Unclaimed Funds has been revised with clarifying language added to subsections (b) and (d). In §83.834(b), the use of registered or certified mail has been clarified as a delivery method that may be required with respect to specific borrowers. Language has been added to the end of subsection (d) to allow for payment to another state or governmental entity under that entity's law, as appropriate. In addition, §83.834 also includes revisions related to punctuation, grammar, and consistency.

Section 83.836 has experienced revisions regarding the consistent formatting of numbers and the addition of "per examiner" to clarify the application of the hourly rate for follow-up examination fees.

In §83.837(c)(2), accent marks have been added to the Spanish translation of the disclosure required when automobile club memberships are offered in connection with a Chapter 342 loan. The actual wording of the translation has not changed, as the revisions involve providing more formal Spanish characters for systems able to produce them. Licensees using the former translation without the accent marks will be considered in compliance. Additionally, §83.837 includes technical corrections to improve grammar and capitalization.

The following sections contain technical corrections: §83.851, Duplication of Loans; §83.852, Loan Size, Duration, and Schedule of Installments: Limitation; §83.853, Misleading Advertising; §83.854, Conditional Offers of Credit; §83.855, Advertisements in Form of Negotiable Instruments; §83.856, Use of State Agency Name; §83.857, Full Disclosure Requirements--Other than Open-End or Revolving Loan Plans; §83.858, Full Disclosure Requirements--Open-End and Revolving Loan Plans; and §83.859, Collection Practices. Of note, the revisions provide more precise legal citations, incorporate plain language, continue use of the term OCCC, and improve grammar, punctuation, and capitalization.

Section 83.860, regarding Collection Contacts has experienced several revisions to clarify additional parties that may be contacted by a licensee and to clarify the application of the section. In particular, subsection (b) states that licensees may also solicit payment from the "borrower's designee, trustee, insurance company paying a claim or a refund involving the debtor, any party having a lawful right or claim to any collateral, any person who may be or is legally obligated to pay all or a portion of the debt, or a guardian, executor, administrator, attorney, agency or representative of any of the foregoing." Similarly, §83.860(d) adds guardians, executors, administrators, or other parties authorized under the Gramm Leach Bliley Act or the Fair Credit Reporting Act to receive nonpublic personal information pertaining to a debt. In addition, new subsection (f) provides the applicability of particular subsections in situations involving pending court or arbitration proceedings or notices required by law or contract. Changes have also been made to improve grammar and legal citations.

The changes to the following sections involve technical corrections to improve grammar: §83.861, Simulated Legal Process or Documents Prohibited; and §83.862, Impersonation and Fictitious Names Prohibited.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §83.101, §83.102

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005898
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: November 4, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 936-7621

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SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §§83.202 - 83.205

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: November 4, 2010
Proposal publication date: September 3, 2010
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §§83.301 - 83.311

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

§83.302. Filing of New Application.

An application for issuance of a new regulated loan license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the application and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for License.

(i) Location. A physical street address must be listed for the applicant's proposed lending address. A post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) Responsible person. The person responsible for the day-to-day operations of the applicant's proposed offices must be named.

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

(I) If the applicant is a proprietor, each owner must sign.

(II) If the applicant is a partnership, each general partner must sign.

(III) If the applicant is a corporation, an authorized officer must sign.

(IV) If the applicant is a limited liability company, an authorized member or manager must sign.

(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

(B) Disclosure of Owners and Principal Parties.

(i) Proprietorships. The applicant must disclose who owns and who is responsible for operating the business. All community property interests must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.

(ii) General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the

ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(iii) Limited partnerships. Each partner, general and limited, must be listed and the percentage of ownership stated.

(I) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

(II) Limited partners. The applicant should provide a complete list of all limited partners owning 5% or more of the partnership.

(III) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(iv) Corporations. Each officer and director must be named. Each shareholder holding 5% or more of the voting stock must be named if the corporation is privately held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(v) Limited liability companies. Each "manager," "officer," and "member" owning 5% or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 5% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

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

(C) Application Questionnaire. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(D) Statutory Agent Disclosure. The statutory agent disclosure must be provided by each applicant. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or a limited liability company, the statutory agent should be the registered agent on file with the Office of the Texas Secretary of State. If the statutory agent is not the same as the registered agent filed with the Office of the Texas Secretary of State, then the applicant must submit certified minutes appointing the new agent.

(E) Personal Affidavit. Each individual meeting the definition of "principal party" as defined in §83.301 of this title (relating to Definitions) or who is a person responsible for day-to-day operations must provide a personal affidavit. All requested information must be provided.

(F) Personal Questionnaire. Each individual meeting the definition of "principal party" as defined in §83.301 of this title or who is a person responsible for day-to-day operations must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(G) Employment History. Each individual meeting the definition of "principal party" as defined in §83.301 of this title or who is a person responsible for day-to-day operations must provide an employment history. Each principal party should provide a continuous 10-year history, with no gaps, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(H) Statement of Experience. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(I) Business Operation Plan. Each applicant must provide a brief narrative to the application explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:

(i) the source of customers;

(ii) the purpose(s) of loans;

(iii) the size of loans;

(iv) the source of working capital for planned operations;

(v) whether the applicant will only be arranging or negotiating loans for another lender or financing entity;

(vi) if the applicant will only be arranging or negotiating loans for another lender or financing entity, the lender must also provide:

(I) a list of the lenders for whom the applicant will be arranging or negotiating loans;

(II) whether the loans will be collected at the location where the loans are made; and

(III) if the loans will not be collected at the location where the loans are made, the identification of the person or firm that will be servicing the loans, including the location at which the loans will be serviced, and a detailed description of the process to be utilized in collections.

(J) Financial Statement and Supporting Financial Information.

(i) All entity types. The financial statement must be dated no earlier than 60 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the Supporting Financial Information. All financial statements must be certified as true, correct, and complete.

(ii) Sole proprietorships. Sole proprietors must complete all sections of the Personal Financial Statement and the Supporting Financial Information, or provide a personal financial statement that contains all of the same information requested by the Personal Financial Statement and the Supporting Financial Information. The Personal Financial Statement and Supporting Financial Information must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the Supporting Financial Information must be submitted for the partnership itself and each general partner. All of the balance sheets and Supporting Financial Information documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the corporate or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(K) Assumed Name Certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business and Commerce Code, Chapter 71, an Assumed Name Certificate must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business and Commerce Code, Chapter 71, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business and Commerce Code, Chapter 71, as amended. Evidence of the filing bearing the filing stamp of the Office of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(2) Other required filings.

(A) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §83.301 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the Disclosure of Owners and Principal Parties under paragraph (1)(B)(iii)(I) of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The OCCC may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are not required.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002, as amended.

(B) Loan forms. The applicant must provide information regarding all loan forms it intends to use.

(i) Custom forms. If a custom loan form is to be prepared, a preliminary draft or proof that is complete as to format and content and which indicates the number and distribution of copies to be prepared for each transaction must be submitted.

(ii) Stock forms. If an applicant purchases or plans to purchase stock forms from a supplier, the applicant must include a statement that includes the supplier's name and address and a list identifying the forms to be used, including the revision date of the form, if any.

(C) Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Office of the Texas Secretary of State.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the certificate of formation or articles of incorporation, with any amendments;

(II) a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(III) a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Office of the Texas Secretary of State:

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

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

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(iii) Publicly held corporations. In addition to the items required for corporations, a publicly held corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

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

(III) a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Office of the Texas Secretary of State:

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

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

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(v) Trusts. A copy of the relevant portions of the instrument that created the trust addressing management of the trust and operations of the applicant must be filed with the application.

(vi) Estates. A copy of the instrument establishing the estate must be filed with the application.

(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide:

(I) a certificate of authority to do business in Texas, if applicable; and

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

(D) Bond. The commissioner may require a bond under Texas Finance Code, §342.102, when the commissioner finds that this would serve the public interest. When a bond is required, the commissioner will give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.

(3) Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location including the Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement as provided in paragraph (1)(J) of this section. The responsible person at the new location must file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

§83.303. Transfer of License.

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §83.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(1) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(2) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(3) any change in ownership of a licensed limited partnership interest:

(A) in which a limited partner owning 10% or more relinquishes that owner's entire interest;

(B) in which a new limited partner obtains an ownership interest of 10% or more;

(C) in which a general partner relinquishes that owner's entire interest; or

(D) in which a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

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

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

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

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

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

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

(A) in which a new member obtains an ownership interest of 10% or more;

(B) in which an existing member owning 10% or more relinquishes that member's entire interest; or

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

(6) any acquisition of a license by gift, devise, or descent; and

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of paragraphs (1) - (6) of this subsection, and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) Approval of transfer. No regulated loan license may be sold, transferred, or assigned without written approval of the commissioner.

(c) Filing requirements. An application for transfer of a regulated loan license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the rules and instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the transfer application, and the application for transfer must include the following:

(1) Required application information.

(A) New licensees filing transfers. The information required for new license applications under §83.302 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §83.302 of this title are applicable to these filings. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection must also be submitted.

(B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement, as provided in §83.302 of this title. The instructions in §83.302 of this title are applicable to these filings. The responsible person at the new location must file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed. Other information required by §83.302 of this title need not be filed if the information on file with the OCCC is current and valid. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection must also be submitted.

(2) Evidence of transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application and should include one of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the stock purchase agreement or other evidence of acquisition if voting stock of a corporate licensee has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(d) Permission to operate. No business under the license may be conducted by any transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. Additionally, the transferor must grant the transferee the authority to operate under the transferor's license pending approval of the transferee's new license application. The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the transferee in connection with the operation of the lending business. The permission to operate must be submitted before the transferee takes control of the licensed operation. The agreement must set a definite period of time for the transferee to operate under the transferor's license. A request for permission to operate may be denied even if it contains all of the required information. Two companies may not simultaneously operate under a single license. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) Application filing deadline. Applications filed in connection with transfers of ownership may be filed in advance but must be filed no later than 10 calendar days following the actual transfer.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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SUBCHAPTER D. LICENSE

7 TAC §§83.404 - 83.408

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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SUBCHAPTER E. INTEREST CHARGES ON LOANS

7 TAC §§83.501, 83.502, 83.504, 83.505

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

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SUBCHAPTER F. ALTERNATE CHARGES FOR CONSUMER LOANS

7 TAC §83.602, §83.604

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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SUBCHAPTER G. INTEREST AND OTHER CHARGES ON SECONDARY MORTGAGE LOANS

7 TAC §§83.701 - 83.708

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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SUBCHAPTER H. REFUNDS FOR PRECOMPUTED LOANS

7 TAC §§83.751 - 83.754, 83.756, 83.757

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

§83.756. Refund of Precomputed Interest for Subchapter F Loans; Prepayment in Full Before the First Installment Due Date.

(a) If the first installment due date is one month or less from the date of the loan, the authorized lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date, 1/30th of the installment account handling charge and acquisition charge that is subject to being refunded and could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date. All interest in excess of such amount must be refunded or credited to the borrower.

(b) If the first installment due date is more than one month from the contract date but less than or equal to one month and 15 days from the contract date, the authorized lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date, 1/30th of the interest that could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date up to a maximum of 30 days. All interest in excess of such amount must be refunded or credited to the borrower.

(c) To calculate the amount of the refund of unearned interest, an authorized lender must consider any installments that were deferred.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. INSURANCE

7 TAC §§83.801 - 83.810, 83.812

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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SUBCHAPTER J. DUTIES AND AUTHORITY OF AUTHORIZED LENDERS

7 TAC §§83.826 - 83.831, 83.833, 83.834, 83.836, 83.837

These amendments and new sections are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §83.830, §83.833

These repeals are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adopted repeals are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. PROHIBITIONS ON AUTHORIZED LENDERS

7 TAC §§83.851 - 83.862

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS

7 TAC §84.301, §84.308

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §84.301, concerning Definitions, and to §84.308, concerning Debt Cancellation Agreements for Total Loss or Theft of Ordinary Vehicle, offered in connection with motor vehicle retail installment sales contracts. The commission adopts the amendments to §84.301 without changes and adopts

the amendments to §84.308 with changes to the proposed text as published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8019).

The commission received one written comment from GS Administrators, Inc. on the proposal. The comment provides specific suggestions to improve two proposed provisions and presents concerns regarding the introductory language to §84.308(c). The issues commented upon will be addressed following the paragraphs outlining the purposes of the provisions receiving comments.

With the enactment of Senate Bill 1966, the 81st Texas Legislature amended the Texas Finance Code to allow the sale of debt cancellation agreements in connection with Chapter 348 retail installment sales contracts, with certain limitations and restrictions. During 2009, the agency engaged in a dialogue with interested stakeholders to develop §84.308. Throughout this rule development process, the agency discovered that the debt cancellation products authorized by Senate Bill 1966 are offered by diverse market segments that do not have the same interests or needs. The agency learned of the specialized perspectives of franchised motor vehicle dealers, independent motor vehicle dealers, gap waiver providers, as well as insurance companies with regard to debt cancellation agreements.

From the information gathered by the agency, it became apparent that two sets of circumstances required separate treatment under §84.308. With this approach, the agency sought to accommodate different market segments offering debt cancellation agreements while maintaining appropriate consumer protections. The original version of §84.308 was divided into two distinct situations where debt cancellation agreements may be offered involving total loss or theft. Fees and other terms were adjusted accordingly to accommodate these two situations as included in the rule adopted by the commission.

Section 84.308 first became effective in March 2010. Upon gaining practical experience with the application of §84.308 to actual debt cancellation agreements being offered across the state, the agency was contacted by industry members regarding potential revisions to enhance the use of these new products in Texas. During the resulting discussions with the industry, three main areas of amendment emerged: (1) clarification regarding certain terms that may be included where insurance coverage is part of the retail buyer's responsibility to the holder; (2) an increase in the rates that may be offered where the holder bears complete responsibility for canceling the debt; and (3) the addition of a third situation applicable to used cars priced at $15,000 or less, where the retail seller does not assign the contract (except to a related finance company) and bears complete responsibility for canceling the debt.

Note that throughout this preamble, the three different types of situations where debt cancellation agreements may be offered involving total loss or theft as contained in adopted §84.308 will be referred to as follows: (1) the "first model" is where insurance coverage is part of the retail buyer's responsibility to the holder; (2) the "second model" is where the holder bears complete responsibility for canceling the debt; and (3) the new "third model" is applicable to used ordinary vehicles with a cash price of $15,000 or less in which the retail seller does not assign the contract to any party other than a related finance company, and in which the retail seller bears complete responsibility for canceling the debt after total loss or theft whether the retail buyer elects to obtain property insurance.

In general, the purpose of the amendments to §84.301 and §84.308 is to implement changes in three areas to address industry concerns and enhance the effectiveness of debt cancellation agreements offered in connection with motor vehicle retail installment sales contracts in Texas. The specific purposes of each amendment are described in greater detail in the following paragraphs.

The purpose of the amendments to §84.301 is to provide clarification to terms used within §84.308 and to make conforming changes to support the revisions to §84.308. The definition of "Primary Insurance Carrier" has been inserted as new subsection (e) in order to clarify the use of this term in §84.308(h)(1)(C) with regard to calculation of the amount to be cancelled under a debt cancellation agreement where insurance coverage is part of the retail buyer's responsibility to the holder. Additionally, the remaining subsections of §84.301 have been relettered accordingly.

Also in §84.301, paragraph (3) is being added to subsection (g) in order to provide a definition of total loss or theft applicable to the new third model for debt cancellation agreements.

The purpose of the amendments to §84.308 is to clarify certain terms that may be included as part of debt cancellation agreements under the first model, to increase the rates offered under the second model, and to add the third model. Conforming changes have been made in the introductory statements of subsection (c), referencing the three paragraphs accompanying the three models, as opposed to the former two.

In reference to subsection (c), the commenter states: "We remain concerned about the inability of this product to be sold in the marketplace due to the unnecessary complexity of these rules. We reiterate our previous comments to the introductory language contained in §84.308(c) in that it remains ambiguous and overly restrictive as to what may be contained in a debt cancellation agreement. As we understand it, this provision is being interpreted to mean that debt cancellation agreements can contain only the language set forth in the provision."

Section 84.308(c) outlines the provisions that are authorized to be included in a debt cancellation agreement. For this adoption, subsection (c) is divided into three distinct situations where debt cancellation agreements may be offered involving total loss or theft. Paragraphs (1), (2), and (3) of §84.308(c) each contain an exclusive list of provisions that must be included in a debt cancellation agreement offered in conjunction with the respective situation or product model.

At the time these rules were adopted in February 2010, the introductory paragraph in subsection (c) was clarified to reflect that language may be included in a debt cancellation agreement to implement the provisions found in the paragraph of the applicable model or to identify and obligate the parties under Texas law. Hence, while each model does require the provisions outlined by either paragraph (1), (2), or (3), as appropriate, flexibility was incorporated into these rules with the addition of implementing language, language to identify and obligate the parties, and provisions approved in writing by the commissioner. Furthermore, additional flexibility allows a debt cancellation agreement to contain, at the election of the drafter, common contract provisions, so long as the provisions comply with state and federal law and implementing regulations.

The intricate nature of these rules is a direct result of the various products authorized under Senate Bill 1966, as well as the diverse market segments offering these debt cancellation prod-

ucts. To provide appropriate guidance, the rules must address the different product models and concerns brought forward by the varying interested stakeholders. The commission believes that the structure and organization of these rules provide clear, plain language directions concerning a complex set of debt cancellation products. Thus, the commission maintains the wording of subsection (c).

Regarding the three main areas of change in §84.308, first, the agency encountered certain common issues during the review process of debt cancellation provisions submitted by the industry. Thus, in §84.308(c)(1), subparagraphs (K) and (L) have been added to give clarification to providers drafting debt cancellation agreements. These provisions provide for the inclusion of statements regarding the original term of a debt cancellation agreement (subparagraph (K)) and limiting the coverage of a primary physical damage insurance deductible to $1,000 (subparagraph (L)). Conforming changes have been added to §84.308(h)(1) with respect to calculations involving an unauthorized deductible over $1,000.

Regarding §84.308(c)(1)(K), the commenter states: "The required statement doesn't make sense for contracts that are not limited to 84 months, but in fact are less than 84 months. GSA is concerned that a required statement in a contract that has no application to that contract may result in consumer confusion." Subparagraph (K) as proposed states that a debt cancellation agreement under the first model must "contain a statement that the original term of a debt cancellation agreement *can be limited to 84 months* from the inception of the retail installment sales contract." (emphasis added). The intent of the proposed provision was to incorporate a statement of what the term could be, not limit the maximum term of all debt cancellation agreements. The commission agrees in part with the commenter's suggestion, accepting the beginning phrase through the word "agreement," but declining the latter phrase. Therefore, the commission has revised §84.308(c)(1)(K) for this adoption as follows: "contain a statement setting forth the maximum term of the debt cancellation agreement (e.g., 84 months)."

The commenter disagrees with §84.308(c)(1)(L) as proposed, stating: "GSA objects to this provision in that it limits the consumer choice in obtaining primary insurance coverage. For the consumer, a higher deductible typically reduces the premium charged. This limitation on the consumer's freedom to purchase insurance coverage is unnecessary in connection with a debt cancellation agreement." The commission agrees with the commenter that "the intent of the proposed language is to limit the amount of deductible that may be covered." Thus, the commission accepts the commenter's suggested wording for §84.308(c)(1)(L) and adopts that language, as follows: "contain a statement that the debt cancellation agreement may cover a portion of the deductible of the primary physical damage insurance, up to a limit of $1,000."

In addition, new subparagraph (M) has been added to §84.308(c)(1) to include a statement advising the retail buyer to contact a tax advisor as to possible tax consequences relating to the purchase of this product. Corresponding language regarding potential tax consequences has been also added to §84.308(c)(2) and (c)(3). The remaining subparagraphs in paragraphs (1), (2), and (3) of subsection (c) have been appropriately relettered.

Second, the original rate structure of the second model limited its availability across the state. Interested stakeholders contacted the agency and requested an increase in the rate structure to increase the availability of the second model. The agency continued its dialogue with stakeholders in order to determine the appropriate rates to maintain reasonableness yet provide a certain level of profitability for providers. Therefore, the fees for the second model have been increased to approximately twice their original levels, as follows: for 0 - 12 months, a rate of 10.00 (rate per $100 or percentage of amount financed); for 13 - 35 months, a rate of 12.00; and for 36 months or more, a rate of 14.00. Additionally, unnecessary language has been removed and other technical corrections have been made to §84.308(c)(2)(B) regarding the second model.

And third, the new third model applies only on used cars priced at $15,000 or less, and in which the retail seller does not assign the contract to any party other than a related finance company. As stated earlier, in the third model, the retail seller bears complete responsibility for canceling the debt after total loss or theft whether the retail buyer elects to obtain property insurance. The unusual circumstances of this third situation for debt cancellation agreements for total loss or theft dictated further separate treatment under the rule, apart from the two models originally in place. The agency worked with stakeholders to develop the changes included in this adoption, which incorporates certain changes as requested by stakeholders. In fact, the agency received express support for the fees in Figure §84.308(e)(3).

The addition of the third model is reflected in new subsection (c)(3), (e)(3), and (h)(3) of §84.308. Overall, the third model includes the applicable provisions from the original two models but has been modified to provide greater flexibility under the unusual circumstances under which the product is offered. Subsection (c)(3) outlines the provisions that are authorized to be included in a debt cancellation agreement under the third model. Section 84.308(e)(3) and its accompanying figure explain the allowable fees that can be charged for debt cancellation agreements as well as the financing of those fees under the third model. Subsection (h)(3) delineates the allowable methods of calculating the amount to be cancelled under a debt cancellation agreement following the third model.

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

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

§84.308. Debt Cancellation Agreements for Total Loss or Theft of Ordinary Vehicle.

(a) Purpose. The Texas Finance Code allows a debt cancellation agreement to be included in a motor vehicle retail installment sales contract involving an ordinary vehicle subject to Texas Finance Code, Chapter 348 as an itemized charge. This section outlines the parameters under which a retail seller or holder may provide a debt cancellation agreement for total loss or theft of an ordinary vehicle in connection with a Chapter 348 retail installment sales contract.

(b) Disclosure under Texas Finance Code, §348.124.

(1) Delivery. A retail seller must provide the retail buyer with a notice that a debt cancellation agreement for total loss or theft of an ordinary vehicle is not required in order to purchase the motor vehicle if a retail seller offers to sell a debt cancellation agreement for total loss or theft to a retail buyer. This notice can be provided to the retail buyer either in a debt cancellation agreement for total loss or theft of

an ordinary vehicle or in a separate disclosure. The notice under this section must be provided separately from the retail installment sales contract. A retail seller may request that the retail buyer authenticate the debt cancellation agreement for total loss or theft of an ordinary vehicle disclosure acknowledging the applicant's receipt of the disclosure or notice. A retail seller may rely upon a verifiable procedure to show that a debt cancellation agreement for total loss or theft of an ordinary vehicle notice was provided to an applicant.

(2) Multiple applicants. In the case of multiple applicants, it is only necessary for the retail seller to deliver the debt cancellation agreement for total loss or theft of an ordinary vehicle notice to one applicant.

(c) Authorized debt cancellation agreement for total loss or theft of an ordinary vehicle provisions. A debt cancellation agreement under this section may only contain provisions or exclusions from either paragraph (1), (2), or (3) of this subsection, language to implement any of the provisions or exclusions of either paragraph (1), (2), or (3) of this subsection, and language to identify and obligate the parties to the debt cancellation agreement under Texas law if that language does not conflict with this subsection.

(1) Debt cancellation agreement for total loss or theft of ordinary vehicle that includes insurance coverage as part of retail buyer's responsibility to holder must:

(A) permit the exclusion of loss or damage only as a result of one or more of the following:

(i) an act occurring after the original maturity date or date of holder's acceleration of the retail installment sales contract;

(ii) any dishonest, fraudulent, criminal, illegal or intentional act of any authorized driver that directly results in the total loss;

(iii) conversion, embezzlement, or secretion by any person in lawful possession of the motor vehicle;

(iv) lawful confiscation by an authorized public official;

(v) the operation, use, or maintenance of the motor vehicle in any race or speed contest;

(vi) war, whether or not declared, invasion, civil war, insurrection, rebellion, revolution, or act of terrorism;

(vii) normal wear and tear, freezing, mechanical or electrical breakdown or failure;

(viii) use of the motor vehicle for primarily commercial purposes;

(ix) damage that occurs after the motor vehicle has been repossessed;

(x) damage to the motor vehicle prior to the purchase of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(xi) unpaid insurance premiums, salvage, towing, and storage charges relating to the motor vehicle;

(xii) damage related to any personal property attached to or within the vehicle;

(xiii) damages associated with falsification of documents by any person not associated with the retail seller or the debt cancellation provider;

(xiv) any unpaid debt resulting from exclusions in the retail buyer's primary physical damage coverage not included in the debt cancellation agreement;

(xv) abandonment of the motor vehicle by the retail buyer only if the retail buyer voluntarily discards, or leaves behind, or otherwise relinquishes possession of the motor vehicle to the extent that the relinquishment shows intent to forsake and desert the motor vehicle so that the motor vehicle may be appropriated by any other person;

(xvi) any amounts deducted from the primary insurance carrier's settlement due to prior damages;

(xvii) any loss occurring outside the continental United States of America, Alaska, or Hawaii (holder may opt to cover losses in Canada);

(xviii) any exclusion or limitation approved in writing by the commissioner;

(B) contain a statement that the retail buyer is required to notify the holder within 75 days, or a longer period as agreed to in the debt cancellation agreement, of any potential loss under the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(C) contain a statement that requests the retail buyer to provide or complete some or all of the following documents and provide those documents to the holder:

(i) a debt cancellation request form;

(ii) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured/underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;

(iii) verification of the retail buyer's primary insurance deductible;

(iv) a copy of the police report, if any, filed in connection with the total loss or theft of the motor vehicle;

(v) a copy of the damage estimate;

(vi) any additional documentation approved in writing by the commissioner;

(D) contain a statement that notwithstanding the collection of the documents under subparagraph (C) of this paragraph, upon reasonable advance notice, the holder may inspect the retail buyer's vehicle to determine pre-damage and mileage condition upon a total loss of the vehicle;

(E) contain a statement that the holder will cancel amounts as provided in the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(F) contain a statement naming the refunding method to be used to calculate refunds under subsection (f) of this section;

(G) contain a statement explaining the calculation of the amount canceled under the debt cancellation agreement for total loss or theft of an ordinary vehicle that is in accordance with subsection (h) of this section;

(H) contain a statement that the debt cancellation agreement is not required to obtain credit and will not be a factor in the credit approval process;

(I) contain a statement that a partial loss of the motor vehicle is not subject to relief under the debt cancellation agreement;

(J) contain a statement that upon request of the commissioner, the administrator will make its records relating to the creation,

processing, and resolution of the debt cancellation agreement available to the commissioner;

(K) contain a statement setting forth the maximum term of the debt cancellation agreement (e.g., 84 months);

(L) contain a statement that the debt cancellation agreement may cover a portion of the deductible of the primary physical damage insurance, up to a limit of $1,000;

(M) contain a statement that the retail buyer should consider contacting a tax advisor regarding possible tax consequences; and

(N) contain, at the election of the drafter, contract provisions pertaining to the following issues, so long as the provisions comply with state and federal law and implementing regulations:

(i) a notice provision regarding how notice may be given or delivered by either party under the debt cancellation agreement;

(ii) a severability provision;

(iii) an arbitration provision;

(iv) any contract provision approved in writing by the commissioner.

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

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

(B) permit the exclusion of loss or damage only as a result of one or more of the following:

(i) an act occurring after the original maturity date or date of holder's acceleration of the retail installment sales contract;

(ii) any dishonest, fraudulent, criminal, illegal or intentional act of any authorized driver that directly results in the total loss;

(iii) conversion, embezzlement, or secretion by any person in lawful possession of the motor vehicle;

(iv) lawful confiscation by an authorized public official;

(v) the operation, use, or maintenance of the motor vehicle in any race or speed contest;

(vi) war, whether or not declared, invasion, civil war, insurrection, rebellion, revolution, or act of terrorism;

(vii) normal wear and tear, freezing, mechanical or electrical breakdown or failure;

(viii) use of the motor vehicle for primarily commercial purposes;

(ix) loss that occurs after the motor vehicle has been repossessed;

(x) damage to the motor vehicle prior to the purchase of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(xi) damage related to any personal property attached to or within the vehicle;

(xii) damages associated with falsification of documents by any person not associated with the retail seller or the debt cancellation provider;

(xiii) abandonment of the motor vehicle by the retail buyer only if the retail buyer voluntarily discards, or leaves behind, or otherwise relinquishes possession of the motor vehicle to the extent that the relinquishment shows intent to forsake and desert the motor vehicle so that the motor vehicle may be appropriated by any other person;

(xiv) any loss occurring outside the continental United States of America, Alaska, or Hawaii (holder may opt to cover losses in Canada);

(xv) any exclusion or limitation approved in writing by the commissioner;

(C) contain a statement that the retail buyer is required to notify the holder within 75 days, or a longer period as agreed to in the debt cancellation agreement, of any potential loss under the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(D) contain a statement that requests the retail buyer to provide or complete a debt cancellation request form and a copy of the police report, if any, filed in connection with the total loss or theft of the motor vehicle and provide those documents to the holder;

(E) contain a statement that the holder will cancel amounts as provided under the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(F) contain a statement naming the refunding method to be used to calculate refunds under subsection (f) of this section;

(G) contain a statement that the holder may not be named as loss payee on any insurance policy covering the motor vehicle or receive any of the proceeds from an insurance policy on the motor vehicle;

(H) contain a statement that the holder may not require property insurance on the motor vehicle;

(I) contain a statement that the debt cancellation agreement is not required to obtain credit and will not be a factor in the credit approval process;

(J) contain a statement that a partial loss of the motor vehicle is not subject to relief under the debt cancellation agreement;

(K) contain a statement that upon request of the commissioner, the administrator will make its records relating to the creation, processing, and resolution of the debt cancellation agreement available to the commissioner;

(L) contain a statement that the retail buyer should consider contacting a tax advisor regarding possible tax consequences; and

(M) contain, at the election of the drafter, contract provisions pertaining to the following issues, so long as the provisions comply with state and federal law and implementing regulations:

(i) a notice provision regarding how notice may be given or delivered by either party under the debt cancellation agreement;

(ii) a severability provision;

(iii) an arbitration provision;

(iv) any contract provision approved in writing by the commissioner.

(3) Debt cancellation agreement for total loss or theft of used ordinary vehicle with a cash price of $15,000 or less in which

the retail seller does not assign the retail installment sales contract to any party other than a related finance company as defined by Texas Tax Code, §152.0475(a), and in which the retail seller bears complete responsibility for canceling the debt after total loss or theft whether the retail buyer elects to obtain property insurance, must:

(A) contain a statement that:

(i) if the retail buyer does not have property insurance for the motor vehicle that is in force and effect at the time of the total loss or theft of the motor vehicle, the retail seller will cancel the amount currently owed by the retail buyer on the date of total loss or theft of the motor vehicle; or

(ii) if the retail buyer has property insurance for the motor vehicle that is in force and effect at the time of the total loss or theft of the motor vehicle or the motor vehicle is involved in a total loss involving another responsible party's liability insurance policy, the retail seller will apply any settlement payment from the retail buyer's primary comprehensive, collision, or uninsured/underinsured motorist policy or other parties' liability insurance policy to the retail buyer's account and cancel the remaining balance;

(B) permit the exclusion of loss or damage only as a result of one or more of the following:

(i) an act occurring after the original maturity date or date of retail seller's acceleration of the retail installment sales contract;

(ii) any dishonest, fraudulent, criminal, illegal or intentional act of any authorized driver that directly results in the total loss;

(iii) conversion, embezzlement, or secretion by any person in lawful possession of the motor vehicle;

(iv) lawful confiscation by an authorized public official;

(v) the operation, use, or maintenance of the motor vehicle in any race or speed contest;

(vi) war, whether or not declared, invasion, civil war, insurrection, rebellion, revolution, or act of terrorism;

(vii) normal wear and tear, freezing, mechanical or electrical breakdown or failure;

(viii) use of the motor vehicle for primarily commercial purposes;

(ix) loss that occurs after the motor vehicle has been repossessed;

(x) damage to the motor vehicle prior to the purchase of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(xi) damage related to any personal property attached to or within the vehicle;

(xii) damages associated with falsification of documents by any person not associated with the retail seller or the debt cancellation provider;

(xiii) abandonment of the motor vehicle by the retail buyer only if the retail buyer voluntarily discards, or leaves behind, or otherwise relinquishes possession of the motor vehicle to the extent that the relinquishment shows intent to forsake and desert the motor vehicle so that the motor vehicle may be appropriated by any other person;

(xiv) any loss occurring outside the continental United States of America, Alaska, or Hawaii (retail seller may opt to cover losses in Canada);

(xv) any exclusion or limitation approved in writing by the commissioner;

(C) contain a statement that the retail buyer is required to notify the retail seller within 75 days, or a longer period as agreed to in the debt cancellation agreement, of any potential loss under the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(D) contain a statement that requests the retail buyer to provide or complete some or all of the following documents and provide those documents to the retail seller:

(i) a debt cancellation request form;

(ii) if property insurance is in force and effect, proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured/underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;

(iii) a copy of the police report, if any, filed in connection with the total loss or theft of the motor vehicle;

(iv) a copy of the damage estimate;

(v) any additional documentation approved in writing by the commissioner;

(E) contain a statement that the retail seller will cancel amounts as provided under the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(F) contain a statement naming the refunding method to be used to calculate refunds under subsection (f) of this section;

(G) contain a statement explaining the calculation of the amount canceled under the debt cancellation agreement for total loss or theft of an ordinary vehicle that is in accordance with subsection (h)(3) of this section;

(H) contain a statement that the retail seller may be named as loss payee on any insurance policy covering the motor vehicle, but may only receive proceeds from an insurance policy on the motor vehicle in the event of a total loss or theft;

(I) contain a statement that the retail seller may not require property insurance on the motor vehicle;

(J) contain a statement that the debt cancellation agreement is not required to obtain credit and will not be a factor in the credit approval process;

(K) contain a statement that a partial loss of the motor vehicle is not subject to relief under the debt cancellation agreement, but may be subject to relief from property insurance voluntarily purchased by the retail buyer;

(L) contain a statement that upon request of the commissioner, the administrator will make its records relating to the creation, processing, and resolution of the debt cancellation agreement available to the commissioner;

(M) contain a statement that the retail buyer should consider contacting a tax advisor regarding possible tax consequences; and

(N) contain, at the election of the drafter, contract provisions pertaining to the following issues, so long as the provisions comply with state and federal law and implementing regulations:

(i) a notice provision regarding how notice may be given or delivered by either party under the debt cancellation agreement;

(ii) a severability provision;

(iii) an arbitration provision;

(iv) any contract provision approved in writing by the commissioner.

(d) Copy of debt cancellation agreement for total loss or theft of ordinary vehicle provided to retail buyer. If a retail buyer purchases a debt cancellation agreement for total loss or theft of an ordinary vehicle, the retail seller must provide the retail buyer, within a reasonable amount of time not to exceed 10 days from the date of the retail installment sales contract, a true and correct copy of the agreement that clearly sets forth:

(1) the name of the retail buyer, and the name, address, and telephone number of the place where requests for debt cancellation are processed;

(2) the amount and term of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(3) the cost of the debt cancellation agreement for total loss or theft of an ordinary vehicle;

(4) the terms, including the limitations, exclusions and restrictions; and

(5) a statement that the holder will cancel certain amounts under the debt cancellation agreement for total loss or theft of an ordinary vehicle substantially similar to the following: "YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT."

(e) Fee or rate for debt cancellation agreement for total loss or theft of an ordinary vehicle. The amount of the fee is based upon the amount financed. The fee for a debt cancellation agreement can be adjusted to the nearest whole dollar. The fee may be included in the amount financed and a finance charge may be charged on the fee. The minimum fee for a debt cancellation agreement under this subsection is $50.

(1) Debt cancellation agreement for total loss or theft of ordinary vehicle that includes insurance coverage as part of retail buyer's responsibility to holder. A retail seller may charge a reasonable debt cancellation agreement fee for total loss or theft of an ordinary vehicle. The following figure contains a rate schedule of maximum fees that are deemed to be reasonable for debt cancellation agreements for total loss or theft of an ordinary vehicle that are in compliance with subsection (c)(1) of this section.
Figure: 7 TAC §84.308(e)(1) (No change.)

(2) Debt cancellation agreement for total loss or theft of ordinary vehicle in which holder bears complete responsibility for canceling the debt after total loss or theft. The following figure contains a rate schedule of maximum fees that are deemed to be reasonable for debt cancellation agreements for total loss or theft of an ordinary vehicle that are in compliance with subsection (c)(2) of this section.
Figure: 7 TAC §84.308(e)(2)

(3) Debt cancellation agreement for total loss or theft of used ordinary vehicle with a cash price of $15,000 or less in which the retail seller does not assign the retail installment sales contract to any party other than a related finance company as defined by Texas Tax Code, §152.0475(a), and in which the retail seller bears complete responsibility for canceling the debt after total loss or theft whether the retail buyer elects to obtain property insurance. The following figure contains a rate schedule of maximum fees that are deemed to be reasonable for debt cancellation agreements for total loss or theft of an ordinary vehicle that are in compliance with subsection (c)(3) of this section.
Figure: 7 TAC §84.308(e)(3)

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

(1) Notification of cancellation triggering refund or credit. A holder may require that the retail buyer notify the holder, retail seller, or any administrator appointed by the holder in writing should the retail buyer decide to cancel the debt cancellation agreement.

(2) Refunding method. Upon termination of a debt cancellation agreement prior to the scheduled maturity date of a retail installment sales contract, the holder or administrator will provide the retail buyer a refund or credit calculated using a method that is at least as favorable to the buyer as the Rule of 78s. In the event of a canceled debt under the debt cancellation agreement, the fee paid for the debt cancellation agreement is fully earned and no refund or credit is due.

(3) Cancellation date. The refund or credit of the debt cancellation agreement fee, if any, must be based upon the earlier date of:

(A) the prepayment of the retail installment sales contract in full prior to the original maturity date;

(B) a demand by the holder for payment in full of the unpaid balance or acceleration;

(C) a request by the retail buyer for cancellation of the debt cancellation agreement; or

(D) the total denial of a debt cancellation request based on one of the exclusions contained in subsection (c)(1)(B) or (2)(B) of this section, except in the case of a partial loss of the covered motor vehicle.

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

(5) Refund or credit less than $1.00 not required. A refund or credit is not required if the amount of the refund or credit is less than $1.00.

(6) Flat cancellation within 30 days. If no total loss or theft has occurred, the retail buyer may cancel the debt cancellation agreement within 30 days from the date of the retail installment sales contract or the issuance of the debt cancellation agreement, whichever is later, or such later day as may be provided under the debt cancellation agreement. Upon such cancellation, the holder or administrator will refund or credit the entire debt cancellation agreement fee. A retail buyer may not cancel the debt cancellation agreement and then receive any benefits under the agreement.

(g) Prompt cancellation under debt cancellation agreement. A holder must comply with the terms of a debt cancellation agreement within 60 days of receiving a debt cancellation request form and all necessary information needed by the holder or administrator to process the request. If the administrator has all of the information that a retail buyer would provide in the completion of a debt cancellation request form, the administrator must comply with the terms of the debt cancellation agreement within 60 days of receipt of all the necessary information needed by the holder or administrator to process the request.

(h) Calculation of amount to be cancelled under debt cancellation agreement for total loss or theft of ordinary vehicle. The calcu-

lation of the amount to be canceled under this section will be figured in compliance with one of the following methods:

(1) Debt cancellation agreement for total loss or theft of ordinary vehicle that includes insurance coverage as part of retail buyer's responsibility to holder.

(A) If the retail installment sales transaction uses the scheduled installment earnings method or is a regular payment contract using the sum of the periodic balances method, the holder or administrator will calculate the amount to be canceled by:

(i) adding the remaining originally scheduled installments owed by the retail buyer, including any scheduled installment that is not more than 15 days past due, on the retail installment sales contract as of the date of loss;

(ii) subtracting the total loss payment made by the primary insurance carrier, or if the primary insurance has lapsed, the retail value of the motor vehicle as of the date of loss determined by an established retail value guide;

(iii) subtracting any refunds received by the holder as of the date of total loss or theft in accordance with subsection (i) of this section; and

(iv) subtracting, if the debt cancellation agreement contains the provision under subsection (c)(1)(L) of this section, the amount of any deductible amount that exceeds $1,000.

(B) If the retail installment sales contract uses the true daily earnings method and is payable in monthly installments, the holder or administrator will calculate the amount to be canceled by:

(i) computing the originally scheduled principal balance due as of the date of total loss or theft;

(ii) adding the amount of accrued time price differential from the date of the last originally scheduled installment immediately preceding the total loss or theft, for a period not to exceed 46 days;

(iii) subtracting the total loss payment made by the primary insurance carrier, or if the primary insurance has lapsed, the retail value of the motor vehicle as of the date of loss determined by an established retail value guide;

(iv) subtracting any refunds received by the holder as of the date of total loss or theft; and

(v) subtracting, if the debt cancellation agreement contains the provision under subsection (c)(1)(L) of this section, the amount of any deductible amount that exceeds $1,000.

(C) The total loss payment made by the primary insurance carrier to the holder is presumed to be correct in connection with the amount owed under the retail buyer's insurance policy in the event of total loss or theft. If the holder or administrator has verifiable knowledge that the total loss payment by the primary insurance carrier is inadequate under the insurance policy, the holder or administrator may dispute the amount paid by the primary insurance carrier. The holder or administrator must contact the primary insurance carrier in writing to object to the amount paid under the primary insurance policy. If the primary insurance carrier has not reasonably tendered additional funds within 30 days of the written notice, the holder or administrator may, but is not required to, deduct an amount, in lieu of the amount shown under subparagraph (A)(ii) or (B)(iii) of this paragraph, equal to the retail value of the motor vehicle as of date of loss determined by an established retail value guide. Any disputes arising from this section are subject to review by the commissioner.

(2) Debt cancellation agreement for total loss or theft of ordinary vehicle in which holder bears complete responsibility for canceling the debt after total loss or theft. The amount currently owed by the retail buyer on the date of total loss or theft of the motor vehicle on the retail installment sales contract will be the amount canceled under the debt cancellation agreement for total loss or theft of an ordinary vehicle.

(3) Debt cancellation agreement for total loss or theft of used ordinary vehicle with a cash price of $15,000 or less in which the retail seller does not assign the retail installment sales contract to any party other than a related finance company as defined by Texas Tax Code, §152.0475(a), and in which the retail seller bears complete responsibility for canceling the debt after total loss or theft whether the retail buyer elects to obtain property insurance.

(A) If the retail buyer did not have property insurance at the time of the total loss or theft of the motor vehicle or the total loss of the vehicle was not covered by another responsible party's liability insurance policy, the amount to be canceled will be the amount currently owed by the retail buyer as of the date of total loss or theft of the motor vehicle.

(B) If the retail buyer had property insurance at the time of the total loss or theft of the motor vehicle or the total loss of the vehicle was covered by another responsible party's liability insurance policy, the retail seller or related finance company will calculate the amount to be canceled by determining:

(i) the current balance owed by the retail buyer as of the date of total loss or theft of the motor vehicle;

(ii) subtracting the total loss payment made by the primary insurance carrier or other responsible party's liability insurance carrier; and

(iii) subtracting any refunds received by the retail seller or related finance company as of the date of total loss or theft of the motor vehicle.

(i) Prepayment of retail installment sales contract by debt cancellation agreement. If the debt cancellation agreement is triggered by the total loss or theft of the motor vehicle, all refunds should be calculated as of the date of loss.

(1) Insurance refunds and other cancelable items. Examples of refunds that should be calculated as of the date of loss include credit life premium, credit accident and health insurance premium, credit involuntary unemployment insurance premium, collateral protection insurance premium, and service contract refunds. The retail installment sales contract may permit an administrator or provider to receive any refunds that are received by the holder after the settlement of the debt cancellation agreement, if those refunds were included in the amount received by the holder from the administrator. Refunds that were not part of the amount received by the holder from the administrator must be either applied to the retail buyer's account or given to the retail buyer.

(2) Time price differential refund. If the retail installment sales contract uses the scheduled installment earnings method or is a regular payment contract using the sum of the periodic balances method, the time price differential refund should be calculated as of the date of loss. If the retail installment sales contract uses the true daily earnings method, the holder should not earn any time price differential charge after the date of loss.

(j) Assignment and delegation.

(1) The retail seller or subsequent holder of a retail installment sales contract may not assign any of its rights under a debt can-

cellation agreement unless the retail seller or subsequent holder assigns the retail installment sales contract that the debt cancellation agreement modifies. The retail seller or subsequent holder of the retail installment sales contract may delegate its duties under a debt cancellation agreement, but the delegating party remains liable for the performance it delegated and the conduct of the persons to whom the duties are delegated.

(2) Good faith reliance. A holder may in good faith rely on a computation by the administrator of the balance waived, unless the holder has knowledge that the computation is not correct. If a computation by the administrator of the balance waived is not correct, the holder must, within a reasonable time of learning that the computation is incorrect, make the necessary corrections or cause the corrections to be made to the retail buyer's account. This section does not prevent the holder from obtaining reimbursement from the administrator or others responsible for the debt cancellation agreement or computation.

(3) For any documents relating to the creation, processing, or resolution of a debt cancellation agreement, the licensee must:

(A) maintain documents that come into its possession; and

(B) upon request by the agency, cooperate in requesting and obtaining access to documents not in its possession.

(4) Paragraph (3) of this subsection also applies to a retail seller who negotiates a debt cancellation agreement and subsequently assigns the retail installment sales contract.

(k) Prohibited practices. A debt cancellation agreement cannot be offered if:

(1) the retail installment sales contract is already protected by gap insurance;

(2) the purchase of the debt cancellation agreement is required for the retail buyer to obtain the extension of 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.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: September 3, 2010
For further information, please call: (512) 936-7621

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER G. LENDING POWERS

7 TAC §91.701

The Credit Union Commission (the Commission) adopts amendments to §91.701, concerning lending powers, without changes to the text published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5680). The amendments incorporate and expand on the loan documentation requirements of §91.702. The Commission is repealing §91.702 concurrently with the adoption of the amendments to this rule. The amendments also add required elements to the loan policies, update and refine the credit underwriting criteria, and provide that a line of credit must have payments sufficient to amortize the outstanding balance over a reasonable period of time and not cause negative amortization. Finally, the amendments rewrite some provisions for clarity and correct a typographical error.

The amendments are adopted as a result of the Texas Credit Union Department's general rule review. The Commission received comments on the amendments from Karen Wilkerson with United Heritage Credit Union, from Jeff Huffman with the Texas Credit Union League, and from Brenda Barrett Healey with the law firm of Henslee Schwartz LLP. One commenter objected to the fact that under §91.701(f), credit unions cannot appeal waiver decisions. The commenter argued that because of the potential for differing opinions on lending, there should be an appeal process. This comment is outside the scope of the proposed amendments, but the Commission notes that it has set the lending guidelines and has charged the Commissioner with enforcing them. A waiver permits a credit union to deviate from the guidelines; a waiver denial merely requires the credit union to comply with the Commission's guidelines. A credit union denied a waiver has the recourse of petitioning the Commission for a rule change to modify the guidelines.

Another commenter objected generally to the amendments, stating that credit unions prefer the existing rules because they are familiar with them and with how the examiners have interpreted them. The commenter goes on to say that the proposed amendments do not reduce regulation, do not make it easier to make loans, and are more subjective, leaving credit unions to be second-guessed by examiners. The commenter cited, in particular, §91.701(d)(2) and (5) and §91.701(e) as causing concerns and questions. Another commenter was concerned that the changes replace objective standards with subjective standards. This commenter felt that the credit union and the Department would disagree on how to characterize the nature of the markets and worried that the Department would take an overly conservative approach. The commenter also noted that the Department is not always privy to the same information as a credit union about a particular market and believes the credit union is in the best position to understand the markets. This commenter also is concerned that examiners will second-guess the credit union's decisions. Additionally, the commenter objected to requiring credit unions to take adequate account of concentration risk and noted the lack of guidance about acceptable practices in §91.701(d)(5). Finally, the commenter believes that the word "reasonable" in §91.701(e) is vague and may be a point of dispute between the credit union and the Department.

Initially, the Commission notes that the wide range in asset size of the state's credit unions makes it difficult to craft specific standards that are appropriate for all credit unions. While the Commission acknowledges that the proposed amendments to §91.701(d) set less specific standards, the result should provide credit unions with additional flexibility to tailor lending policies and loan underwriting standards in accordance with safe and sound business practices, commensurate with the needs and capability of the institution and its members. The standards are intended to assist credit unions in formulating and maintaining lending policies that are appropriate to the size

of the institution and the nature and scope of its individual operations. The standards also emphasize that the credit union's board must ensure that its loan underwriting standards are appropriate for the risk-bearing capacity of the institution within tolerances established by the board. While most credit unions are practicing sound credit risk management on a transaction basis, the Commission considers it important for credit unions to assess the risk posed by lending concentrations. Concentrations (whether they be by borrower, loan size, or any other specialization) should be adequately measured and managed to limit the excessive exposure of capital to risk inherent in such loan portfolio segments. The board must also ensure that internal controls identify lending practices that may cause excessive risk or practices that threaten the financial condition of the institution so that prompt corrective actions can be taken. The Commission believes that lending undertaken in a prudent manner will not be subject to examiner criticism. Accordingly, the Commission declines to amend the rule.

The proposed amendments to §91.701(e) give credit unions flexibility to choose an amortization schedule that is appropriate for the circumstances, while recognizing that 15 years is too long in many instances. The Commission expects credit unions to establish payments that will amortize the outstanding balance over a rational period of time, consistent with the nature of the underlying debt and the member's documented creditworthiness. Negative amortization and other practices that inordinately compound or protract member debt and disguise portfolio performance and quality raise safety and soundness concerns, and are subject to examiner criticism.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 18, 2010.

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Harold E. Feeney
Commissioner
Credit Union Department
Effective date: November 7, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 837-9236

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7 TAC §91.702

The Credit Union Commission (the Commission) adopts the repeal of §91.702, Records for Lending Transactions, without changes as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5681). The substance of the rule has been incorporated into §91.701 and this rule is no longer necessary.

The rule is repealed as a result of the Credit Union Department's general rule review. The Commission received no comments on the repeal.

The repeal is adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code §124.001, which authorizes the Commission to adopt rules regarding loans to members.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §91.703

The Credit Union Commission (the Commission) adopts amendments to §91.703, concerning interest, without changes to the text published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5681). The amendments rename the rule Interest Rates and clarify that the board of directors sets the interest rates but can delegate this authority.

The amendments are adopted as a result of the Credit Union Department's general rule review. The Commission received no comments on these amendments.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §91.704

The Credit Union Commission (the Commission) adopts amendments to §91.704, concerning real estate lending, with a nonsubstantive change to the text published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5682). Section 91.704 will be republished. The amendments define improved real estate, further explain the lending policies a board of directors must establish, and clarify the conditions for excluded transactions. The amendments also incorporate the new federal requirement that residential mortgage loan originators register with the Nationwide Mortgage Licensing System and Registry, and make other editing changes for clarity. The change corrects the citation in subsection (b) from §91.701(d) to (b).

The amendments are adopted as a result of the Texas Credit Union Department's general rule review. The Commission received comments from Karen Wilkerson with United Heritage Credit Union, from Jeff Huffman with the Texas Credit Union League, and from Brenda Barrett Healey with Henslee Schwartz LLP. One commenter believes that §91.704(g)'s requirement that the board of directors ensure that the credit union exercise due diligence when reviewing a guarantor's financial capacity should be the responsibility of the management of the credit union, since it is an operational issue. This comment is outside the scope of the proposed amendments but the Commission will take the comment under consideration for future rule review.

Another commenter generally preferred the existing loan regulations because credit unions are more familiar with the current rules and have a history of how the examiners have interpreted them. The commenter stated that the proposed amendments are more subjective, broad, and open-ended, leaving credit unions exposed to being second-guessed by examiners. This commenter also objected to the incorporation of other federal and state statutes in the agency's rules. The third commenter also objected to the subjective nature of the amendments in §91.704(b), stating that they are open to interpretation and could lead to disputes between the Department and credit union over what is appropriate.

The Commission acknowledges that the amended guidelines are more subjective but believes the change is appropriate, given the diversity of the state's credit unions. A lending standard that is appropriate for a billion dollar credit union would overwhelm a ten million dollar credit union. A rigid application of the existing rule could have a disparate impact on smaller credit unions. The Commission believes that providing flexibility to allow credit unions to tailor real estate lending policies commensurate with the needs and capability of the credit union and its members is desirable. While most credit unions are practicing sound credit risk management on an individual loan basis, the Commission considers it important for credit unions to regularly assess the risk posed by real estate lending. A credit union should monitor conditions in the real estate market in its lending area to ensure that its policies continue to be appropriate for current market conditions. Real estate lending is an integral part of many credit unions' business plans and, when undertaken in a prudent manner, will not be subject to examiner criticism. Accordingly, the Commission declines to modify the proposed amendments. The Commission also declines to remove incorporated federal and state statutes from its rules. The commission expects credit unions to conduct real estate lending activities consistent with safe and sound lending standards, which includes compliance with all applicable laws. References to other federal and state statutes remind credit unions, especially smaller institutions, that other requirements may be applicable.

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

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

§91.704. Real Estate Lending.

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

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

(2) Home loan means a loan that is:

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

(B) secured in whole or part by:

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

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

(3) Improved residential real estate means residential real estate containing offsite improvements, such as access to streets, curbs, and utility connections, sufficient to make the property ready for residential construction, and real estate in the process of being improved by a building.

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

(5) Owner-occupied means that the owner of the underlying real property occupies a dwelling unit of the real property as a principal residence.

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

(b) Written Policies. Before engaging in any real estate lending, a credit union shall adopt and maintain written policies that are appropriate for the size of the credit union and the nature and scope of its operation. When formulating the real estate lending policy, the credit union should consider both internal and external factors, such as its size and condition, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate laws and rules, and general market conditions. Each policy must be consistent with safe and sound lending practices and establish appropriate limits and standards for extensions of credit that are secured by liens on or

interests in real estate, or that are made for the purpose of financing permanent improvements to real estate. The policies shall, in addition to the general requirements of §91.701(b) of this title (relating to Lending Powers), address the following, as applicable:

(1) Title insurance;

(2) Escrow administration;

(3) Loan payoffs;

(4) Collection and foreclosure; and

(5) Servicing and participation agreements.

(c) Loan to Value Limitations.

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

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

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

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

(D) Owner occupied residential real estate (other than home equity)--Loan to value limit 95%

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

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

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

(2) The regulatory loan-to-value limits should be applied to the underlying property that collateralizes the loan. In determining the loan to-value ratio, a credit union shall include the aggregate amount of all sums borrowed, including the 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.

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

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

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

(3) Interim construction loans--18 months

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

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

(6) Home improvement loans--20 years

(7) All other loans--15 years

(e) Mortgage Fraud Notice. A credit union must provide to each applicant for a home loan a written notice at closing. The notice must be provided on a separate document, be in at least 14-point type, and have the following or substantially similar language: "Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of §32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed $10,000. "I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan. "I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing." On receipt of the notice, the applicant shall verify the information and execute the notice. A credit union must keep the signed notice on file with the records required under §91.701 of this title.

(f) Excluded Transactions. It is recognized that there are a number of lending situations in which other factors significantly outweigh the need to apply the regulatory loan-to-value limits. As a result, an exception to the loan-to-value limits is permissible for the following loan categories:

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

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

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

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

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

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

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

(h) Registration of residential mortgage loan originators. Title V of the Housing and Economic Recovery Act of 2008 (Public Law 110-289) requires employees of a credit union who engage in the business of a mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry and to obtain a unique identifier. A credit union must comply with the requirements imposed by Part 761 of the NCUA Rules and Regulations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §91.708

The Credit Union Commission (the Commission) adopts amendments to §91.708, concerning real estate appraisals or evaluations, without changes to the text published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5684). The amendments substitute the phrase "amount of the loan or extension of credit" for the phrase "transaction value" for better accuracy, clarify when the commissioner may require an appraisal, allow a credit union to substitute a certification of value in certain renewal instances, and make other editing changes for clarity.

The amendments are adopted as a result of the Texas Credit Union Department's general rule review. The Commission received comments on the proposed amendments from Jeff Huffman with the Texas Credit Union League and from Brenda Barrett Healey with Henslee Schwartz LLP. One commenter stated that their members preferred the current rules because they are familiar with them and have a history of how the examiners have interpreted them. This commenter also stated that the proposed amendments are more subjective, broad, and open-ended, leaving credit unions exposed to being second-guessed by examiners. Another commenter believes the terms "market conditions" and "obvious and material changes" are vague, ambiguous, and subject to interpretation. The commenter argues that credit unions will be forced to take the most conservative position and order an appraisal, increasing the member's renewal costs.

The Commission believes that the change is appropriate given the increase in complex business lending by some credit unions. A credit union that advances funds in a renewal should be analyzing the status of the borrower, the collateral, and the market conditions just as the credit union did in the original loan, and should provide documentation of its analysis of changes in any of the conditions. The Commission declines to modify the proposed amendments.

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

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

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7 TAC §91.710

The Credit Union Commission (the Commission) adopts amendments to §91.710, concerning overdraft protection, without changes to the text published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5684). The amendments provide that the credit union comply with the overdraft service requirements of the Federal Reserve System. The amendments also make nonsubstantive editing changes for clarity.

The amendments are adopted as a result of the Texas Credit Union Department's general rule review. The Commission received no comments on these amendments.

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

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

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7 TAC §91.711

The Credit Union Commission (the Commission) adopts amendments to §91.711, concerning loan participations, without changes to the text published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5685). The amendments rename the rule Purchase and Sale of Member Loans and rework subsection (b) of the rule to clarify terminology and requirements for written policies. The amendments also specify that purchase and sale agreements be in writing with minimum terms and define the term "member loan". Finally, the amendments formalize the requirement that the credit union exercise independent judgment before purchasing a participation interest, incorporate the

requirements of Part 741 of NCUA's rules for some participation interests, and define sales with recourse.

The amendments are adopted as a result of the Texas Credit Union Department's general rule review. The Commission received comments from Karen Wilkerson with United Heritage Credit Union and from Jeff Huffman with the Texas Credit Union League. One commenter expressed concern that a credit union's authority to purchase a non-member loan participation was eliminated with the deletion of language in §91.711(b). The Commission responds that credit unions continue to have authority to purchase non-member loan participations under §91.805. The language in question was deleted because it incorrectly stated the accounting that should be used for these investments. GAAP requires that non-member loan participations be accounted for as loans, not as investments.

Another commenter stated that their members preferred the current rules because they are familiar with them and have a history of how the examiners have interpreted them. This commenter also stated that the proposed amendments are more subjective, broad, and open-ended, leaving credit unions exposed to being second-guessed by examiners. The commenter objected, in particular, to the proposed language in §91.711(a)(6), which requires the board of directors to address the requirements for providing and securing in a timely manner adequate credit and other information needed to make an independent judgment. The Commission believes that directors should exercise due diligence before making this type of investment. The language objected to is one of six requirements the board must address in formulating its investment policy for these investments. The board must make an independent judgment that an investment is prudent; obtaining credit and other information is essential to making an independent and educated decision. The Commission declines to modify the proposal.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §91.713

The Credit Union Commission (the Commission) adopts amendments to §91.713, concerning indirect financing of motor vehicles or other chattels, without changes to the text published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5686). The amendments rename the rule Indirect Lending and add a requirement that the credit union periodically review statistics for compliance and concentration risk. The amendments also edit the rule for clarity.

The amendments are adopted as a result of the Texas Credit Union Department's general rule review. The Commission received no comments on these amendments.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §91.719

The Credit Union Commission (the Commission) adopts amendments to §91.719, concerning loans to officials and senior management employees, without changes to the text published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5687). The amendments re-title subsections for clarity, reduce the frequency of reports to the board of directors, and add a requirement that the minutes reflect the board's review of these loans.

The amendments are adopted as a result of the Texas Credit Union Department's general rule review. The Commission received no comments on these amendments.

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

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

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CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES
SUBCHAPTER B. FEES

7 TAC §97.115

The Credit Union Commission (Commission) adopts new §97.115, Reimbursement of Legal Expenses, with nonsubstantive changes to the text published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5688). Section 97.115 will be republished. The new rule permits the commissioner to recover legal costs that the Credit Union Department (Department) incurred as a result of a credit union's unreasonable or egregious behavior or as a result of a credit union's actions outside the scope of what is permitted by statute or rule. The rule excludes costs from proceedings where the credit union's legal rights, duties, or privileges are being determined by the Department or as against the Department. As explained below, the rule has been modified to incorporate suggestions made by a commenter. The changes do not impose a greater burden on the credit unions.

The new rule is adopted to more fairly collect legal costs if they are caused by a single credit union's actions as described in the rule. The Commission received comments from David Brooks with Corpus Christi City Employees Credit Union, James Muse with Doches Credit Union, Brenda Barrett Healey with Henslee Schwartz LLP, and Jeff Huffman with the Texas Credit Union League. One commenter favored the proposed rule, stating that the cooperative method of funding has recently come with a high price tag. The commenter noted the nationwide anger at having to pay for the mistakes of a few and believes that most credit unions, if operated conservatively, will not be impacted by the additional charges. The commenter argues that credit unions that are taking less risk and operating in a safe and sound manner should not have to pay for other credit unions' cost of recovery.

The remaining three commenters opposed the rule. One commenter seconded the comments of the Texas Credit Union League, stating that the Department is seeking unlimited fee charging powers, and stating that the rule should be scrapped. Another commenter states that, while agreeing with the general principles of fairness and equality espoused by the Department, the proposed rule falls short of achieving the desired objectives. The commenter goes on to argue that the language is broader than necessary to achieve the objectives and suggests that the commissioner could seek reimbursement only when the credit union had "acted in an egregious manner, acted outside of the course and scope of what is legally permitted, or had other culpable conduct". The Commission agrees with this comment and has amended the rule in response. This commenter also suggests that the commissioner's determination as to whether to seek reimbursement should depend on the outcome of a legal proceeding or on whether the credit union acted reasonably under the circumstances or within its legal rights. The Commission has incorporated the latter part of this suggestion into guidance for the Commission when it considers a credit union's appeal.

Finally, a commenter objects to the rule because it gives broad regulatory powers to use against individual credit unions. The commenter believes the fees are punitive and will deplete credit unions of critical capital when they need it the most. In addition, the commenter argues that the fees are unlimited and completely at the discretion of the commissioner, and notes that nothing in the rule requires that the commissioner reduce assessments so that the fees are fairly redistributed. The commenter also states that the fees reduce predictability of the cost of regulation for a credit union. Finally, the commenter believes the Commission should limit the commissioner's power to specific instances where the fees can be applied.

Initially, the Commission points out that the rule provides a credit union with the right to appeal any assessment under the rule prior to the credit union having to pay the assessment. The Commission firmly believes that this protects credit unions from arbitrary or unlimited fee imposition. In addition, as stated above, the Commission is amending the rule to address concerns that it is not specific enough. Because the Department is permitted to collect only the amount of revenue authorized by the Commission, any fees collected under this proposed rule will automatically result in proportionately lower fees for other credit unions. Accordingly, the Commission declines to provide for this in the rule.

Finally, the Commission acknowledges that the rule is punitive. It is intended first, to remind credit unions that actions outside the law have consequences, and, second, to offset costs for other credit unions when the Department must hire the Office of Attorney General as a result of these actions. The Commission believes that credit unions can avoid these costs and avoid depleting capital by operating within the laws and regulations. The Commission also believes that when a credit union does cause the Department to incur these costs, the costs should be borne by that credit union, not by all of the state-chartered credit unions, causing them to deplete capital for others' actions. Accordingly, the Commission declines to amend the rule in response to those comments.

The new rule is adopted under Texas Finance Code, §15.402, which authorizes the Commission to establish reasonable and necessary fees for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code §16.003, which permits the Department to set the amount of fees, penalties, charges and revenues required to carry out its functions.

The specific sections affected by the new rule are Texas Finance Code, §15.402 and §16.003.

§97.115. Reimbursement of Legal Expenses.

(a) The commissioner may seek reimbursement of expenses from an individual credit union for legal fees incurred solely and necessarily because the credit union acted in an unreasonable or egregious manner or acted outside the course and scope of what is permitted by statute or regulation. To ensure that the rights and interest of all parties are protected, this section shall not apply to any adjudicative proceedings in which the legal rights, duties, or privileges of the credit union are being determined by the Department after an opportunity for hearing. This section also does not apply to court proceedings where the individual credit union's legal rights, duties, or privileges are being determined as against the Department.

(b) The credit union has thirty days from the date it receives the assessment to pay in full or to appeal in writing to the Commission.

(c) If a credit union files a written notice of appeal, the Commission shall hear the appeal at its next regularly scheduled meeting. In making its decision, the Commission shall consider whether the credit union acted reasonably under the circumstances or acted within its legal rights.

(d) When possible, the Department will notify a credit union before the Department requests legal assistance which may be charged to a credit union under 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.

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7 TAC §97.116

The Credit Union Commission (Commission) adopts new §97.116, Recovery of Costs for Extraordinary Services Not Related to an Examination, with nonsubstantive changes to the text published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5689). Section 97.116 will be republished. The new rule requires a credit union to reimburse the Credit Union Department (the Department) for expenses incurred if the credit union's actions are unreasonable or egregious, or outside the course and scope of what is permitted by statute or regulation.

The new rule is adopted to more fairly collect Department expenses if they are caused by a single credit union's actions as described in the rule. The Commission received one comment supporting the rule and four comments opposing the rule. David Brooks with Corpus Christi City Employees Credit Union favored the proposed rule, stating that the cooperative method of funding has recently come with a high price tag. The commenter cited the nationwide anger at having to pay for the mistakes of a few and believes that most credit unions, if operated conservatively, will not be impacted by the additional charges. The commenter argues that credit unions that are taking less risk and operating in a safe and sound manner should not have to pay for other credit unions' cost of recovery.

The Commission received comments opposing the rule from Karen Wilkerson with United Heritage Credit Union, from James Muse with Doches Credit Union, from Brenda Barrett Healey with Henslee Schwartz LLP, and from Jeff Huffman with Texas Credit Union League. One commenter believes the Department intends to use this rule to punish credit unions with excessive complaints. The Commission disagrees and notes that this is a misunderstanding of a discussion during a Commission meeting and, as stated during the meeting, does not represent the intent of the rule. The commenter also believes that the Commission is adopting this rule as a result of its new status as a self-directed, semi-independent agency. The Commission responds that, on the contrary, the rule is being adopted in response to the concerns of credit unions who had prudently managed their credit unions and object to paying to resolve an economic crisis they did not cause. The motivation for this rule is to require certain credit unions to bear the costs of their inadvisable behavior. The Commission stresses that the rule is revenue neutral to the Department: the Department will not profit from any fees collected under this rule, as its overall revenue collection cannot exceed that authorized by the Commission. Accordingly, any fees assessed under this rule will result in a proportionate reduction of the operating fees collected under §97.113.

One commenter supported Texas Credit Union League's analysis, stating that the Department is seeking unlimited fee charging powers and urging that the rule be scrapped. Another commenter states that the rule does not specify what services would be considered unique or extraordinary but does give the commissioner sole discretion to determine this. In response, the Commission points out that the right to appeal serves to limit the arbitrary nature of the possible charges and protects credit unions from overly subjective decisions. This commenter also objects to the rule not limiting the penalty to instances where the credit union has acted egregiously, outside the scope of authority or the law, or had other culpable conduct. The Commission believes this last comment has merit and has modified the rule accordingly. Finally, the commenter questions how this rule would differ from the authority to charge for supplemental examinations in §97.113. The Commission has modified the rule to clarify this.

Finally, a commenter objects to the rule because it gives broad regulatory powers to use against individual credit unions. The commenter believes the fees are punitive and will deplete credit unions of critical capital when they need it the most. In addition, the commenter argues that the fees are unlimited and completely at the discretion of the commissioner, and notes that nothing in the rule requires the commissioner to reduce assessments so that the fees are fairly redistributed. The commenter also states that the fees reduce predictability of the cost of regulation for a credit union. Finally, the commenter believes the Commission should limit the commissioner's power to specific instances where the fees can be applied.

Again, the Commission points out that the rule provides a credit union with the right to appeal any assessment under the rule prior to a credit union having to pay the assessment. The Commission firmly believes that this protects credit unions from arbitrary fee imposition. In addition, as stated above, the Commission is modifying the rule to address concerns that it is not specific enough. Also, as stated above, because the Department is permitted to collect only the amount authorized by the Commission, any fees collected under this proposed rule will result in proportionately lower fees for other credit unions. Finally, the Commission acknowledges that the rule is punitive. It is intended first, to remind credit unions that actions outside the law have consequences, and, second, to offset costs incurred by the Department when credit unions require the Department to use excessive staff resources in response to these actions. The Commission believes that these costs should not be borne by the state-chartered credit unions, but by the credit union engaging in the behavior. Accordingly, the Commission declines to amend the rule in response to those comments.

The new rule is adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the

Texas Finance Code, and under Texas Finance Code §16.003, which permits the Department to set the amount of fees, penalties, charges and revenues required to carry out its functions.

The specific sections affected by the proposed new rule are Texas Finance Code, §15.402 and §16.003.

§97.116. Recovery of Costs for Extraordinary Services Not Related to an Examination.

(a) The commissioner may seek reimbursement from an individual credit union for non examination-related expenses incurred solely and necessarily because the credit union acted in an unreasonable or egregious manner, or acted outside the course and scope of what is permitted by statute or regulation. Expenses can include personnel costs, transportation costs, meals, lodging, and other incidental expenses. If the commissioner determines that recovery of costs is appropriate, the Department shall provide advance notice to the credit union of its intention to recover the expenses.

(b) In seeking reimbursement, the commissioner shall consider the amount of the costs involved, the nature of the credit union's conduct, the service provided, the financial impact on the credit union, and the impact of the activity on other Department services. The commissioner may reduce the charges and bill the credit union less than the full amount of the costs.

(c) The credit union has thirty days from the date it receives the assessment to pay in full or to appeal in writing to the Commission.

(d) If a credit union files a written notice of appeal, the Commission shall hear the appeal at its next regularly scheduled meeting. In making its decision, the Commission shall consider whether the credit union acted reasonably under the circumstances or acted within its legal rights.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 11. SURFACE MINING AND RECLAMATION DIVISION

SUBCHAPTER C. SUBSTANTIVE RULES--URANIUM EXPLORATION AND SURFACE MINING

The Railroad Commission of Texas adopts amendments to §11.71 and §11.72, relating to Purpose and Authority; and Applicability; new §11.73 and §11.74, relating to Uranium Exploration Forms; and Information Subject to Public Review; amendments to §11.81 and §11.82, relating to Statutory Definitions; and Regulatory Definitions; amendments to §§11.92-11.100, relating to Permit Application; Elements of Permit Application; Application Approval; Bonding, Insurance, Payment of Fees; Permit Issuance; Renewal; Transfer; Permit Approval; and Permit Denial; amendments to §11.113 and §11.114, relating to Revocation or Suspension without Consent; and Revision on Motion or with Consent; new §§11.131-11.135, relating to Uranium Exploration Permit: General Provisions; Application to Conduct Uranium Exploration Activity; Uranium Exploration Permit Revision; Uranium Exploration Permit Renewal; and Uranium Exploration Permit Transfer; new §§11.137-11.142, relating to Commission Notice of Uranium Exploration Permit Application, Issuance, and Denial; Uranium Exploration Drill Site Operating and Reclamation Requirements; Uranium Exploration Drill Site Plugging and Reporting Requirements; Commission and Groundwater Conservation District Jurisdiction; Groundwater Quality and Well Information; and Groundwater Analysis and Reporting; amendments to §§11.151-11.153, relating to Plan; Standards; and Alternative Methods; amendments to §11.181 and §11.182, relating to Closing, and Release; amendments to §11.194, relating to Release from Reporting Requirement; and amendments to §11.203 and §11.206, relating to Duration of Liability; and Release or Reduction of Bonds. The Commission adopts §§11.71, 11.73, 11.82, 11.132, 11.137, 11.139, and 11.142 with changes and adopts the remaining sections without changes to the proposed versions published in the May 7, 2010, issue of the *Texas Register* (35 TexReg 3566). The Commission is not adopting and is withdrawing proposed new §11.136, relating to Uranium Exploration Permit Fees; the Commission will propose a revised version of that rule in a separate rulemaking proceeding.

In a separate, concurrent rulemaking, the Commission adopts the repeal of §§11.131-11.139, relating to Notice of Exploration through Overburden Removal; Content of Notice; Extraction of Minerals; Removal of Minerals; Lands Unsuitable for Surface Mining; Notice of Exploration Involving Hole Drilling; Permit; Reclamation and Plugging Requirements; and Reporting.

The Texas Mining and Reclamation Association-Uranium Committee (TMRA), Mesteña Uranium, LLC (Mesteña), URI, Inc. (URI), Goliad County Groundwater Conservation District (GCGCD), Kenedy County Groundwater Conservation District (KCGCD), and the Sierra Club Lone Star Chapter (Sierra Club) filed comments on the proposed amendments and new rules. These comments are addressed in the following paragraphs. TMRA did not specifically state its agreement with or opposition to the proposed rules in their entirety, but made suggestions to change the wording in some provisions. Likewise, the Sierra Club did not specifically state its agreement with or opposition to the proposed rules in their entirety, but did indicate support for particular provisions and made suggestions to change others.

Comments on the provisions in the proposal preamble regarding the fee structure are addressed later in this adoption order.

Mesteña disputed the Commission's determination that no current permittee is a small business or micro-business. Mesteña may have misunderstood the proposal preamble. As stated in the proposal preamble, only limited information was available to the Commission, and uranium exploration and mining companies are not required to and did not provide to the Commission data on the number of employees or annual

gross receipts. These are elements of the definitions of "small business" and "micro-business" in Texas Government Code, §2006.001; therefore, the Commission was unable to determine conclusively whether any current permittee is a small business or micro-business. Therefore, the Commission did, in fact, conduct an assessment of the economic costs of compliance and provided this assessment in the preamble of the proposal published in the May 7, 2010, issue of the *Texas Register.*

Sierra Club commented that it supported the Commission's proposed standard form for permit applications at §11.71, Purpose and Authority. The Commission assumes that Sierra Club intended in this comment to refer to §11.73, relating to Uranium Exploration Forms. In new §11.73, the Commission adopts form SMRD-5U, Application to Transfer a Uranium Exploration Permit, without changes from the form SMRD-5U published with the May 7, 2010, proposal. The Commission notes that the version date for this form was listed as "09/09" in the table in Figure: 16 TAC §11.73 in the May 7, 2010, published notice, but should have been listed as "04/10." As a result of comments addressed in subsequent paragraphs regarding proposed §11.82 and §11.139, the Commission adopts revised form SMRD-3U, Application to Conduct Uranium Exploration Activities by Drilling, with changes to clarify "authorized representative," and forms SMRD-38U, Cased Exploration Well Completion Report, and SMRD-39U, Borehole Plugging Report, with changes to address re-entry of boreholes to obtain further data. All forms are adopted with the date of 10/10.

The Commission received several comments regarding proposed §11.74, relating to Information Subject to Public Review. Sierra Club and KCGCD noted their view that the proposed rules regarding confidentiality of applications are in line with the spirit of the legislation adopted in House Bill 3837 (80th Texas Legislature, 2007) to avoid the common practice of uranium exploration companies claiming an entire application to be confidential. KCGCD indicated that, in fact, the amended Act requires disclosure of pertinent information in exploration permit applications and that the proposed rules strike the right balance between allowing groundwater conservation districts to receive the information required under the statute while providing applicants a means to protect from disclosure information that is truly confidential. By contrast, TMRA and Mesteña indicated their opinion that, under proposed §11.74(a), a uranium mining company could compromise its investment just by filing an application for an exploration permit because the required application information would not allow it to conceal new discoveries from competitors.

As described in the May 7, 2010, proposal, this rule largely mirrors the language in Texas Natural Resources Code, §131.048, and serves to emphasize that all information filed by an applicant or permittee is considered essential for public review unless the applicant or permittee identifies specific information to be confidential and the director determines that it is not information essential for public review. The Commission disagrees with TMRA's and Mesteña's comments because permits are not required to contain the results of any drilling activities other than well and borehole locations. Companies performing approved activities within an exploration permit area already will have obtained control of the land for the prescribed purposes.

TMRA commented on proposed new §11.74(b), which describes the procedure to be followed by the director in making a written determination of whether information identified as confidential is, in fact, information essential for public review. TMRA's position is that a process for appeal of the director's decision should be further defined. The Commission disagrees; the absence of detail is intended to ensure that an entity may file an appeal in the most expeditious manner because of the fairly short deadline of ten business days for filing the appeal. As long as the appeal document is clearly titled as such, it may be in any form that is sufficient to advise the Commission of the nature of the objection to the director's determination. The appeal will be forwarded to the Commissioners and, potentially, added to an open meeting agenda for consideration and determination by the Commission. The Commission adopts §11.74 without changes to the May 7, 2010, proposal.

The Commission received comments regarding the proposed new definitions for "drilling completion," "exploration borehole," "exploration reclamation," and "well" in §11.82. TMRA and Mesteña suggested that the definition of "drilling completion" be revised to indicate that a borehole is complete only after "final depth and diameter" are reached, rather than when total depth is reached, and when the company had determined that all data has been collected from the borehole. The Commission finds these proposed changes to this definition to be ambiguous and thus not helpful in achieving one purpose of the definition. One intent of this proposed definition is to establish a specific time from which plugging time frames can be measured. Should a permittee need to re-enter a borehole for further data acquisition or to case the borehole, such activities should be accomplished within the allotted regulatory time frames or within a permit-specific, alternate time frame approved as part of a temporary plugging plan contained in an application. The Commission adopts the proposed definition of "drilling completion" without changes.

TMRA, URI and Mesteña commented on the proposed definition of "exploration borehole" and suggested that this term should be limited to horizontal or vertical uncased boreholes located outside of a Texas Commission on Environmental Quality (TCEQ) production area authorization (PAA) area. These commenters also suggested that a new term, "delineation borehole," be adopted and defined as a borehole drilled within a PAA area. The Commission disagrees that these changes are needed; no distinction is necessary for boreholes drilled for orebody delineation, as such drilling is still considered to be an exploration activity whether or not the borehole is plugged immediately or later cased for use as a well. The only distinction is whether or not a cased borehole is later registered with the TCEQ or included in a PAA. The Commission adopts the proposed definition of "exploration borehole" without changes.

KCGCD suggested that the statutory definition of "reclamation" proposed at §11.81(11) be expanded to include exploration reclamation activities or that a new regulatory definition for reclamation be adopted that includes exploration reclamation activities. The Commission has determined that such changes and additions to the definitions of this term are unnecessary because the Commission already proposed a new term, "exploration reclamation," at §11.82(11). However, as a result of this comment, the Commission has revised §11.71, relating to Purpose and Authority, to clarify that reclamation is required for disturbances caused by exploration activities, as well as for disturbances caused by surface mining activities.

TMRA and Mesteña also suggested that the proposed definition of "well" be expanded to exclude those constructed under the Underground Injection Control (UIC) Program administered by TCEQ pursuant to 30 TAC Chapter 331 (relating to Underground

Injection Control) and located within a UIC area permit boundary, indicating their view that such wells are outside the jurisdiction of the Commission's exploration permitting program. The Commission disagrees. The purpose of the proposed definition is to distinguish between a well and an exploration borehole which is not based on the jurisdictional status of a well. Each borehole drilled outside a PAA and each borehole drilled within a PAA for delineation of an orebody or for post-leach logging falls under the jurisdiction of the Commission. If a borehole is cased for use as a well, the well remains under the Commission's jurisdiction until the Commission is notified that the well has either been registered with the TCEQ or included in an area permit issued by the TCEQ. The Commission adopts the proposed definition of "well" without changes.

TMRA and Mesteña recommended that the Commission adopt a definition of "well log," suggesting that this definition is necessary to clarify what the Commission means by the term. "Well log" and "geophysical log" are terms used in the statute as amended by House Bill 3837. Each of these terms is in common use and definition in the drilling and exploration industry, and the Commission sees no reason for further definition that may invoke a limitation unintended by the Texas Legislature.

The Commission adopts the amendments to definitions in §11.81 without changes.

TMRA and Mesteña suggested that a new term, "authorized representative," be defined in adopted §11.82 to clarify who is required to serve as an authorized representative as used in the proposed rules. The Commission notes that this term is used in proposed §11.132 and §11.133, and the Commission finds that it is clear from the context of its use that the authorized representative would be the individual responsible for conducting the exploration activity as the signatory on the application form. The Commission does not propose to adopt a definition for this term; however, the Commission adopts an additional cross-reference at §11.132(c) to further emphasize that the authorized representative identified by the permittee as required by §11.132(b)(2) is the same individual who must sign the attestations required in the application. The Commission adopts the amendments to definitions in §11.82 with changes, including the addition of a definition for the term "usable quality water," as explained in a subsequent paragraph.

The Commission received several comments regarding proposed new §11.131, relating to Uranium Exploration Permit: General Provisions; which sets forth the requirement to obtain a permit for uranium exploration prior to conducting such activity, outlines the scope of such permit, including a general description of the purposes and authority granted by a permit, and mirrors language enacted by House Bill 3837. This section also establishes the term for an exploration permit and requirements for permit renewal until certain activities are completed.

GCGCD suggested that proposed §11.131(e)(3) be revised to indicate that rig supply water used for exploration borehole drilling be tested and of potable quality as required at 16 TAC §76.1000(f) (relating to Technical Requirements--Locations and Standards of Completion for Wells). The Commission disagrees for two reasons. First, installation of a rig supply well must be accomplished by a licensed well driller; therefore, the requirements at 16 TAC §76.1000(f) already apply. Second, because a permittee conducting exploration does not know whether or not an exploration borehole will be cased as a well, it must use potable water in all drilling. A requirement in proposed §11.131(e)(3) that the produced water be of potable quality is therefore unnecessary.

Sierra Club reiterated a comment made in response to earlier versions of these proposed rules that it supported the proposed permit requirements set forth in §11.131(g). Sierra Club and KCGCD concurred that the 12-month permit term is appropriate to help ensure that uranium exploration companies are following the law. These comments also stated support for the proposed requirement at §11.131(h) that all wells be registered with the TCEQ before an exploration permit can be closed. TMRA and Mesteña commented that the requirement at §11.131(h) that a permit for exploration be renewed until all boreholes are properly plugged and all cased exploration wells are either plugged, registered with the TCEQ or included in a TCEQ-issued area permit in accordance with Chapter 27 of the Texas Water Code, be deleted. These commenters indicate that such requirement is not consistent with any remaining Commission oversight and would require a permittee to pay fees for the same exploration boreholes twice. The Commission disagrees. Boreholes within an exploration permit area remain under the jurisdiction of the Commission and require continuing inspection until they are permanently plugged. Boreholes completed as wells likewise remain under the Commission's jurisdiction until registered with the TCEQ or included in a TCEQ-issued area permit. Per-acre area fees therefore remain appropriate for permit processing, maintenance, and inspection until all exploration reclamation is completed. Unless additional boreholes are drilled, the Commission would assess no further per-borehole fee. The Commission adopts new §11.131 without changes.

KCGCD indicated its support of proposed rules at §11.132, Application to Conduct Uranium Exploration Activity, commenting that the required information is necessary to allow the Commission to evaluate the merits of the application and that no application should be approved without companies' strict adherence to these requirements. The Commission concurs. Sierra Club commented on the proposed requirement at §11.132(b)(6)(C)(ii) that an application for exploration contain information on the location of private and public water wells outside of but within 150 feet of the proposed permit boundary. Sierra Club stated its opinion that information should be provided on all wells within 500 feet of the proposed permit boundary. The Commission disagrees. Conduct of drilling activities is prohibited closer that 150 feet from a water well without consent of the owner; therefore, a requirement for an applicant to provide information beyond this distance is unnecessary.

TMRA and Mesteña commented that portions of §11.132(b)(7)(D), requiring that an application contain a description of the proposed plugging and well construction methods, be deleted. Mesteña is of the opinion that cased wells fall under the jurisdiction of other state agencies and, therefore, the methods of well construction should be regulated by those agencies. The Commission disagrees. All boreholes drilled, including those that later are cased as a well, initially fall under the Commission's jurisdiction until plugged or a *de facto* transfer of the well through an affidavit. The Commission must ensure that all wells installed under an exploration permit are constructed in a manner that protects the groundwater and surface-water resources of the State.

TMRA and Mesteña also commented that §11.132(b)(7)(E), requiring that an application include a plan for preventing surface runoff from entering mud pits, should be revised to indicate that a plan must be provided to prevent dispersion of mud-pit con-

tents that may result from precipitation events. The Commission disagrees. Mud pits for drilling are intended to serve as a reservoir for the drilling mud and to allow for settling of fines created during the drilling. The mud pits are not intended to serve as a surface-water control structure.

The Commission adopts new §11.132 with changes in §11.132(c) to clarify the meaning of the term "authorized representative," as described previously.

The Commission received several comments regarding proposed new §11.133, Uranium Exploration Permit Revision. TMRA and Mesteña both suggested that §11.133(a) be revised to include a requirement that the Director of the Surface Mining and Reclamation Division review and approve a proposed revision prior to the proposed implementation date. The Commission does not concur that this addition is necessary. Time frames for application review are already established at §1.201(a) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). These commenters also suggested that §11.133(b) be expanded to indicate that only any new or revised information required by §11.132 is required to be provided in a revision application. In the Commission's view, such additional language is not necessary. The proposed language clearly indicates that only information applicable to the requested revision is required. The Commission adopts new §11.133 without changes.

Proposed new §11.134 establishes the minimum requirements for the content of applications for renewal of exploration permits. TMRA and Mesteña both suggested that §11.134(a) include a requirement that the Director of the Surface Mining and Reclamation Division review and approve a renewal application within 30 days of receipt. As noted above, such a change is not necessary because time frames for application review are already established in the Commission's General Rules of Practice and Procedure. Sierra Club and KCGCD both indicated their support for adoption of the rules as proposed. The Commission adopts new §11.134 without changes.

KCGCD commented on §11.135, regarding transfers of uranium exploration permits. KCGCD's comment on §11.135(a) appears to suggest that applicants requesting a transfer of its permit via Form SMRD-5U should be required to submit such application within a certain number of days prior to or after the transfer. The Commission disagrees with this comment. It is unclear why such an application submission deadline would be needed, because a person holding an exploration permit is subject to all requirements of the permit, these Regulations, and the Act, and the individual aspiring to obtain transfer of a permit may not commence activities until the requested transfer is approved by the Commission. The Sierra Club and KCGCD indicated their support for adoption of §11.135(b), requiring that all boreholes be plugged and reclaimed prior to submission of an application for transfer. The Commission adopts new §11.135 without changes.

The Commission received comments from Sierra Club and KCGCD regarding proposed new §11.137, Commission Notice of Uranium Exploration Permit Application, Issuance, and Denial. Both commenters suggested that the Commission provide notice of receipt of an application at least 30 days prior to the Commission's decision on initial, renewal, certain revision, and transfer applications. The Commission notes that, although the Commission has attempted, as a matter of policy, to provide prompt notice of receipt, a 30-day prior notice is not always possible due to existing Commission processing time frames set forth in the Commission's General Rules of Practice and Procedure. Sierra Club and KCGCD further commented that notice of the Commission's decision on a permit application should be provided at the same time and to the same group of stakeholders that were notified of application receipt. The Commission's proposed rule already contains this requirement.

TMRA commented on §11.137(a)(2) and (3), suggesting that the requirement for the Commission to notify certain entities when a renewal application is filed or a revision is filed in which the permittee proposes to add additional acreage or remove acreage from an approved permit area, does not allow a permittee to conceal new discoveries from competitors and could cause a permittee with substantial investment in a prospect to lose the prospect to competition just by filing for an exploration permit before drilling occurs. The Commission disagrees. Section 131.356 of the Act does not distinguish between different types of applications for uranium exploration. In addition, the likelihood of competitive rights being affected simply as a result of the filing of an application are almost nil unless a permittee had not already secured right of entry to conduct exploration activities, which in itself would preclude exploration.

TMRA and Mesteña commented on proposed new §11.137(c)(2), regarding the requirement to include the name, address, and telephone number of the applicant's representative in the written notice issued by the Commission, suggesting that the phrase "applicant's representative" be revised to "applicant's authorized representative." Staff concurs that this change would be appropriate to be consistent with the use of this phrase in other parts of these rules. The Commission adopts new §11.137 with this clarifying change to subsection (c)(2).

The Commission received numerous comments regarding §11.138, the Commission's proposed new rule pertaining to drill site operation and reclamation requirements. With respect to the requirement to obtain written consent of a well owner to drill within 150 horizontal feet of the well, TMRA and Mesteña commented that requiring advance notice to the Commission prior to drilling near a water well, and requiring that specific locations of proposed boreholes be identified, would unnecessarily delay the exploration program without any benefit to the surface or mineral owner, permittee, or the environment. These commenters therefore suggested that the rule be revised to indicate that only written notice must be provided to the well owner prior to drilling. TMRA and Mesteña further indicated a view that the current Commission rules do not prohibit exploration drilling within 150 feet of a water well. GCGCD, KCGCD, and Sierra Club all commented that this conditional prohibition on drilling should extend to 500 feet from the well rather than 150 feet. The Commission does not adopt these suggestions. As proposed, the new rule is substantively the same as current rule §11.138(4)(D), which requires written consent of a well owner prior to exploration drilling within 150 feet of a water well. The only delay that may result from the requirement to obtain written permission would stem from a well owner not granting such permission. The Commission has also not identified a technical rationale for increasing the distance to 500 feet from a water well. In the Commission's view, a distance of 150 feet is a conservative distance, considering that the Commission does not consider such drilling activities to have as great a potential for environmental harm as a septic system, for which the regulatory setback distance from a well is only 50 feet (30 TAC §285.91(10), relating to Tables). The Commission adopts §11.138 without changes.

TMRA, URI, and Mesteña also commented on §11.138(b)-(d), reiterating earlier comments regarding prevention of surface-water runoff into drilling mud pits, and separately defining "delineation boreholes" from "exploration boreholes." These suggested changes are addressed in previous paragraphs. The comments also noted that their normal operations do not include immediate reclamation of the surface of plugged boreholes and installed wells within a PAA, and that such activities are routinely deferred until the end of the mine life pursuant to TCEQ rules at 30 TAC Chapter 336 (relating to Radioactive Substance Rules). TMRA and Mesteña further commented that the normal practice of the industry did not include active revegetation of drilling sites, which is simply to allow native vegetation to become re-established in those areas disturbed by reclamation. Finally, TMRA and Mesteña suggested that §11.138(d)(3) be revised to require notification of cessation of drilling and plugging only if the cessation occurs more than 30 days prior to the end of the permit term. The Commission disagrees with these comments and does not adopt any changes as a result of these comments. The Commission could not locate rules in the cited chapter governing surface reclamation requirements associated with installed wells. In addition, the Commission does not consider that deferment of surface reclamation for borehole and well sites under its jurisdiction would constitute sound public policy that protects the groundwater and surface-water resources in the State. Under the regulatory flexibility implied in the proposed rule, applicants may propose a surface reclamation and revegetation plan for consideration by the Commission. This rule is intended to ensure that such a plan is considered by the applicant during preparation of an application. The commenters' suggestion that notification of cessation of drilling and plugging for the permit term be limited to occurrences greater than 30 days before the end of a permit term is unnecessary. The Commission finds that the proposed rule is clear that notification would be unnecessary if fewer than 30 days remained before the end of a permit term. The Commission adopts §11.138 without changes.

TMRA, URI, and Mesteña suggested several changes to §11.139, Uranium Exploration Drill Site Plugging and Reporting Requirements, which establishes technical requirements for borehole plugging, marking, and reporting, including acceptable plugging materials and methodology, a reasonable time frame for effecting the plugging of exploration boreholes, and requirements for marking plugged holes in the field to facilitate inspection following plugging. TMRA and Mesteña recommended that §11.139(a) be revised to indicate clearly that an alternative plugging schedule for exploration boreholes may be submitted and approved in accordance with subsection (d) of this section. The Commission concurs in part. The proposed modification, that permittees plug each exploration borehole within three business days of drilling completion *unless otherwise described in the permit,* would introduce some ambiguity with regard to what plugging plan is finally approved. For added clarity, the Commission has adopted a change but has modified the suggested wording to identify the applicable plan as that which is ultimately approved in the permit.

URI described conflicts between the proposed rules and TCEQ Class III UIC Permit criteria, as follows: (1) plugging a delineation borehole according to the three business days rule or casing according to the 48-hour rule may necessitate drilling a new offset within a foot or two of the original borehole or trying to drill out the cement of the original, either of which is problematic and wasteful; (2) the drilling date reported on the affidavit does not consider any re-entry into the borehole for wash-out or deepening purposes for subsequent re-logging attempts; and (3) this drilling date also does not take into account the time needed for data interpretation from pilot boreholes that are drilled in conjunction with well-field development. URI summarized its comment by stating that, during mining operations, the time-consuming process of drilling, evaluating, offset drilling, evaluating, casing, cased well testing, etc., is not a constant process but is often interrupted and iterative; therefore, the timing of the final plugging or casing is difficult to predict. These comments suggested that §11.139(a) be revised to indicate that each exploration borehole be plugged within three business days of drilling completion unless otherwise described in the permit, and reiterated the suggestion that the Commission distinguish between a "delineation borehole" and an "exploration borehole" and impose separate reclamation requirements. The Commission disagrees with these comments in part. As discussed in previous paragraphs, "delineation boreholes" have the same or greater potential to affect groundwater resources and are within the Commission's jurisdiction when drilled. The Commission has determined that these issues are appropriately addressed in a permit-specific alternative plugging plan submitted pursuant to §11.139(d), wherein the applicant may propose a plan for temporary and permanent plugging to be considered by the Commission with respect to the merits of that specific plan in meeting the resource protection requirements of the Act. The Commission does agree, however, with URI's concern that the proposed plugging and casing time frames do not take into consideration the need for borehole re-entry for re-logging or deepening. The Commission has adopted minor modifications to forms SMRD-38U and SMRD-39U that include identification of re-entry dates when applicable.

TMRA, URI, and Mesteña also disagree with proposed §11.139(b)(1) on the basis that Type-I neat cement should not be the default required plugging material for exploration boreholes. They state that this material has been demonstrated to fracture many formations commonly encountered in the State. The commenters suggested that the rule be generalized to allow the plugging media and density to be proposed by the applicant specific to the conditions encountered, approved by the director, and specified as a permit condition. The Commission does not agree. The Commission finds no basis for the statement that a column of Type-I neat cement pumped into a borehole can fracture a formation, particularly at the typical depths of exploration drilling conducted in Texas. The issues raised in these comments are appropriately addressed under the adopted rules at §11.139(d), pursuant to which applicants may propose an alternative plugging plan that includes the use of an alternative to Type-I neat cement that the Commission finds is a satisfactory alternative. The Commission will evaluate any proposed alternative plan and assess the comparative effectiveness of the proposed alternative plugging material.

TMRA, URI, and Mesteña commented that the two-day time period allowed to check a plug for proper depth at §11.139(b)(3) is too short, because settling may occur over a much longer time span than two business days, and that a period of thirty (30) days would increase the likelihood that a subsided plug will be discovered and corrected. The Commission disagrees. Under normal plugging situations, most of the settling will occur within the two-day time period. The Commission adopts this time period as proposed to ensure prompt plugging completion and to minimize the loss of incompletely plugged boreholes due to erosion or collapse induced by weather events or heavy-equipment

traffic. If a subsided plug was not corrected by additional plugging it would constitute incomplete reclamation.

TMRA and Mesteña commented that §11.139(c) should be changed to indicate that the marking method used to identify the location of plugged boreholes should be the method that is described in the approved permit, not in the application. The Commission concurs. The Commission may impose requirements in the approved permit that are different from those the applicant proposes in the application. The Commission has revised this text accordingly in the adopted rule.

TMRA and Mesteña commented on §11.139(d) to suggest that the term "usable quality water" be deleted from the rule because it is not a defined term. The Commission does not adopt this change. This term has enjoyed common usage for several decades by numerous state agencies and the oil and gas industry, and refers to groundwater that is used or can be used for a beneficial purpose. This term was defined in former §11.138(4)(B) that the Commission repeals in a concurrent rulemaking. This term is therefore not a new term, and the Commission now re-adopts the definition of this term in §11.82.

TMRA commented generally that the requirement in §11.139(e) and (g) to submit monthly filings of borehole plugging and well completion forms will greatly increase the paperwork processing time for the Commission and expects that the Commission may become inundated with forms beyond its ability to process them in a timely fashion. Both TMRA and Mesteña suggested that the Commission include a proviso in these subsections to indicate that filing of a Form SMRD-38U or SMRD-39U is required only if at least one well was completed or one borehole was plugged within the previous month. The Commission agrees that filing these reports for months in which there is no reportable activity would be time consuming, but the Commission disagrees that any proviso is needed in subsections (e) and (g). The Commission finds that the wording as proposed is clear that the reports must be filed only when a borehole is actually plugged or an exploration well cased the previous month.

TMRA and Mesteña commented on §11.139(f), specifically that the requirement of this rule that wells be installed within 48 hours of completion of drilling imposes undue hardship for boreholes drilled at the end of the work week, and that this requirement should be changed to five business days. The Commission disagrees. This rule does not impose a new requirement and substantively mirrors the current rule at §11.138(4)(C). The intent of this rule is to ensure that an unplugged, uncased borehole does not contribute to deterioration of groundwater resources. This protection requirement is independent of business decisions on when to drill.

TMRA and Mesteña also suggested that the standards set forth in this rule for well construction should be those adopted by the TCEQ at 30 TAC §331.82 (relating to Construction Requirements), which sets forth construction requirements for Class III wells. The Commission does not adopt this suggested change. While in some instances such installed wells would be converted to Class III wells, the requirements under the jurisdiction of the Commission concerning uranium exploration and protection of the groundwater resources are adequately established under the standards of the Texas Department of Licensing and Regulation as indicated in the published proposed rule.

TMRA commented regarding §11.139(h) that if an exploration permit is renewed, the requirement to plug or case exploration boreholes during the permit term, as set forth in this rule, is moot. The Commission does not concur with this assessment. The intent of this rule is to ensure that, regardless of whether a permit is renewed, the permittee is required to complete all plugging and/or casing of each exploration borehole drilled during that permit term.

The Commission adopts §11.139 with changes as described in the previous paragraphs.

TMRA and Mesteña also commented regarding §11.140, which specifies the Commission's jurisdiction over uranium exploration boreholes and cased exploration wells, and requires a permittee to register cased exploration wells with the TCEQ pursuant to its rule at 30 TAC §331.221 (relating to Registration of Wells). Both commenters suggested that text be added to this rule to indicate that the Commission's jurisdiction does not extend to wells installed under a permit issued by the TCEQ. The Commission is not adopting this suggested change. In the opinion of the Commission, the text of the proposed rule contains sufficient clarity indicating that all exploration boreholes, and all wells drilled under the exploration permit unless plugged, registered with the TCEQ, or included in a TCEQ-issued area permit, fall within the jurisdiction of the Commission. The rule as proposed mirrors the amended Act at §131.354.

TMRA and Mesteña commented that new §11.141, which requires permittees to obtain groundwater samples from area wells for analysis at least 15 days prior to commencement of drilling and, within 90 days of receiving the laboratory analyses, provide the pre-exploration groundwater quality information to the groundwater conservation district, should clarify that wells associated with TCEQ-permitted uranium mining activities are exempt from these requirements. The Commission disagrees. Section 131.351 of the amended Act is clear that such wells are not exempt. TMRA and Mesteña further commented that the proposed rule at §11.141(a) does not specify that sampling is required only once. The Commission does not adopt any changes as a result of this comment. By definition, once exploration drilling commences within a permitted area, any subsequent drilling cannot necessarily be considered to be prior to exploration. Such a determination will need to be made by the Commission based on information to be provided by the applicant for a permit or permit renewal.

TMRA and Mesteña also commented that §11.141(e) was inconsistent with amendments to the Act enacted by House Bill 3837, in that reporting to a groundwater conservation district was applicable only for cased wells used for exploration of rig supply purposes, and that this rule fails to identify the means by which a well location is to be described. TMRA and Mesteña suggest that §11.141(e) be revised to indicate that well locations should be provided in GPS coordinates. The Commission disagrees that the proposed rule is inconsistent with House Bill 3837; the language of this rule mirrors closely that of §131.357(c) of the Act. The Commission does not adopt the suggested change with regard to reporting the locations of sampled wells. The Commission concludes that, because several viable methods exist for adequately describing locations, an applicant should propose a method of describing the locations of sampled wells in the exploration permit application.

Sierra Club and GCGCD commented that pre-exploration water quality testing should be applied for all exploration activities and mining permits, whether or not a groundwater conservation district exists. GCGCD stated its opinion that, where there is no groundwater conservation district, the analyses should be provided to the County Government. The Commission does

not concur. Section 131.357(a) of the Act clearly limits the requirement to provide pre-exploration groundwater quality data to groundwater conservation districts in which exploration occurs.

Sierra Club and KCGCD commented in favor of both proposed new §11.140 and §11.141, noting their view that the proposed rules align favorably with the requirements in the Act to require reporting of pumpage and basic groundwater quality data to the Commission and applicable groundwater conservation districts prior to commencement of drilling. These commenters also stated their opinion that both the Commission and the groundwater conservation districts have the authority to ensure that a permittee complies with the reporting and record keeping requirements of §131.354(d) and §131.357 of the Act. The Commission agrees and adopts §11.140 and §11.141 without changes.

TMRA and Mesteña suggested in comments on new §11.142 that groundwater quality analyses be conducted in accordance with the requirements at 40 CFR §141 rather than the specific protocols set forth in *Standard Methods for Examination of Water and Wastewater,* 2005, 21st edition; *Methods for Chemical Analysis of Water and Wastes,* 1979 (EPA-600/4-79-020); and *Test Methods: Technical Additions to Methods for Chemical Analysis of Water and Wastes,* 1982 (EPA-600/4-82-055), as proposed. These commenters are of the opinion that citation of specific analytical protocols will require that the adopted rules be updated as new editions of these analytical protocols are published. The Commission agrees that the rule would need to be amended to adopt new editions of the cited protocols, but that is intentional because it ensures that interested persons will be on notice of the proposed change and will allow them an opportunity to comment or otherwise participate in the rulemaking proceeding. The Commission understands the commenters' concern but considers the cited protocols to be appropriate and adopts new §11.142 without these suggested changes.

Sierra Club and KCGCD reiterated a comment that they submitted regarding the Commission's November 6, 2009, proposal, suggesting that vanadium (V) be included as a parameter that should be analyzed in groundwaters in permit-area wells. Although the Commission described its intent in the preamble of the proposed rules to add vanadium to the table of analytical parameters at §11.142(a), the published table did not include vanadium. The Commission recognizes that the available literature on minerals and elements that frequently occur in Texas uranium provinces supports this suggestion. GCGCD and Mesteña both commented that the table of analytical parameters indicated the wrong element symbol (Sn) for selenium, which is Se. Although an earlier version of this table did contain this errant symbol, the published proposed rules correctly indicated Se for selenium. KCGCD and GCGCD both recommended that the list of analytical parameters include Radon 222. The Commission understands that radon is a significant component for measurement of exposure to ionizing radiation and is common in groundwater wherever uranium is present; nevertheless, the Commission is not proposing to include Radon 222 in the list of required analytes at this time, although this analyte may be proposed in a future rule amendment. The Commission adopts §11.142 with changes to include vanadium as a required analyte.

The purpose of the amendments and new rules is to clarify several existing rules and to promulgate more comprehensive rules regarding uranium exploration by drillhole pursuant to the expanded statutory authority enacted in House Bill (HB) 3837.

The Commission adopts amendments to §11.71 that add the words "exploration," "explored lands," and "exploration activity;" the Commission adopts the rule with additional changes that clarify the scope of the rules in Chapter 11.

In §11.72, the Commission adopts amendments that add the words "uranium exploration activity" and "uranium exploration permit" pursuant to the expanded statutory authority to regulate uranium exploration enacted by House Bill 3837, 80th Legislature (2007).

The Commission adopts new §11.73, with clarifying changes, to specify the forms required to be filed with the Commission for various purposes. The form numbers, names, updated creation or revision dates, and the applicable rule numbers are listed in the table. To amend a form, create a new form, or to stop using a current form, the Commission would be required to give notice as a rulemaking proceeding, which would include notice and an opportunity for interested persons to comment.

The Commission adopts new §11.74 to establish that all information filed by an applicant or permittee is considered essential for public review unless the applicant or permittee identifies specific information to be confidential and the director determines whether it is or is not essential for public review. This rule largely mirrors the language in Texas Natural Resources Code, §131.048.

In §11.81, the Commission adopts amendments to the definitions of "party to the administrative proceedings," the deletion of the definition of "person affected," and amendments to the definition of "surface mining operation." One comment on the November 6, 2009, proposal suggested that the definition of "person affected" not be deleted. The Commission proposed and now adopts the deletion of this definition in §11.81 because the term is already defined in the Act at §131.004(11). Another comment suggested that the definition of "reclamation" should include a specific reference to exploration activities. The Commission agreed that this distinction should be included, and proposed and now adopts a definition for a new term, "exploration reclamation," in §11.82 to clarify the matter.

In §11.81(14), the Commission adopts wording in the definition of "surface mining permit" to clarify that a uranium surface mining permit does not include a discharge permit issued by the Commission pursuant to the Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, Subchapter H, or an uranium exploration permit issued by the Commission pursuant to this chapter. The Commission adopts similar changes in §11.82(16) for the definition of "uranium exploration permit."

In §11.82, the Commission adopts an amendment to the definition of "Act," and adopts new definitions for "APA," "applicant," "director," "division," "drilling completion," "examiner," "exploration borehole," "exploration reclamation," "permit," "uranium exploration permit," "well," and "well completion." The definitions for "APA," "applicant," "director," "division," "examiner," "well," and "well completion" clarify terms that are used in the chapter. The definitions for "exploration borehole," "permittee," and "uranium exploration permit" clarify terms used in HB 3837. The Commission adopts in §11.82 the definition for the term "usable quality water" that appears in §11.138(4)(B), whose repeal is adopted in a concurrent rulemaking, and renumbers the definitions for "well" and "well completion" in §11.82.

For §§11.92-11.100, the Commission adopts minor changes to the rule titles to clarify that these rules apply to surface mining

activities; in §11.93 and §11.94, the Commission also adopts an increase in the initial application fee from $200 to $400. In §11.100, the Commission adopts wording to correct the name of a state agency.

The Commission adopts minor changes in §11.113 and §11.114 to correct references to other rules and to delete obsolete language for greater clarity.

The Commission adopts the repeal of §§11.131-11.139 in a separate, concurrent rulemaking and here adopts the corresponding new §§11.131-11.135 and §§11.137-11.142 to implement the new statutory provisions enacted by HB 3837. New §11.131 sets forth the requirement to obtain a permit for uranium exploration prior to conducting such activity, outlines the scope of such permit, including a general description of the purposes and authority granted by a permit, and mirrors language enacted by HB 3837. This section also establishes the permit term for exploration and the requirements for permit renewal until certain activities are completed.

Each applicant for a uranium exploration permit must comply with new §11.132 by filing Form SMRD-3U, specifically including information regarding the applicant, the names and addresses of each entity that the Commission is required to notify under new §11.137 in this rulemaking. New §11.132 also requires a map or maps of the area of proposed exploration and a list of permit-area surface owners and mineral owners that specifically identifies those mineral owners from whom right of entry to conduct exploration activities has been obtained. In addition, sufficient geologic and hydrologic information for the proposed area of exploration must be included to support the proposed plan for borehole plugging and well installation. The Commission adopts a change in subsection (b)(3) to make the sentence grammatically correct. In subsection (c), the Commission adopts a clarifying change to include a reference to the "authorized representative" identified in subsection (b)(2).

New §§11.133, 11.134, and 11.135 establish the minimum requirements, respectively, for the content of applications for revision, renewal, and transfer of exploration permits. Applicants for revision or renewal must file Form SMRD-3U describing any changes to the exploration activity, and permittees requesting a transfer must file Form SMRD-5U.

New §11.137 establishes the Commission's requirements for notifying certain entities in the area of proposed activity for a new exploration permit, revision, renewal, or transfer. These entities, to be identified by name and address in the permit application, pursuant to new §11.132, include the local groundwater conservation district, if present, the mayor and health authority of each municipality in the locality, the county judge and county health authority of each county in which the proposed exploration is to occur, and each member of the Texas legislature representing the area in which the proposed exploration is to occur. Notices required under §11.137 must be provided concurrently to all entities. The Commission adopts a clarifying change in subsection (c)(2) to insert the word "authorized" before the word "representative."

New §11.138 sets forth the drill site operating and reclamation requirements for uranium exploration. No permittee may drill an exploration borehole within 150 horizontal feet of an existing water well without the written consent of the well owner. The rule further sets out a permittee's duty to protect the drill site and ensure that reclamation occurs as contemporaneously as practicable. The permittee must notify the division prior to certain activities to allow scheduling of inspections.

New §11.139 establishes technical requirements for borehole plugging, marking, and reporting, including acceptable plugging materials and methodology, a reasonable time frame for effecting the plugging of exploration boreholes, and requirements for marking plugged holes in the field to facilitate inspection following plugging. Subsections (e) and (g) require a monthly report of plugging (on Form SMRD-39U or SMRD-38U). The Commission adopts changes in subsections (a) and (c) to clarify that the terms of the approved permit control the plugging and marking requirements for each permittee.

New §11.140 addresses ground water quality pursuant to HB 3837 and specifies the Commission's jurisdiction over uranium exploration boreholes and cased exploration wells, and requires a permittee to register cased exploration wells with the Texas Commission on Environmental Quality pursuant to its rule at 30 TAC §331.221 (relating to Registration of Wells). Certain wells are subject to the requirements of groundwater conservation districts. The new rule also requires permittees to file monthly reports with the Commission and the applicable groundwater conservation districts reporting the total amount of water produced from certain wells.

New §11.141 requires permittees to obtain groundwater samples for analysis at least 15 days prior to commencement of drilling. Within 90 days of receiving the laboratory analysis, the applicant must provide the pre-exploration groundwater quality information to the groundwater conservation district. New §11.142 requires groundwater quality analysis according to the specified groundwater monitoring parameters. Permittees must report the analyses to the Commission and the groundwater conservation districts. One comment on the November 6, 2009, proposal suggested that vanadium (V) be included as a parameter that should be analyzed in ground waters in permit-area wells. The available literature on minerals and elements that frequently occur in Texas uranium provinces supports this suggestion. The Commission proposed and now adopts the inclusion of vanadium as a required analyte.

Finally, the Commission adopts amendments to §§11.151-11.153, 11.181, 11.182, 11.194, 11.203, and 11.206 to correct statutory citations and cross-references to other rules and to make other non-substantive clarifications.

DIVISION 1. INTRODUCTION

16 TAC §§11.71 - 11.74

The Commission adopts the amendments and new rules under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the adopted amendments and new rules.

Issued in Austin, Texas, on October 12, 2010.

§11.71. Purpose and Authority.

In order to prevent the adverse effects to society and the environment resulting from unregulated surface mining operations; to ensure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances are protected from such unregulated exploration and surface mining operations; to ensure that surface mining operations are not conducted where reclamation as required by the Texas Railroad Commission is not possible; to ensure that exploration and surface mining operations are so conducted as to prevent unreasonable degradation to land and water resources; to ensure that exploration reclamation and reclamation of all surface-mined lands is accomplished as contemporaneously as practicable with the exploration and surface mining operation, recognizing that the extraction of minerals by responsible mining operations is an essential and beneficial economic activity, these sections are promulgated pursuant to the directive and authority of the Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, et seq. (the "Act"), and any amendment to it.

§11.73. Uranium Exploration Forms.

Forms required to be filed at the Commission for conducting uranium exploration shall be those prescribed by the Commission as listed in Table 1 of this section. All Commission forms listed in Table 1 for uranium exploration and required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information.

Figure: 16 TAC §11.73

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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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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DIVISION 2. DEFINITIONS

16 TAC §11.81, §11.82

The Commission adopts the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the adopted amendments.

Issued in Austin, Texas, on October 12, 2010.

§11.82. Regulatory Definitions.

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

(1) Access roads--All roads located within the permit area and under the control of the operator of the surface mining operation.

(2) Act--The Texas Uranium Exploration, Surface Mining, and Reclamation Act, Texas Natural Resources Code, Chapter 131, et seq.

(3) Administrative Procedure Act; APA--Texas Government Code, Chapter 2001.

(4) Applicant--A person who is applying for a new permit or an amendment to or a renewal or transfer of a current permit.

(5) Contiguous area--Includes all areas touching upon the boundaries of the land affected by the surface mining operation which the operator proposes to surface mine notwithstanding areas separated by terrain features such as streams, roads, gas lines, and power transmission lines.

(6) Director--The director of the Surface Mining and Reclamation Division or the director's delegate.

(7) Division--The Surface Mining and Reclamation Division of the Commission or its director or employees.

(8) Drilling completion--The time at which total drilling depth has been reached and the exploration borehole has been logged.

(9) Examiner--The person appointed by the Commission to conduct hearings.

(10) Exploration borehole--An uncased hole created with a drill, auger, or other boring tool for exploring strata in search of uranium deposits.

(11) Exploration reclamation--The process of restoring an area affected by activities conducted under a uranium exploration permit to its original or other substantially beneficial condition.

(12) Highwall--The vertical or nearly vertical wall of exposed strata adjacent to the site of a mineral deposit which results from surface mining excavation.

(13) Permit--A surface mining permit, as defined in this section, or a uranium exploration permit, as defined in this section.

(14) Rules--The regulations promulgated by the commission pursuant to the authority of the Texas Uranium Exploration, Surface Mining, and Reclamation Act.

(15) Terracing--Grading where the steepest contour of the highwall shall not be at a greater angle from the horizontal than that set by the commission in approving a specific reclamation plan calling for terracing with the table portion of the restored area flat and a flat terrace without depressions to hold water and with adequate provision for drainage, unless otherwise approved by the commission.

(16) Uranium exploration permit--The written certification by the Commission that the named entity may conduct the uranium exploration activities described in the certification during the term of the permit and in the manner and subject to the conditions established in the certification. A uranium exploration permit does not include:

(A) a uranium surface mining permit issued by the Commission pursuant to this chapter; or

(B) a permit issued by the Texas Commission on Environmental Quality pursuant to Texas Water Code, §27.011 and §27.0513.

(17) Usable quality water--Groundwater that is used or can be used for a beneficial purpose including, but not limited to, domestic, livestock, or irrigation uses.

(18) Well--Any excavation that is drilled, cored, bored, washed, fractured, driven, dug, jetted, or otherwise constructed for the intended use of locating, monitoring, dewatering, depressurizing, observing, diverting, or acquiring groundwater, or for conducting pumping or aquifer tests.

(19) Well completion--Activities undertaken as a part of well installation to render the well usable for its intended purpose. Well completion includes, at a minimum, the installation of casing; sealing the well annulus to the ground surface; and capping the well.

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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Mary Ross McDonald
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For further information, please call: (512) 475-1295

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DIVISION 3. URANIUM SURFACE MINING PERMITS

16 TAC §§11.92 - 11.100

The Commission adopts the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the adopted amendments.

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DIVISION 4. TERMINATION, SUSPENSION, REVISION, AND CORRECTION OF PERMITS

16 TAC §11.113, §11.114

The Commission adopts the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the adopted amendments.

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DIVISION 5. URANIUM EXPLORATION PERMITS AND PERMIT FEES

16 TAC §§11.131 - 11.135, 11.137 - 11.142

The Commission adopts the new rules under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the adopted new rules.

Issued in Austin, Texas, on October 12, 2010.

§11.132. Application to Conduct Uranium Exploration Activity.

(a) Each applicant shall apply for a uranium exploration permit by filing with the division a completed Form SMRD-3U (Application to Conduct Uranium Exploration Activities by Drilling) and paying the Commission the applicable fee or fees as required by §11.136 of this title (relating to Uranium Exploration Permit Fees).

(b) The application shall contain the following information necessary for the division to provide notice pursuant to §11.137 of this title (relating to Commission Notice of Uranium Exploration Permit Application, Issuance, and Denial):

(1) the name, mailing and street addresses, and telephone number of the applicant;

(2) the name, mailing and street addresses, and telephone number of the applicant's authorized representative that will be responsible for conducting the exploration activity;

(3) the name of each county in which the exploration activity is proposed, along with the contact information by name, address, and telephone number, for each of the following:

(A) each groundwater conservation district within the area in which the exploration activity will occur;

(B) the mayor and health authority of each municipality within 10 miles in all directions of the boundary of the area in which the exploration activity will occur;

(C) the county judge and health authority of each county in which the exploration activity will occur; and

(D) each member of the Texas legislature who represents the area in which the exploration activity will occur;

(4) the names and addresses of all landowners of record of the surface of the exploration permit area, indexed to the land tracts identified on the map required in paragraph (6) of this subsection;

(5) the names and addresses of all mineral estate owners for which the applicant has obtained the right of entry to conduct exploration activities, indexed to the land tracts identified on the map required in paragraph (6) of this subsection;

(6) a USGS topographic map or maps (scale 1:24,000), in both paper and digital formats, showing the proposed exploration area, with the following information shown:

(A) the exploration area boundary and acreage stated to the nearest acre;

(B) the boundary of each land tract within the exploration permit area, with the tracts that the applicant has obtained the right to enter to conduct exploration activities identified; and

(C) the location of all private or public water wells that can be identified in the public record that are:

(i) within the proposed permit boundary; and

(ii) outside of but within 150 feet of the proposed permit boundary; and

(7) the following information:

(A) a description of the geology and hydrogeology for the proposed permit area that includes cross-sections and maps;

(B) an explanation of the exploration drilling method, including the depth of subsurface penetration and the estimated size of the surface disturbance;

(C) a description of the physical method for marking each borehole location for inspection;

(D) a description of the proposed plugging and well construction methods, which shall conform to the requirements of §11.138 of this title (relating to Uranium Exploration Drill Site Operating and Reclamation Requirements);

(E) a description of the proposed methods for disposing of cuttings produced by the drilling activity and preventing surface runoff from entering mud pits; and

(F) a description of the proposed procedures for leveling any disturbance caused by the drilling activity to conform to the requirements of §11.138 of this title.

(c) The application shall be signed by the authorized representative identified in subsection (b)(2) of this section, dated, and certified, attesting to the veracity of the statements and representations in the application.

§11.137. Commission Notice of Uranium Exploration Permit Application, Issuance, and Denial.

(a) The division shall provide concurrent written notice to the entities listed in subsection (b) of this section of:

(1) the division's receipt of an initial application for an exploration permit and the director's issuance or denial of an exploration permit;

(2) the division's receipt of an application for a permit revision that adds acreage to or removes acreage from the permit area or makes a material change in the permit boundaries and the director's issuance or denial of a permit revision;

(3) the division's receipt of an application for an exploration permit renewal and the director's issuance or denial of an exploration permit renewal; and

(4) the division's receipt of an application for an exploration permit transfer and the director's issuance or denial of an exploration permit transfer.

(b) The division shall give the notice required by subsection (a) of this section to the following:

(1) each groundwater conservation district within the area in which the exploration activity will occur or is occurring;

(2) the mayor and health authority of each municipality within 10 miles of the boundary of the area in which the exploration activity will occur or is occurring;

(3) the county judge and health authority of each county in which the exploration activity will occur or is occurring; and

(4) each member of the Texas Legislature who represents the area in which the exploration activity will occur or is occurring.

(c) In the written notice of receipt of an initial application for an exploration permit, the division shall include:

(1) the name, address, and telephone number of the applicant;

(2) the name, address, and telephone number of the applicant's authorized representative that will be responsible for conducting the exploration activity; and

(3) information describing or showing the exploration area boundary covered by the application for an exploration permit.

(d) In the written notice of the issuance or denial of an exploration permit, permit revision (if required to be provided by subsection

(a) of this section), permit renewal, or permit transfer, the division shall include information on where a copy of the approval or denial document may be obtained.

§11.139. Uranium Exploration Drill Site Plugging and Reporting Requirements.

(a) Each permittee shall plug each exploration borehole within three business days of drilling completion unless otherwise approved in the permit. The permittee shall maintain records of borehole logging, cementing dates, and rig logs and make them available for inspection by the division.

(b) Each permittee shall plug each exploration borehole in accordance with the following requirements.

(1) Each borehole shall be plugged with Type-I neat cement from total depth to three feet below ground surface unless the director approves an alternative plugging method that meets the requirements of subsection (d) of this section.

(2) Downhole plugs shall be emplaced using tremie tubing or drill string pipe. The remainder of the hole between the top of the plug and the ground surface shall be filled with non-toxic drill cuttings or soil.

(3) To ensure that the proper plug depth is achieved, each borehole shall be checked for settling within two business days after initial plugging. If the depth to the top of the plug is not at the required distance from the surface, additional cement or alternative plugging material, if approved, shall be added to bring the plug to the required depth.

(c) Each permittee shall physically mark each plugged borehole using the specific borehole marking method described in the approved permit, and shall ensure the markings remain in place until the borehole is inspected by the division. A permittee may use a section of poly rope, a piece of polyvinyl chloride (PVC) pipe, or a similar device to mark the location of the borehole.

(d) A permittee may request in writing to use an alternative plugging method or materials and shall demonstrate that the alternative methods or materials will provide at least the same level of groundwater protection as Type-I neat cement to protect and prevent communication with all formations bearing fresh water and usable quality water.

(e) No later than the last day of each month, each permittee shall file a completed Form SMRD-39U (Borehole Plugging Report) with the division showing the plugging information for each borehole plugged the previous month.

(f) Within 48 hours of drilling completion, each permittee shall install and cement casing for each exploration borehole that is to be used as a cased exploration well. Cased exploration wells shall be completed in accordance with the standards set forth in the regulations of the Texas Department of Licensing and Regulation at 16 TAC §76.1000 (relating to Technical Requirements--Locations and Standards of Completion for Wells).

(g) No later than the last day of each month, each permittee shall file with the division a completed Form SMRD-38U (Cased Exploration Well Completion Report) showing the completion information for each exploration well cased the previous month.

(h) Each permittee shall plug boreholes or install casing in boreholes during the permit term.

§11.142. Groundwater Analysis and Reporting.

(a) Each exploration permittee shall perform groundwater quality testing required under §11.141(a) and (b) of this title (relating to Groundwater Quality and Well Information) for the parameters listed in Table 1. Each permittee shall ensure that analyses are conducted in accordance with protocols set forth in *Standard Methods for Examination of Water and Wastewater,* 2005, 21st edition; *Methods for Chemical Analysis of Water and Wastes,* 1979 (EPA-600/4-79-020); and *Test Methods: Technical Additions to Methods for Chemical Analysis of Water and Wastes,* 1982 (EPA-600/4-82-055).
Figure: 16 TAC §11.142(a)

(b) In addition to reporting the analytical results as required by §11.141 of this title, each permittee shall report to the division and to the groundwater conservation district the following information:

(1) a water level from each cased exploration well completed under the exploration permit and from existing wells identified in §11.141 of this title, if the permittee determines it is possible to obtain a water level without pulling the pump or risking damage to the well; and

(2) analysis sheets from the laboratory containing:

(A) name, address, and telephone number of the analytical laboratory;

(B) date of sample collection;

(C) date of sample receipt by the laboratory;

(D) date of laboratory analysis/report;

(E) laboratory sample identification;

(F) name and signature of laboratory personnel responsible for the analysis; and

(G) the analysis results.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 2010.

TRD-201005808
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 1, 2010
Proposal publication date: May 7, 2010
For further information, please call: (512) 475-1295

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DIVISION 6. URANIUM SURFACE MINING RECLAMATION

16 TAC §§11.151 - 11.153

The Commission adopts the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the adopted amendments.

Issued in Austin, Texas, on October 12, 2010.

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-201005809
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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DIVISION 8. MINE CLOSING AND RELEASE

16 TAC §11.181, §11.182

The Commission adopts the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the adopted amendments.

Issued in Austin, Texas, on October 12, 2010.

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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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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DIVISION 9. REPORTS AND REPORTING

16 TAC §11.194

The Commission adopts the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the adopted amendments.

Issued in Austin, Texas, on October 12, 2010.

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-201005811
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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DIVISION 10. PERFORMANCE BONDS

16 TAC §11.203, §11.206

The Commission adopts the amendments under Texas Natural Resources Code, §131.021, which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007) is affected by the adopted amendments.

Issued in Austin, Texas, on October 12, 2010.

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-201005812
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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SUBCHAPTER C. SUBSTANTIVE RULES--URANIUM MINING
DIVISION 5. EXPLORATION ACTIVITIES

16 TAC §§11.131 - 11.139

The Railroad Commission of Texas adopts the repeal of §§11.131-11.139, relating to Notice of Exploration through Overburden Removal, Content of Notice, Extraction of Minerals, Removal of Minerals, Lands Unsuitable for Surface Mining, Notice of Exploration Involving Hole Drilling, Permit, Reclamation and Plugging Requirements, and Reporting, without changes to the proposal published in the May 7, 2010, issue of the *Texas Register* (35 TexReg 3581), as part of a comprehensive rulemaking proceeding to implement the Commission's statutory authority for uranium exploration enacted by House Bill 3837 (80th Legislature, 2007). In a separate, concurrent rulemaking, the Commission adopts corresponding new §§11.131-11.135 and 11.137-11.142 to address House Bill 3837.

The Commission received no comments on the proposed repeals.

The Commission adopts the repeals under Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007), which authorizes the Commission to promulgate rules pertaining to surface uranium mining and exploration operations.

Statutory authority: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §131.001, *et seq.,* as amended by House Bill 3837, 80th Legislature (2007).

Issued in Austin, Texas, on October 12, 2010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 2010.

TRD-201005802
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: November 1, 2010
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For further information, please call: (512) 475-1295

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TITLE 22. EXAMINING BOARDS

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

The Texas Board of Professional Geoscientists (Board) adopts amendments to §§850.10, 850.60 - 850.63, 850.81, and 850.82, concerning the licensure and regulation of Professional Geoscientists. The amendments are adopted without changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 6021) and will not be republished.

BACKGROUND AND PURPOSE

The adopted amendments correct minor errors, improve the rules, and ensure that the rules reflect current legal, policy, and operational considerations.

SECTION-BY-SECTION SUMMARY

An adopted amendment to the title of Subchapter A renames the subchapter to Authority and Definitions.

Adopted amendments to §850.10 improve the definitions of Act and rule; add definitions for advisory opinion, Board, licensee, and sanction; delete the definitions of address of record, applicant, Chairman, Vice-Chairman, complainant, hearings examiner, examiner, administrative law judge, pleading, respondent, T.R.C.P., and U.S.P.S.; and re-number the definitions accordingly.

An adopted amendment to the title of Subchapter B renames the subchapter to Organization and Responsibilities.

Adopted amendments to §850.60 rename the title of the section to Organization and Responsibilities of the Board - General Provisions; add a statement that the purpose of this chapter is to implement the provisions in the Texas Geoscience Practice Act (the Act), Texas Occupations Code Chapter 1002, concerning the licensure of Professional Geoscientists and regulation of the public practice of geoscience; and re-letter the section accordingly.

Adopted amendments to §850.61 rename the title of the section to Organization and Responsibilities of the Board - Meetings and remove the specific revised date of Robert's Rules of Order.

Adopted amendments to §850.62 clarify the Board's duties of ensuring that unless exempted by the Texas Occupations Code Chapter 1002, a person may not use the Professional Geoscientist title or initials or represent that a person is qualified to engage in the public practice of geoscience and that a person does not take responsible charge of certain geoscientific reports or portions of reports unless the person is licensed under the authority provided to the Board under the Act; clarify that the Act and rules adopted by the Board under the authority of the Act apply to every licensee, registered firm, Geoscientist-in-Training, and unlicensed individual or unregistered firm providing or offering to provide public geoscience services; clarify that unless an exemption applies, the Board ensures that all firms offering to engage or engaging in the public practice of professional geoscience in Texas are registered as a Geoscience Firm; provide that an individual meeting certain criteria who expresses an intent to become a licensed Professional Geoscientist may register with the Board as a Geoscientist-in-Training (GIT); and remove the subsections stating that complaints can be filed with the Board and that a complaint must be filed within two years of the event giving rise to the complaint. These removed subsections are addressed in Chapter 851 (relating to Texas Board of Geoscientists Licensing Rules). This section is re-lettered accordingly.

Adopted amendments to §850.63 provide that a notice of its order imposing a sanction or penalty must include the specific disciplinary action to be taken, in addition to previously existing requirements, and remove the provision that upon request, exams

may be offered in a foreign language at the expense of the requestor.

An adopted amendment to §850.81 updates the cost for providing public information to be that as promulgated by the Office of the Attorney General.

An adopted amendment to §850.82 provides that the Executive Director shall determine the agency's position on disputes regarding issues with the processing of a drawn payment.

COMMENTS

No comments were received on the proposal.

SUBCHAPTER A. AUTHORITY AND DEFINITIONS

22 TAC §850.10

STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Act; §1002.154 which provides that the Board shall enforce the Act; §1002.351 which provides that the Board may adopt rules relating to the public practice of geoscience by a firm or corporation; and §1002.352 which provides that the Board shall establish criteria by which a person who expresses an intent to become licensed as a Professional Geoscientist may register with the Board as a Geoscientist-in-Training.

The adopted amendments affect the Texas Occupations Code, Chapter 1002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 14, 2010.

TRD-201005855
Charles Horton
Deputy Executive Director
Texas Board of Professional Geoscientists
Effective date: November 15, 2010
Proposal publication date: July 9, 2010
For further information, please call: (512) 936-4405

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SUBCHAPTER B. ORGANIZATION AND RESPONSIBILITIES

22 TAC §§850.60 - 850.63

STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Act; §1002.154 which provides that the Board shall enforce the Act; §1002.351 which provides that the Board may adopt rules relating to the public practice of geoscience by a firm or corporation; and §1002.352 which provides that the Board shall establish criteria by which a person who expresses an intent to become licensed as a Professional Geoscientist may register with the Board as a Geoscientist-in-Training.

The adopted amendments affect the Texas Occupations Code, Chapter 1002.

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-201005856
Charles Horton
Deputy Executive Director
Texas Board of Professional Geoscientists
Effective date: November 15, 2010
Proposal publication date: July 9, 2010
For further information, please call: (512) 936-4405

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SUBCHAPTER C. FEES

22 TAC §850.81, §850.82

STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Act; §1002.154 which provides that the Board shall enforce the Act; §1002.351 which provides that the Board may adopt rules relating to the public practice of geoscience by a firm or corporation; and §1002.352 which provides that the Board shall establish criteria by which a person who expresses an intent to become licensed as a Professional Geoscientist may register with the Board as a Geoscientist-in-Training.

The adopted amendments affect the Texas Occupations Code, Chapter 1002.

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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Charles Horton
Deputy Executive Director
Texas Board of Professional Geoscientists
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Proposal publication date: July 9, 2010
For further information, please call: (512) 936-4405

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER K. EPILEPSY SERVICES

25 TAC §§37.211 - 37.218

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§37.211 - 37.218, concerning the provision of epilepsy services in Texas, without changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6458) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amended sections implement Health and Safety Code, Chapter 40, which authorizes the department to establish a program to provide epilepsy diagnostic, treatment, and support services to eligible individuals. Epilepsy Services provide access to seizure-related services for individuals whose incomes do not exceed 200% of the Federal Poverty Level residing in Texas who cannot obtain the same care through other funding sources or programs.

The purpose of the amendments is to clarify the existing language, thereby enhancing the understanding of program policy by Epilepsy Services applicants, recipients, and contractors and ensuring the appropriate administration of program services. The amendments revise and delete language for consistency and clarify the purpose of the chapter, income procedures, and eligibility and residency requirements, and add epilepsy education as a benefit contractors may offer.

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 37.211 - 37.218 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

An amendment to §37.211 revises the language to further clarify the purpose of this subchapter.

Amendments to §37.212 clarify eligibility requirements, including verification of income.

Amendments to §37.213 revise and clarify residency requirements regarding physical presence in the state and intent to reside within the state, and add a prohibition on claiming dual residency.

An amendment to §37.214 revises the language to clarify that the eligibility date will be determined when the contracted provider receives the completed application.

Amendments to §37.215 clarify procedures for including income in a determination of financial need for an applicant or the person(s) who have a legal obligation to support the applicant.

Amendments to §37.216 add epilepsy education as a benefit Epilepsy Services providers may offer.

An amendment to §37.217(a) deletes the header "Selection of Service Providers" for consistency, because subsections (b) and (c) do not include headers. An amendment to subsection (b) clarifies that a respondent to a Request for Proposal that is aggrieved in connection with the award of a department contract may file a protest.

Amendments to §37.218 delete redundant language in the headers in subsections (a) - (c) and add clarifying language concerning the notice of intent to take action.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed amendments during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are adopted under Health and Safety Code, §40.003, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to define the scope of the epilepsy program and the medical and financial standards for eligibility; and Government Code, §531.0055(e) and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005944
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 4, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 458-7111 x6972

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CHAPTER 140. HEALTH PROFESSIONS REGULATION

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§140.2, 140.103, 140.153, 140.204, 140.277, 140.301, 140.403, and 140.504, and new §§140.23, 140.120, 140.169, 140.217, 140.286, 140.377, 140.431, and 140.523 concerning fees and procedures for issuance of criminal history evaluation letters in the perfusionist, sanitarian, code enforcement officer, respiratory care practitioner, optician, massage therapist, chemical dependency counselor, and medical radiologic technologist regulatory programs. The sections are adopted without changes to the proposed text as published in the May 7, 2010, issue of the *Texas Register* (35 TexReg 3616) and will not be republished.

BACKGROUND AND PURPOSE

The purpose of the rules is to establish procedures to evaluate, upon request, the criminal history of potential applicants to determine if they are ineligible to hold a license. These evaluations will occur before the potential applicants enter or complete a preparatory educational program or licensure examination leading to licensure thereby allowing applicants to avoid unnecessary hardship or costs if their criminal history is a ground for license ineligibility. These rules establish fees and procedures for the issuance of a criminal history evaluation letter.

The rules are necessary to comply with amendments made to Occupations Code, Chapter 53 by House Bill (HB) 963, 81st Legislature, Regular Session (2009). HB 963 authorizes the collection of a fee for providing potential applicants a criminal history evaluation letter. All state agencies that issue licenses or certificates to engage in a particular occupation must adopt rules necessary to administer the new provisions by September 1, 2010.

SECTION-BY-SECTION

The amendments to §§140.2, 140.103, 140.153, 140.204, 140.277, 140.301, 140.403, and 140.504, and new §§140.23, 140.120, 140.169, 140.217, 140.286, 140.377, 140.431, and 140.523 contain uniform language outlining provisions for fees and procedures for the issuance of criminal history evaluation letters in the perfusionist, sanitarian, code enforcement officer, respiratory care practitioner, optician, massage therapist, chemical dependency counselor, and medical radiologic technologist regulatory programs. The criminal history evaluation letter fee is $50 for each of the programs and the procedures are uniform among the program rules. The procedures require a person making a request for the issuance of a criminal history evaluation letter to complete and submit a request form and the applicable fee.

The rules require the department to make the requested determination regarding the person's eligibility for a license and issue a criminal history evaluation letter not later than the 90th day after the date the department received the request.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER A. PERFUSIONISTS

25 TAC §140.2, §140.23

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.102, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the establishment of fees and procedures relating to criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005928
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 4, 2010
Proposal publication date: May 7, 2010
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER C. SANITARIANS

25 TAC §140.103, §140.120

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.102, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the establishment of fees and procedures relating to criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

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Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: May 7, 2010
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER D. CODE ENFORCEMENT OFFICERS

25 TAC §140.153, §140.169

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.102, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the establishment of fees and procedures relating to criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER E. RESPIRATORY CARE

25 TAC §140.204, §140.217

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.102, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the establishment of fees and procedures relating to criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201005931
Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER G. OPTICIANS

25 TAC §140.277, §140.286

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.102, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the establishment of fees and procedures relating to criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER H. MASSAGE THERAPISTS
DIVISION 1. THE DEPARTMENT

25 TAC §140.301

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §§53.102, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the establishment of fees and procedures relating to criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and

provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201005934
Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: May 7, 2010
For further information, please call: (512) 458-7111 x6972

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DIVISION 7. COMPLAINTS, VIOLATIONS AND SUBSEQUENT DISCIPLINARY ACTIONS

25 TAC §140.377

STATUTORY AUTHORITY

The new rule is authorized by Occupations Code, §§53.102, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the establishment of fees and procedures relating to criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: May 7, 2010
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER I. LICENSED CHEMICAL DEPENDENCY COUNSELORS

25 TAC §140.403, §140.431

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.102, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the establishment of fees and procedures relating to criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

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Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: May 7, 2010
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER J. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §140.504, §140.523

STATUTORY AUTHORITY

The amendment and new rule are authorized by Occupations Code, §§53.102, 352.053, 455.051, 504.051, 601.052, 603.152, 604.052, 1952.051, and 1953.051, which authorize the establishment of fees and procedures relating to criminal history evaluation letters, and the adoption of rules regarding the regulation of perfusionists, sanitarians, code enforcement officers, respiratory care practitioners, opticians, massage therapists, licensed chemical dependency counselors, and medical radiological technologists; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 15, 2010.

TRD-201005937

Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 4, 2010
Proposal publication date: May 7, 2010
For further information, please call: (512) 458-7111 x6972

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CHAPTER 421. HEALTH CARE INFORMATION

SUBCHAPTER A. COLLECTION AND RELEASE OF HOSPITAL DISCHARGE DATA

25 TAC §§421.1, 421.8, 421.9

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§421.1, 421.8, and 421.9, concerning the collection and release of hospital discharge data without changes to the proposed text as published in the April 23, 2010, issue of the *Texas Register* (35 TexReg 3201) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to comply with Health and Safety Code, Chapter 108, which requires the Executive Commissioner to adopt rules to implement the data submission requirements for hospitals to submit inpatient discharge data to the department.

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 421.1, 421.8 and 421.9 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

The amendment to §421.1(32) adds the term "Present on admission (POA)--Diagnosis present on admission" and renumbers the definitions following the added term in the section.

The amendment to §421.8(c)(11)(IIII) adds the data element "POA Indicator (if applicable)." This amendment requires the department to include this new data element in the public use data file. The public use data file is an electronic file with patient level data that identifies facilities and provides consumers, healthcare facilities and independent researchers with additional data regarding quality of care provided in hospitals.

The amendment to §421.9 adds a new subsection (e) for the submission of a new required data element and establishes a list of hospital types that are exempt from the reporting of this new data element and renumbers the following subsections. The data element "POA indicator" is listed to be submitted by all acute care hospitals required to submit data under Health and Safety Code, Chapter 108. Some hospitals are exempted from the requirements for submission of POA indicators. The exempted hospitals are: (1) Critical Access Hospitals; (2) Inpatient Rehabilitation Hospitals; (3) Inpatient Psychiatric Hospitals; (4) Cancer Hospitals; (5) Children's or Pediatric Hospitals; and (6) Long Term Care Hospitals. The amendment allows the exempted hospital to submit the POA indicators to the department voluntarily. The POA indicators will be new data elements. Therefore, in accordance with Health and Safety Code, Chapter 108, the new data element cannot be required to be submitted to the department before the 90th day after the date the rules are adopted and must take effect no later than the first anniversary after the date the rules are adopted. The department anticipates beginning collecting POA indicators data in January 2011. This indicator code will be collected and used by the department for public reporting on the quality of care in the hospitals. The Code of Federal Regulations citation is also corrected in §421.9(f).

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §§108.006, 108.009, 108.010 and 108.011, which require the Executive Commissioner to adopt rules regarding which data elements are to be required for submission to the department and which data elements are to be released in a public use data file; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 14, 2010.

TRD-201005853
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: January 9, 2011
Proposal publication date: April 23, 2010
For further information, please call: (512) 458-7111 x6972

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §700.318 and §700.346, and the repeal of §700.324 and §700.325, without changes to the proposed text published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6810).

The justification for the amendments and repeals is to implement guidance received by the Administration of Children and Families. The guidance states that states are no longer required to conduct re-determinations for Aid to Families with Dependent Children (AFDC). As a result, DFPS is repealing §700.324 and §700.325, which pertain to AFDC re-determinations. Section 700.318 is revised to state that DFPS may do re-determinations on state-paid foster care children to ensure the child continues to meet income/resource limitations for Medicaid while in foster care. DFPS is also amending §700.346 to clarify the eligibility requirements for the Return to Care program, including: (1) the youth must have been in DFPS conservatorship the day before the youth's 18th birthday, and it does not matter if the youth was on runaway status or in an unauthorized DFPS placement; and (2) at what age (18) a conviction or an act of abuse precludes a youth from the Return to Care program.

The sections will function by providing a clearer functioning of DFPS practices.

No comments were received regarding adoption of the sections.

40 TAC §700.318, §700.346

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement 42 Code of Federal Regulations §435.916.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005787
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2010
Proposal publication date: August 6, 2010
For further information, please call: (512) 438-3437

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40 TAC §700.324, §700.325

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department. The repeals implement 42 U.S.C. §670, et seq.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005788
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2010
Proposal publication date: August 6, 2010
For further information, please call: (512) 438-3437

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SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS DIVISION 2. PERMANENCY CARE ASSISTANCE PROGRAM

40 TAC §700.1029, §700.1031

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §700.1029 and §700.1031, without changes to the proposed text published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6811). DFPS has received questions from various child welfare professionals and families regarding the eligibility criteria for permanency care assistance (PCA) benefits, indicating a need for greater specificity in the rules, particularly with respect to joint managing conservatorship and shared managing and possessory conservatorship of a child.

The amendment to §700.1029 clarifies that a person will not be eligible to receive PCA benefits on behalf of any child if the court issues an order: (1) naming either of the child's parents joint managing conservator of the child; (2) naming the person and DFPS joint managing conservators of the child; or (3) awarding possessory conservatorship to one or both of the child's parents under circumstances that have the effect of reunifying the child with that parent.

The amendment to §700.1031 clarifies that a person awarded sole or joint managing conservator of a child in a temporary or final order is not entitled to foster care reimbursement.

The amendments will function by clarifying the eligibility criteria for receipt of PCA benefits.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Subchapter K, Chapter 264, Family Code (§264.851 et seq.), as added by House Bill 1151 and Senate Bill 2080, mandating the creation of a Permanency Care Assistance program and specifying the eligibility criteria; as well as the optional provisions in Title IV-E of the Social Security Act at 42 USC 673(d), as added by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act), P.L. 110-351.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 11, 2010.

TRD-201005789
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2010
Proposal publication date: August 6, 2010
For further information, please call: (512) 438-3437

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Youth Commission

Title 37, Part 3

Pursuant to Government Code §2001.039, the Texas Youth Commission files this notice of intent to review and consider for readoption, 37 TAC Chapter 97 (Security and Control) and Chapter 99 (General Provisions).

The commission will determine whether the reasons for adopting the rules under review continue to exist. Any amendments to or repeals of rules proposed as a result of this rule review will be initiated under a separate proceeding and published in future issues of the *Texas Register,* in the Proposed Rules section.

Written comments relating to whether the reasons for adopting these rules continue to exist will be accepted for a 30-day period following publication of this notice in the *Texas Register.* Comments should be directed to Erica Knutsen, Policy Writer, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or by email to erica.knutsen@tyc.state.tx.us.

TRD-201005964
Toysha Martin
General Counsel
Texas Youth Commission
Filed: October 18, 2010

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Adopted Rule Reviews

Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 11 (Miscellaneous) in its entirety, specifically §11.37.

Notice of the review of Chapter 11 was published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8409). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting the rule in Chapter 11 continue to exist and readopts Chapter 11 in accordance with the requirements of the Government Code, §2001.039.

TRD-201005894
A. Kaylene Ray
General Counsel
Texas Department of Banking
Filed: October 15, 2010

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On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 26 (Perpetual Care Cemeteries) in its entirety, specifically §§26.1 - 26.4, 26.11, and 26.12.

Notice of the review of Chapter 26 was published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8409). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting the rules in Chapter 26 continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

TRD-201005895
A. Kaylene Ray
General Counsel
Texas Department of Banking
Filed: October 15, 2010

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On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 27 (Applications) in its entirety, specifically §27.1.

Notice of the review of Chapter 27 was published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8409). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 27 continue to exist. During its review, the commission has determined that certain nonsubstantive revisions are appropriate and necessary. Proposed amendments to Chapter 27, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting the rule in Chapter 27 continue to exist and readopts this section in accordance with the requirements of the Government Code, §2001.039.

TRD-201005896

A. Kaylene Ray
General Counsel
Texas Department of Banking
Filed: October 15, 2010

♦ ♦ ♦

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 31 (Private Child Support Enforcement Agencies) in its entirety, specifically Subchapter A (§31.1); Subchapter B (§§31.11 - 31.19); Subchapter C (§§31.31 - 31.34 and §§31.36 - 31.39); Subchapter D (§§31.51 - 31.56); Subchapter E (§§31.71 - 31.76); Subchapter F (§§31.91 - 31.96); and Subchapter G (§§31.111 - 31.115).

Notice of the review of Chapter 31 was published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8409). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting the rules in Chapter 31 continue to exist. During its review, the commission has determined that certain nonsubstantive revisions are appropriate and necessary. Proposed amendments to Chapter 31, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting the rules in Chapter 31 continue to exist and readopts Chapter 31 in accordance with the requirements of the Government Code, §2001.039.

TRD-201005897
A. Kaylene Ray
General Counsel
Texas Department of Banking
Filed: October 15, 2010

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Office of Consumer Credit Commissioner

Title 7, Part 5

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 83, concerning Consumer Loans, comprised of §§83.101, 83.102, 83.201 - 83.205, 83.301 - 83.311, 83.401 - 83.408, 83.501 - 83.505, 83.601 - 83.605, 83.701 - 83.708, 83.751 - 83.758, 83.801 - 83.812, 83.826 - 83.837, and 83.851 - 83.862, pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Part 5, Chapter 83 was published in the *Texas Register* as required on May 7, 2010, (35 TexReg 3653). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission proposed amendments to 7 TAC, Chapter 83 in the September 3, 2010, issue of the *Texas Register* (35 TexReg 7986). The amendments to the affected sections within Chapter 83 are being concurrently adopted and published elsewhere in this issue of the *Texas Register.*

Subject to the adopted amendments to Chapter 83, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 5, Chapter 83.

TRD-201005910
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 15, 2010

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Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed the review of Texas Administrative Code, Title 7, §§95.100, Definitions; 95.101, Share and Depositor Insurance Protection; 95.102, Qualifications for an Insuring Organization; 95.103, General Powers and Duties of an Insuring Organization; 95.104, Notices; 95.105, Reporting; 95.106, Amount of Insurance Protection; 95.107, Sharing Confidential Information; 95.108, Examinations; 95.109, Fees and Charges; 95.110, Enforcement; Penalty; and Appeal; 95.200, Notice of Taking Possession; Appointment of Liquidating Agent; Subordination of Rights; 95.205, State Not Liable for Any Deficiency; 95.300, Share and Deposit Guaranty Credit Union; 95.301, Authority for a Guaranty Credit Union; 95.302, Powers; 95.303, Subordination of Right, Title, or Interest; 95.304, Capital Contributions; Membership Investment Shares; Termination; 95.305, Audited Financial Statements; Accounting Procedures; Reports; 95.310, Fees and Charges; 95.400, Requirements of Participating Credit Unions; as published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6841).

The rules were reviewed as a result of the Credit Union Department's (Department) general rule review.

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§95.100, 95.101, 95.103 - 95.110, 95.200, 95.205, 95.300 - 95.305, 95.310, and 95.400 continue to exist and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

A notice of Proposed Rulemaking to adopt amendments to §95.102 is published elsewhere in this issue of the *Texas Register.*

This concludes the review of 7 TAC Part 6, Chapter 95.

TRD-201005963
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 18, 2010

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General Land Office

Title 31, Part 1

In accordance with the notice of proposed rule review published in the May 14, 2010, issue of the *Texas Register* (35 TexReg 3861), the Texas General Land Office (GLO) has reviewed and considered for readoption, revision or repeal Title 31, Part 1, Chapter 13, Subchapter F, §§13.71 - 13.83, Vacancy Process, and Subchapter G, §§13.87 - 13.94, Vacant Land. The rule review was conducted under the GLO's rule review plan published in the April 23, 2010, issue of the *Texas Register* (35 TexReg 3297), as required by Texas Government Code §2001.039.

No public comments were received on the proposed rule review.

The GLO considered, among other things, whether the reasons for adoption of these rules continue to exist. As a result of the review,

the GLO determined that the rules in Subchapter G, §§13.87 - 13.94, Vacant Land, are no longer necessary. A Notice of Proposed Rulemaking to repeal Subchapter G is published elsewhere in this issue.

As a result of the review, the GLO also determined that the rules in Subchapter F, §§13.87 - 13.94, Vacancy Process, are still necessary and readopts the sections without change.

As a result of the review, the GLO further determined that new rules should be adopted to reflect recent legislative changes and agency practices. Therefore, new Subchapter E, §§13.32 - 13.62, Vacancies, is proposed for adoption. A Notice of Proposed Rulemaking to adopt new Subchapter E is published elsewhere in this issue.

This completes the GLO's review of Title 31, Part 1, Chapter 13, Subchapter F, §§13.71 - 13.83, Vacancy Process, and Subchapter G, §§13.87 - 13.94, Vacant Land.

TRD-201005977
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Filed: October 18, 2010

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Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission has completed the rule review of Texas Administrative Code, Title 13, Part 1, Chapter 9, concerning Talking Book Program library services for persons who are blind or have a physical impairment, in accordance with Government Code §2001.039, that requires state agencies to review and consider for readoption each of their rules every four years. The proposed review was published in the May 7, 2010, issue of the *Texas Register* (35 TexReg 3653). The Commission received no comments on the review of Chapter 9.

The Commission assessed whether the reasons for readopting the rules in Chapter 9 continue to exist. The Commission found that the rules are necessary to establish procedures and policies under which eligible persons receive services from the Talking Book Program of the Texas State Library and Archives Commission.

The rules are readopted pursuant to the Human Resources Code, §91.082 that requires the State Library and Archives Commission to establish a central media center for persons unable to use ordinary print materials, and Government Code §441.006 that provides the Commission with the authority to govern the Texas State Library.

TRD-201005995
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Filed: October 19, 2010

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Texas Water Development Board

Title 31, Part 10

Pursuant to the notice of proposed rule review published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8141), the Texas Water Development Board (TWDB) has reviewed and considered for readoption, revision, or repeal Texas Administrative Code, Title 31, Part 10, Chapter 355, Research and Planning Fund, in accordance with Texas Government Code §2001.039.

The TWDB considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the rule review, the TWDB determined that the reasons for initially adopting the rules in Chapter 355 continue to exist and readopts the rules. This completes the TWDB's review of Chapter 355, Research and Planning Fund.

TRD-201006008
Ingrid Hansen
Deputy General Counsel
Texas Water Development Board
Filed: October 20, 2010

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Pursuant to the notice of proposed rule review published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8142), the Texas Water Development Board (TWDB) has reviewed and considered for readoption, revision, or repeal Texas Administrative Code, Title 31, Part 10, Chapter 357, Regional Water Planning Guidelines, in accordance with Texas Government Code §2001.039.

The TWDB considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the rule review, the TWDB determined that the reasons for initially adopting the rules in Chapter 357 continue to exist and readopts the rules. This completes the TWDB's review of Chapter 357, Regional Water Planning Guidelines.

TRD-201006009
Ingrid Hansen
Deputy General Counsel
Texas Water Development Board
Filed: October 20, 2010

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8142), the Texas Water Development Board (TWDB) has reviewed and considered for readoption, revision, or repeal Texas Administrative Code, Title 31, Part 10, Chapter 358, State Water Planning Guidelines, in accordance with Texas Government Code §2001.039.

The TWDB considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the rule review, the TWDB determined that the reasons for initially adopting the rules in Chapter 358 continue to exist and readopts the rules. This completes the TWDB's review of Chapter 358, State Water Planning Guidelines.

TRD-201006010
Ingrid Hansen
Deputy General Counsel
Texas Water Development Board
Filed: October 20, 2010

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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 §84.308(e)(2)

Original Financing Term (Months)	Rate per $100 or Percentage of Amount Financed
0-12	10.00
13-35	12.00
36+	14.00

Figure: 7 TAC §84.308(e)(3)

Original Financing Term (Months)	Rate per $100 or Percentage of Amount Financed
0-12	6.50
13-35	7.50
36+	9.00

Figure: 16 TAC §11.73

Table 1. Surface Mining and Reclamation Division Forms
for Uranium Exploration

Form Number	Form Title	Creation or Last Revision Date	Rule Number (16 TAC § __) or Other Authority
SMRD-3U	Application to Conduct Uranium Exploration Activities by Drilling	Rev. 10/10	§11.132; §11.133
SMRD-5U	Application to Transfer a Uranium Exploration Permit	10/10	§11.135
SMRD-38U	Cased Exploration Well Completion Report	10/10	§11.139
SMRD-39U	Borehole Plugging Report	10/10	§11.139

Figure: 16 TAC §11.142(a)

Table 1. Groundwater Monitoring Parameters

Major Constituents	Minor Constituents	Trace Constituents	Radionuclides	Additional Parameters
Bicarbonate (HCO_3)	Boron (B)	Arsenic (As)	Radium 226	pH (field and lab)
Calcium (Ca)	Carbonate (CO_3)	Selenium (Se)	Gross Alpha	Temperature (field and lab)
Chloride (Cl)	Fluoride (F)	Vanadium (V)	Gross Beta	Total alkalinity
Magnesium (Mg)	Iron (Fe) (Total and Dissolved)		Uranium (U)	Total Dissolved Solids (TDS)
Molybdenum (Mo)	Manganese (Mn) (total and dissolved)			Specific conductance
Sodium (Na)	Nitrate (NO_3) or Nitrate as (N)			
Sulfate (SO_4)	Potassium (K)			

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of the Implementation of a 2011A Qualified Mortgage Credit Certificate Program

The Texas State Affordable Housing Corporation (the "Corporation"), a nonprofit corporation organized under the laws of the State of Texas (the "Program Area"), is implementing a qualified mortgage credit certificate program (the "Program") within the Program Area to assist eligible purchasers. A Mortgage Credit Certificate ("MCC") is an instrument designed to assist persons better afford home ownership. The MCC Program allows first-time homebuyers an annual federal income tax credit equal to the lesser of $2,000 or the credit rate for the MCC multiplied by the amount of interest paid by the holder on a home mortgage loan during each year that they occupy the home as their principal residence.

An eligible purchaser of a residence located within a Program Area may apply to the Corporation for an MCC through a participating lender of his or her choice at the time of purchasing a principal residence and obtaining a mortgage loan from a participating lender.

To be an eligible purchaser to receive an MCC, a purchaser must meet the following criteria:

(1) Be one of the following:

(a) A household whose annual income does not exceed 80% Area Median Family Income (AMFI); or

(b) A full-time Texas classroom teacher, teacher's aide, school librarian, school nurse, school counselor, or an allied health or nursing faculty member; or

(c) A full-time paid fire fighter, peace officer, corrections officer, juvenile corrections officer, county jailer, EMS personnel, or public security officer, working in the State of Texas.

(2) The applicant for the MCC cannot have had an ownership interest in his or her principal residence during the three-year period ending on the date the mortgage loan is obtained.

(3) The applicant must intend to occupy the residence with respect to which the MCC is obtained as his or her principal residence within 60 days after the MCC is issued. The MCC issued to an applicant will be revoked if the residence to which the MCC relates ceases to be occupied by the applicant as his or her principal residence.

(4) The MCC cannot be issued to an applicant in conjunction with the replacement or refinancing of an existing mortgage loan. The MCC can, however, be obtained in conjunction with the replacement of a construction period or bridge loan having a term of less than 24 months.

(5) Federal law imposes limitations on the purchase price of homes financed under the program. Visit www.tsahc.org to view the maximum purchase prices allowed. These limitations are periodically adjusted. Two-family, three-family and four-family residences are also eligible, provided that one of the units will be occupied by the mortgagor as his or her principal residence and that the residence was first occupied for residential purposes at least five years prior to the closing of the mortgage. The cost of the residence must not exceed the maximum purchase price limits. The purchase price limitation does not apply to qualified home improvement loans. There are special rules that apply to qualified rehabilitation loans.

(6) Additionally, an applicant's current annualized family income may not exceed 80% of the AMFI if the eligible purchaser is a purchaser listed under (1)(a) above or the greater of 115% of the AMFI adjusted for family size or the maximum amount permitted by Section 143(f) of the Internal Revenue Code of 1986 if the purchaser is a purchaser listed under (1)(b) or (1)(c) above. Visit www.tsahc.org to view the maximum incomes allowed.

Anyone receiving an MCC and selling his or her residence within nine years of the issuance of the MCC may be required to return all or a portion of the tax credit received in connection therewith to the Internal Revenue Service.

To defray the costs of implementing the Program, the Corporation will charge applicants a $100 application fee, a $250 closing package review fee, plus an MCC issuance fee equal to one percent of the amount of such person's loan.

The Corporation strongly encourages anyone who believes that he or she qualifies for an MCC to apply at the offices of a participating lender. For more information regarding the Program and its restrictions, including a list of current participating lenders, please contact the Paige McGilloway, Single Family Programs Manager, at (888) 638-3555 or by email at pmcgilloway@tsahc.org.

TRD-201005992
David Long
President
Texas State Affordable Housing Corporation
Filed: October 19, 2010

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Office of the Attorney General

Agreed Final Judgment

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water and Health and Safety Codes. Before the State may settle a judicial enforcement action, pursuant to §7.110 of the Texas 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 Chapter 7 of the Texas Water Code.

Case Title and Court: *State of Texas v. KM Liquids Terminals LLC,* Cause No. D-1-GV-10-0000017 in the 53rd District, Travis County, Texas.

Background: Defendant is the operator of a bulk liquids storage terminal at 530 North Witter Street in Pasadena, Texas 77506 (the Facility).

Nature of Settlement: The Proposed Agreed Final Judgment settles all of the State's claims in the suit. The Agreed Final Judgment contains

provisions for civil penalties and attorney's fees. The proposed judgment ordered, decreed, and adjudged that the State shall have judgment from and against Defendant KM Liquids Terminals LLC for a Civil Penalty of $40,000.00. The judgment awards the State attorney's fees of $4,000.00.

The Office of the Attorney General will accept written comments relating to this proposed judgment for thirty (30) days from the date of the publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment and written comments on the proposed judgment should be directed to David L. Green, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-3205, facsimile (512) 320-0052.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201005972
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: October 18, 2010

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Notice of Proposed Agreed Final Judgment in a Texas Health and Safety Code and Texas Water Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and the Texas Water Code. Before the Court signs an agreed final judgment settling a judicial enforcement action, pursuant to Texas Water Code §7.110, the Attorney General shall permit the public to comment in writing on the proposed agreed final judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed final judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Codes.

Case Title and Court: *City of West Lake Hills v. Yaupon Partners, L.L.C. and Ray McMackin;* No. D-1-GN-10-001858, in the 200th Judicial District Court, Travis County, Texas.

Background: This suit alleges violations of Texas Health and Safety Code and the Texas Water Code at a residential on-site sewage facility in the City of West Lake Hills, Texas. Defendants Yaupon Partners, L.L.C. and Ray McMackin are operating a failed septic system that does not meet the standards required by state and local law as required for a proper operation of an on-site sewage facility. The suit seeks injunctive relief, civil penalties, attorney's fees and court costs.

Proposed Agreed Final Judgment: The agreed final judgment requires Defendants to render permanently inoperable or remove and properly dispose of the failed sewer system; abate any and all nuisance conditions resulting from illegal sewage discharges; and install a new on-site sewage facility that is certified by a Texas-licensed on-site sewage facility installer to be in full compliance with all applicable state and local regulations within 60 days of the date the agreed final judgment is signed by the Court. In addition, Defendants agree to pay civil penalties in the amount of $76,116.00 and attorney's fees in the amount of $67,000.00 subject to the terms of the agreed final judgment.

For a complete description of the proposed agreed final judgment, the complete proposed agreed final judgment should be reviewed. Requests for copies of the agreed final judgment, and written comments on the proposed agreed final judgment should be directed to Eugene A. Clayborn, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-4300, facsimile (512) 320-0167. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201005971
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: October 18, 2010

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Automobile Burglary and Theft Prevention Authority

Request for Applications Under the Automobile Burglary and Theft Prevention Authority Fund

Notice of Invitation for Applications:

The Automobile Burglary and Theft Prevention Authority is soliciting applications for grants to be awarded for projects under the Automobile Burglary and Theft Prevention Authority (ABTPA) Fund. This grant cycle will be one year in duration, and will begin on September 1, 2011. One or more of the following types of projects may be awarded, depending on the availability of funds:

Law Enforcement/Detection/Apprehension Projects, to establish motor vehicle burglary and theft enforcement teams and other detection/apprehension programs. Priority funding may be provided to state, county, precinct commissioner, general or home rule cities for enforcement programs in particular areas of the state where the problem is assessed as significant. Enforcement efforts covering multiple jurisdictional boundaries may receive priority for funding.

Prosecution/Adjudication/Conviction Projects, to provide for prosecutorial and judicial programs designed to assist with the prosecution of persons charged with motor vehicle burglary and theft offenses.

Prevention, Anti-Theft Devices and Automobile Registration Projects, to test experimental equipment which is considered to be designed for auto theft deterrence and registration of vehicles in the Texas Help End Auto Theft (H.E.A.T.) Program.

Reduction of the Sale of Stolen Vehicles or Parts Projects, to provide vehicle identification number labeling, including component part labeling and etching methods designed to deter the sale of stolen vehicles or parts.

Public Awareness and Crime Prevention/Education/Information Projects, to provide education and specialized training to law enforcement officers in auto burglary and theft prevention procedures, provide information linkages between state law enforcement agencies on auto theft crimes, and develop a public information and education program on theft prevention measures.

Eligible Applicants:

State agencies, local general-purpose units of government, independent school districts, nonprofit, and for profit organizations are eligible to apply for grants for automobile burglary and theft prevention assistance projects. Nonprofit and profit organizations shall be required to provide with their grant applications sufficient documentation to evaluate the credibility and the community support of the organization and the viability of the organization's existing activities in the context of providing automobile burglary and theft prevention assistance.

Contact Person:

Detailed specifications, including selection process and schedule for workshops for applicants will be made available through ABTPA. Copies of the Administrative Guide and the application can be found at www.txwatchyourcar.com.

Contact Charles Caldwell, ABTPA Director, Texas Automobile Burglary and Theft Prevention Authority, (512) 374-5101.

Application Workshops:

A **mandatory** workshop for all applicants that wish to apply for the Texas Automobile Burglary and Theft Prevention Grant funds with at least **one (1)** representative has been selected to be held:

Tuesday-Wednesday, January 18-19, 2011, Austin, Texas, 8:30 a.m. - 5:00 p.m., Holiday Inn Austin Town Lake, 20 North IH-35, Austin, Texas, 78701, 1-888-615-0509, *Group Code ABTPA Grant Workshop*.

Attendees are responsible for making individual hotel reservations. Registration for the workshops must be done on the ABTPA Web site at www.txwatchyourcar.com.

Application Deadline and Submission Requirements:

The Authority must receive submitted applications by 5:00 p.m., Friday, May 6, 2011 or postmarked by May 6, 2011. Each Application must:

1. Include all signed certifications and signature pages.

2. If submitting hardcopy, application can be mailed or delivered to: **Texas Automobile Burglary and Theft Prevention Authority 4000 Jackson Avenue Austin, Texas 78731**

3. Submit the **original copy** of the proposal.

4. Facsimile transmissions will not be accepted. If mailed, applications must be marked "Personal and Confidential" and addressed to the contact person listed above. If delivered, please leave application with the contact person (or designee) at the address listed.

Selection Process:

Applications will be selected according to §§57.2, 57.4, 57.7, and 57.14, as published in Title 43 Chapter 57, Texas Administrative Code. Grant award decisions by ABTPA are final and not subject to judicial review. Grants will be awarded on or before September 1, 2011.

TRD-201006007
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Filed: October 20, 2010

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Cameron County Regional Mobility Authority

Notice of Availability of Request for Qualifications for SH 550 and Additional Projects

The Cameron County Regional Mobility Authority (CCRMA), a political subdivision operating pursuant to Chapter 370 of the Texas Transportation Code, is soliciting statements of interest and qualifications from entities interested in: (1) developing, designing, constructing, financing, and potentially operating/maintaining the CCRMA's SH 550 Project; and (2) providing pre-development and other services with respect to five additional CCRMA toll projects (together, the "Program") through a comprehensive development agreement (CDA). The Program includes toll projects related to SH 550, US 77 relief routes at Driscoll and Riviera, West Parkway, Outer Parkway, South Padre Island 2nd Access, and the 281 Connector and includes the development of tolled lanes, nontolled lanes, and associated facilities. The CCRMA has initiated a two-step process for the selection of a developer. The first step includes the release of a request for qualifications (RFQ). The purpose of this step is to identify a shortlist of qualified proposers based on their financial strength, experience and background, financial resources, and conceptual approach to the development of the Program. The second step will include the release of a Request for Detailed Proposals. Teams chosen to participate in the second phase of the procurement process must demonstrate a minimum capacity to finance $1 billion dollars of toll road projects. The CCRMA expects to select a developer and establish a public/private partnership through a concession CDA for the SH 550 Project, which may include certain pre-development and other services for other projects in the Program.

The RFQ will be available on or about October 26, 2010. Copies may be obtained from the CCRMA website at http://www.cameroncountyrma.org, or by contacting the CCRMA at (956) 982-5414. Periodic updates, addenda, and clarifications will be posted on the CCRMA website and interested parties are responsible for monitoring the website accordingly. There will be a pre-proposal workshop for interested parties at the Cameron County Courthouse (Dancy Building), 1100 East Monroe, Suite 241, Brownsville, Texas at 1:00 p.m. CST on November 9, 2010. Attendance at the pre-proposal workshop is not a condition of submitting a proposal. Final qualifications statements must be received in the offices of the CCRMA by or before 4:00 p.m. CST on November 29, 2010, to be eligible for consideration. Each proposing entity will be evaluated based on the criteria and process set forth in the RFQ.

Questions concerning the RFQ may be submitted via e-mail to Pete Sepulveda, Jr., RMA Coordinator, at psepulveda@co.cameron.tx.us or in writing to: Cameron County Regional Mobility Authority, c/o Pete Sepulveda, Jr., RMA Coordinator, 1100 East Monroe, Suite 256, Brownsville, Texas 78521.

TRD-201006012
Pete Sepulveda, Jr.
RMA Coordinator
Cameron County Regional Mobility Authority
Filed: October 20, 2010

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Cancer Prevention and Research Institute of Texas

Request for Applications - Shared Instrumentation Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas to purchase equipment and instruments that will directly support cancer research programs to significantly advance knowledge of the causes, prevention, and/or treatment of cancer. CPRIT expects outcomes of supported activities to directly and indirectly benefit subsequent cancer research efforts, cancer public health policy, or the continuum of cancer care - from prevention to treatment and cure. A wide variety of instrumentation may be wholly or partially supported including, but not limited to, biomedical imaging systems, microscopes, cyclotrons, mass spectrometers, protein and DNA sequencers, flow cytometers, and cell sorters. Funding may be requested for instrumentation to develop state of the art facilities that will directly support and impact cancer research programs at the recipient institution and in the region. The maximum duration of the award is 5 years. The maximum amount that may be requested is $3 million for the first year (minimum amount $100,000) and up to $300,000 for each subsequent year.

A request for applications is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on November 15, 2010, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. Central Time on December 7, 2010. Only one application may be submitted per institution. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201005970
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: October 18, 2010

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 12, 2010, through October 15, 2010. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Coastal Coordination Council's web site. The notice was published on the web site on October 20, 2010. The public comment period for this project will close at 5:00 p.m. on November 20, 2010.

FEDERAL AGENCY ACTIONS:

Applicant: Town of Bayside; Location: The project is located along the Copano Bay shoreline at the Bayside Community Park, in Bayside, Refugio County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bayside, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 675565; Northing: 3108563; Project Description: The applicant proposes to install a 300-foot-long by 15-foot-wide; concrete mat along the shoreline at the Bayside Community Park for the purpose of shoreline protection. The project will result in permanent impacts to .08 acres (3,858 square feet) of waters of the U.S., including wetlands. Approximately .009 acres (431 square feet) of smooth cordgrass beds, .05 acres (2,507 square feet) of high marsh, and .02 acres (918 square feet) of vegetated and unvegetated jurisdictional areas below the Annual High Tide (AHT) line will be permanently filled as a result of the project. A habitat characterization of the shoreline, performed in August 2010 showed that wetland vegetation was dominated by smooth cordgrass at lower elevations and by various species of high marsh vegetation at higher elevations. Approximately 60 cubic yards of material will be placed within jurisdictional areas. CMP Project No.: 10-0178-F1. Type of Application: U.S.A.C.E. permit application #SWG-2002-02051 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the application listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.state.tx.us. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201006013
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
Coastal Coordination Council
Filed: October 20, 2010

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Comptroller of Public Accounts

Notice of Loan Fund Availability and Request for Applications

Pursuant to: (1) the LoanSTAR Revolving Loan Program of the Texas State Energy Plan (SEP) in accordance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.) as amended by the Energy Conservation and Production Act (42 U.S.C. §6326, et seq.); (2) the Oil Overcharge Restitutionary Act, Chapter 2305, Texas Government Code; and (3) Title 34, Texas Administrative Code, Chapter 19, Subchapter D Loan Program for Energy Retrofits; the Comptroller of Public Accounts (Comptroller) and the State Energy Conservation Office (SECO) announces its Notice of Loan Fund Availability (NOLFA) and Request for Applications (RFA #BE-G2-2010) and invites applications from eligible interested governmental entities for loan assistance to perform building energy efficiency and retrofit activities.

Program Summary: The Texas LoanSTAR (Saving Taxes and Resources) Program finances energy-related cost-reduction retrofits for state, public school district, public college, public university, and public hospital facilities. Low interest rate loans are provided to assist those institutions in financing their energy-related cost-reduction efforts. The program's revolving loan mechanism allows applicants to repay loans through the stream of energy cost savings realized from the projects.

Utility dollar savings are the number one criterion for determination if the measure can be considered an eligible Energy Cost Reduction Measure (ECRM); therefore, ECRMs are not limited to those activities that save units of energy. An ECRM could conceivably call for actions that save no energy or consume additional BTUs, but save utility budget dollars. Before entering into a LoanSTAR loan agreement, applicants, if selected, are required to submit an Energy Assessment Report (EAR) for Design-Bid-Build Projects or a Utility Assessment Report (UAR) for Energy Savings Performance Contracts, or a Systems Commissioning Report in the case where a commissioning project meets LoanSTAR payback requirements. A Professional Engineer licensed in the State of Texas must analyze all LoanSTAR projects. The prospective applicant selects the Engineer.

The Engineer will submit the details of the analysis in the form of an EAR for Design-Bid-Build Projects or a UAR for Energy Savings Performance Contracts. The EAR is prepared in accordance with the LoanSTAR Technical Guidelines (http://www.seco.cpa.state.tx.us/ls/ls_guideline.php) prescribed format. An UAR is prepared in accordance with the SECO Performance Contracting Guidelines (http://www.seco.cpa.state.tx.us/sa_pc.htm) prescribed format. There is not a prescribed format for Systems Commissioning Reports. SECO must approve project descriptions

and calculations contained within the EAR, the UAR, and the Systems Commissioning Reports before authorizing project financing. SECO must approve project designs for design-bid-build projects before construction can commence. Monitoring during the construction phase and at project completion will take place on both design-bid-build and energy savings performance contract projects.

The applicant should monitor post-retrofit energy savings in design-bid-build projects to insure that energy cost savings are being realized. The level of monitoring may range from utility bill analysis to individual system or whole-building metering, depending on the size and types of retrofits installed. SECO must approve applicant's measurement and verification plan for energy savings performance contracts. Post construction measurement and verification must be included as part of the total project cost. Additional LoanSTAR funds can be borrowed for metering of large, complex retrofits and for systems commissioning to maximize the probability of achieving, or exceeding the calculated savings - provided the maximum allowable loan amount is not exceeded in the process of adding these measures to the loan.

Loan Background: If awarded under the terms of this NOLFA/RFA, projects financed by LoanSTAR must have a composite simple payback of ten years or less. In addition, each energy cost reduction measure (ECRM) and utility cost reduction measure (UCRM) must have a simple payback that does not exceed the economic useful life of the ECRM or UCRM. Applicants are encouraged to consider renewable energy technologies when evaluating ECRMs and UCRMs.

Approximately $21,000,000 total in LoanSTAR funds may be available in the form of the building efficiency and retrofit revolving loan funds. The anticipated maximum loan size is $5,000,000. SECO may make more than one award of a loan with this NOLFA/RFA announcement. The loan interest rate for this NOLFA/RFA announcement is 3% fixed. The loan term will be equal to the composite simple payback term for the energy efficiency measures, and must be ten years or less. Applicants have the option of buying down the overall project costs or specific ECRMs and UCRMs so that paybacks can meet the composite loan term limit.

Contact: Parties interested in submitting an application should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673. This NOLFA and RFA will be available on October 29, 2010, after 10:00 a.m. Central Standard Time (CST) and during normal business hours thereafter. The Comptroller will make the application, instructions, and a sample loan agreement and attachments available electronically on the SECO website at: http://www.seco.cpa.state.tx.us/funding/ after 10:00 a.m. CST on October 29, 2010.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent must be received at the above-referenced address not later than 2:00 p.m. (CST) on November 5, 2010. Prospective applicants are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and be signed by an official, such as a CEO or CFO, of the entity. On or about November 12, 2010, or as soon thereafter as practical, the Comptroller expects to post responses to the questions received by the deadline on the Stimulus website referenced above. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Applications must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CST), on December 17, 2010. Late Applications will not be considered under any circumstances. Applicants shall be solely responsible for verifying time receipt of applications in the Issuing Office.

Application Requirements and Eligibility: Eligible Governmental Entities may apply to the LoanSTAR revolving loan program, administered by the Texas Comptroller of Public Accounts (CPA), State Energy Conservation Office (SECO). Applicants must meet eligibility requirements.

As part of the application process, applicants shall submit one of the following documents,

1. A Project Assessment Commitment must be completed by the applicant's Chief Financial Officer or equivalent.

2. Preliminary Energy Assessment (PEA) for both design-bid-build projects or for energy savings performance contracts. A Professional Engineer licensed in the State of Texas must complete the PEA. PEAs must include ECRMs or UCRMs that will be completed to reduce utility (energy and water) costs. Project costs and simple paybacks must also be documented for each ECRM and UCRM in the PEA.

3. EAR for design-bid-build projects,

4. UAR for energy savings performance contracts, or

5. Commissioning Report for commissioning projects.

A Loan Application must be also submitted to SECO for review and approval. While the PEA may qualify the project for potential funding, an approved EAR, UAR or commissioning report will be required prior to execution of a loan agreement, if awarded.

The SECO technical staff or its contractor will review the Project Assessment Commitment, PEA, EAR, UAR or commissioning report. PEA, EAR, UAR or commissioning report should include, at a minimum, the following Cost Categories: Labor, Materials (including equipment), Overhead and Profit. The technical staff may request additional information or calculations.

SECO will establish an Evaluation Committee for the full review and evaluation of eligible applications. The Evaluation Committee shall include employees of the Comptroller and may include other impartial individuals who are non-Comptroller employees. SECO's legal counsel will review the applications for eligibility, compliance with the terms of this NOLFA/RFA, and thoroughness. The applications that meet minimum qualifications and meet eligibility requirements shall be distributed to the members of the Evaluation Committee for their independent review and evaluation. Evaluation criteria and relative weight for each NOLFA/RFA may vary. The Evaluation Committee shall review and individually score each written application. The Evaluation Committee shall then have the option of selecting the top scoring applications and may, but is not required to, call the top scoring Applicants to come to SECO offices in Austin for an interview. At the interviews, if the Evaluation Committee so chooses, the Applicants will be asked a series of questions and scored regarding their responses to the questions. The Evaluation Committee can, in its sole discretion, proceed directly to scoring and selection without the necessity of any oral interviews.

Upon the selection of the apparent Successful Applicant(s), if any, the next step SECO takes is dependent on the documentation submittal by the applicant. In the case where the apparent Successful Applicant(s) submitted a Project Assessment Commitment or PEA, the applicant shall be notified they have 75 calendar days to complete and submit an EAR, UAR or commissioning report. When this report is completed, the SECO technical staff or its contractor will review the EAR, UAR or commissioning report. The technical staff may request additional information or calculations. If the report is not submitted within the time

constraints, SECO may, in its sole discretion, choose to withdraw the NOLFA/RFA. SECO shall attempt to finalize a Loan Agreement with the apparent Successful Applicant(s) after submission of an EAR, UAR or commissioning report. If a Loan Agreement cannot be successfully negotiated within a reasonable period of time, negotiations will be terminated, and negotiations with the next highest ranking Applicant may commence. The process may continue until one or more Loan Agreements are signed, or the NOLFA/RFA is withdrawn. SECO may at any time, upon failure of negotiations, choose to reissue or withdraw the NOLFA/RFA rather than continue with negotiations. If SECO decides, in its sole discretion, to award more than one loan, SECO may proceed with negotiations in the above-described manner with more than one Applicant simultaneously.

Once projects have been selected, a Memorandum of Understanding (MOU) and/or a Loan Agreement may be issued and executed. The MOU will be issued if the selected borrower included a Project Commitment or PEA submittal. The borrower's CFO will sign and inserts dates on this MOU which certifies that the borrower has retained a Professional Engineer to prepare an Energy Assessment Report (EAR) to be prepared in accordance with the guidelines and formats provided in the Texas LoanSTAR Program Guidebook: Guidelines, Formats, Program Requirements and Documents or an Utility Assessment Report (UAR) to be prepared in accordance with the SECO Performance Contracting Guidelines. The borrower's CFO will also certify that copies of the completed reports referenced will be delivered to the SECO for review within the required submittal date. The sole purpose of the MOU is to reserve LoanSTAR funds for a borrower during the period the EAR or UAR is being prepared. This document should not be construed as a loan agreement and does not authorize the expenditure of funds for LoanSTAR projects. LoanSTAR project expenditures cannot be incurred before the effective date cited in a fully executed loan agreement unless those expenditures are approved in the LoanSTAR Technical Guidelines.

Applicant Design-Bid Build Design and Review Process: After a Loan Agreement has been executed, the applicant can begin the process of designing and implementing the projects identified in the report. A design-bid-build process includes two milestones.

1. Selecting a design Engineer. The Engineer selected to design the projects can be the Engineer who prepared the Energy Assessment Report; however, the institution must follow competitive procedures based upon qualifications.

2. Preparing the design documents. The applicant must submit Design Development Reports and Detailed Design Reports to SECO for technical review and approval. The SECO Technical Review will ensure that the design specifications match the projects identified in the report.

i. Design Development Report (50%) - This design review report will be completed when the design process is approximately 50% complete and will verify that the design is proceeding in a direction which conforms with the approved Energy Assessment Report.

ii. Detailed Design Review Report (100%) - This design review report will verify that the completed design conforms to the intent of the approved energy assessment. In addition, it will evaluate the proposed schedule and estimated project construction budget provided by the design engineer.

The applicant agrees that bidding and construction activities will not begin until after applicant receives SECO approval that the submitted designs conform to LoanSTAR Technical Guidelines. Applicants agree to competitively select contractors or bidders as required by state law.

Applicant Energy Savings Performance Contracting Design Review Process: There is no design review process for energy savings performance contracts unless a system commissioning is a component of that program.

Applicant Systems Commissioning Review Process: Systems Commissioning may be part of a design-bid-build project, an energy savings performance contract or a stand-alone activity. To be considered as an ECRM or a stand-alone activity, the Systems Commissioning Report must be reviewed and approved by SECO prior to loan execution. Commissioning activities typically include surveying, interviewing, baseline measurements and analyses, definition of problems, definition of solutions, implementation of solutions, balancing, and verification measurements. Some of these steps may be repeated as necessary to optimize systems operations. In some cases, system considerations extend beyond just the equipment installed under the LoanSTAR ECRMs. This is to insure that total building system effects are comprehended and optimized. Since both heating and cooling systems are usually involved in this process, optimization activities may extend over a six-month period or longer. Documentation of findings and corrections, along with recommended operating procedures, should be provided by the commissioning organization.

Applicant Construction Review Process: Applicant shall prepare and submit a Monthly Progress Report via the internet on or by the 10th day of each month. Reporting shall be in a format prescribed by SECO. Applicant agrees to notify SECO when the project reaches 50% completion. SECO will then perform a construction-monitoring visit to ensure the project complies with the LoanSTAR Technical Guidelines. After the construction-monitoring visit, SECO will provide the Applicant with a copy of the On-Site Construction Monitoring Report. This report will provide a general overview of construction site activities. It will address issues of budget, schedule, and conformance of the work with the design documents and will make recommendations concerning any necessary changes in scope or budget.

Applicant agrees to notify SECO when the project reaches 100% completion. SECO will then perform a construction-monitoring visit to ensure the completed project complies with the LoanSTAR Technical Guidelines. After the construction-monitoring visit, SECO will provide the Applicant with a copy of the Final Monitoring Report. This report will be similar to the On-Site Construction Monitoring Report. In addition, it will focus on compliance by the construction contractor with the "close-out" documentation requirements outlined in the bid documents. The report will verify that the contractor has provided guarantees, warranties, releases, O&M manuals, training sessions required, etc. Applicant shall then certify that materials and equipment to be replaced have been properly disposed. These materials would include, but not be limited to, light bulbs, ballasts, switches, controls, HVAC equipment, refrigerants, pumps, fans, blowers, piping, valves, conduit, wiring, and boilers. Certification shall include proper disposal of hazardous materials. All waste disposals must be conducted in compliance with local, State of Texas, and federal rules and regulations. Upon completion of the project and acceptance by SECO, the Applicant will submit a Final Completion Report (see LoanSTAR Technical Guidelines) to SECO and a final voucher request.

Applicant Repayment Process: After submittal of the Final Completion Report to SECO and the final voucher request, Applicant will request a Loan Repayment Schedule from SECO. SECO will then forward the Loan Repayment Schedule to the Applicant based on the incurred loan amount. Loan repayments will begin within sixty days of project completion and are due quarterly. The amount of annual loan repayment is based on the energy cost savings projected in the Energy Assessment Report. These projected savings are the basis for the loan. They are not guaranteed savings. Therefore, the dollar amount and the number of loan repayments are established in the promissory note and do not

vary according to the actual savings. The applicant payback term will be equal to the EAR loan composite payback term.

Application Summary: Applications must be complete, be submitted under signed transmittal letter, include an executive summary, a table of contents, a Project Assessment Commitment or PEA or EAR or UAR or Commissioning Report, and a Loan Application. The proposed project must meet the following program requirements:

* The maximum loan amount shall not exceed $5 million dollars.

* The interest rate is set at 3%.

* The term of the loan is the composite simple back term for the energy efficiency measures and must be 10 years or less. The individual Energy Cost Reduction Measures (ECRM) must demonstrate a simple payback of less than the ECRM's economic useful life.

* Project expenses will be reimbursed on a "cost reimbursement" basis. No advance of funds is allowed.

* Borrower will be required to comply with federal Solid Waste Disposal Act, and, if applicable, National Environmental Policy Act, and National Historic Preservation Act. Applicants understand and will see that the State Historical Preservation Office (SHPO) is consulted in any project award that may include a building or site of historical importance. In this regard, SHPO guidance will be solicited and followed to insure that the historical significance of the building will be preserved. All requirements are set out in the sample contract located at the back of this proposal.

* SECO will conduct periodic on-site monitoring visits on all building retrofit projects.

* All improvements financed through the LoanSTAR Revolving Loan Program shall meet minimum efficiency standards (as prescribed by applicable building energy codes). Examples of projects that are acceptable may include:

- Building and mechanical system commissioning and optimization.

- Energy management systems and equipment control automation.

- High efficiency heating, ventilation and air conditioning systems, boilers, heat pumps and other heating and air conditioning projects.

- High efficiency lighting fixtures and lamps.

- Building Shell Improvements (insulation, adding reflective window film, radiant barriers, and cool roof.)

- Load Management Projects o Energy Recovery Systems

- Low flow plumbing fixtures, high efficiency pumps

- Systems commissioning

- Renewable energy efficiency projects are strongly encouraged wherever feasible, and may include installation of distributed technology such as rooftop solar water and space heating systems; geothermal heat pumps (only closed loop systems with no greater than 10-ton capacity), or electric generation with photovoltaic or small wind and solar-thermal systems. If there are closed-loop geothermal heat pumps greater than 10-ton capacity involved, then applicants will be responsible for further NEPA review by DOE in the event of an award. If renewable generation greater than 20 KW is involved, applicants will be responsible for further NEPA review by DOE.

Evaluation Criteria: Applications will be evaluated under the general questionnaire criteria outlined below. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all applications submitted. The Comptroller is not obligated to execute a loan agreement on the basis of this NOLFA and RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this NOLFA or RFA. Comptroller and SECO may request additional information at any time if deemed necessary for further evaluation. The following general evaluation criterion is set up in the form of a questionnaire to enable applicants to self-score their RFA. General evaluation criterion points are shown below and additional instruction may be included in the application instructions:

1. Which of the following reports are submitted with this application? (30 points)

* Energy Assessment Report (EAR) for design-bid-build projects - 30 points

* Utility Assessment Report (UAR) for Energy Savings Performance Contracts - 30 points

* Commissioning Report - 30 points

* Preliminary Energy Assessment (PEA) - 25 points

* Project Assessment Commitment

- 3 or more ECRMs/UCRMs - 15 points

- 2 ECRMs/UCRMs - 13 points

- 1 ECRM/UCRM - 10 points

* If no report is submitted, do not proceed.

2. If the project is an Energy Savings Performance Contract (ESPC) which requires the submittal of a UAR (see question 1), is a Measurement and Verification (M+V) Plan submitted with this application? (0 points)

* If yes, write "OK" in column and continue with evaluation.

* If no, do not proceed.

3. If the project is an Energy Savings Performance Contract (ESPC), has the applicant stated that the M+V complies with International Performance Measurement and Verification Protocol (IPMVP)? (0 points)

* If yes, write "OK" in column and continue with evaluation. If no, do not proceed.

* If no, do not proceed.

4. This question relates only to applicants that are submitting Project Assessment Commitments or PEAs. Has the applicant stated they agree to complete and submit the EAR/UAR within 75 days after contract commitment? (0 points)

* If yes, write "OK" in column and continue with evaluation.

* If no, do not proceed.

5. Has the applicant stated they agree to the terms and conditions of the sample contract? (0 points)

* If yes, write "OK" in column and continue with evaluation.

* If no, do not proceed.

6. Is the composite simple payback for the project estimated or calculated to be less than 10 years? (0 points)

* If yes, write "OK" in column and continue with evaluation.

* If no, do not proceed.

7. Is the simple payback for the each ECRM/UCRM estimated or calculated to be less than the Estimated Useful Life (EUL) of that measure? (0 points)

* If yes, write "OK" in column and continue with evaluation.

* If no, do not proceed.

8. How many ECRMs/UCRMs are included in the project? (Note, the ECRMs/UCRMs are by category (lighting, HVAC, controls, etc.) and not by location (Building 1 lighting, Building 2 lighting, etc.) (15 points)

* 3 or more ECRMs/UCRMs - 15 points

* 2 Energy ECRMs/UCRMs - 13 points

* 1 Energy ECRM/UCRM - 10 points

9. Does the project retrofit incorporate renewable technologies? (5 points)

* Yes - 5 points

* No - 0 points

10. Does the applicant's team have Professional Engineers (PE) in the State of Texas that has demonstrated work experience on the design of similar projects? (15 points)

* If yes, what is the PE's average design experience in years? (Note: This number is calculated by adding together the design experience, in years, for each PE and then dividing the total number of years by the number of PEs. Each PE's experience shall not to exceed 10 years of experience on similar projects and each PE is required to list example projects that document their similar design experience in order to earn point credit)

- 8 or more years on similar projects - 15 points

- 4 years similar projects - 10 points

- 1 year on similar project - 5 points

* If no, than 0 points will be credited for this response.

11. Does the applicant's team have other individual team members that have demonstrated work experience on the planning and construction of similar projects? (15 points)

* If yes, what is the average number of projects for the individual team members? (Note: This number is calculated by adding together the project for each other individual team member and then dividing the total number of projects by the number of individual team members. Each individual team member's experience shall not exceed 6 similar projects and individual team members are required to list example projects that document their similar work experience in order to earn point credit)

- 3 or more similar projects - 15 points

- 2 similar projects - 10 points

- 1 similar project - 5 points

* If no, than 0 points will be credited for this response.

12. What is the name of the county and the county population? (15 points) (http://quickfacts.census.gov/qfd/states/48000lk.html) where project retrofit activities will take place. (10 points)

County Name: _____ County Population: _____

* County population less than 10,000 - 15 points

* County population between 10,001 to 100,000 - 10 points

* County population greater than 100,000 - 5 points

13. Will the energy savings information, updated monthly, be available for public viewing? (5 points)

* If yes, how will the applicant make this information available for public viewing

- Via an internet portal - 3 points

- Via detailed signage at the facility entrance - 2 points

* If no, than 0 points will be credited for this response.

The anticipated schedule of events pertaining to this RFA is as follows: Issuance of RFA - October 29, 2010, after 10:00 a.m. CST; Non-Mandatory Letters of Intent and Questions Due - November 5, 2010, 2:00 p.m. CST; Official Responses to Questions posted - November 12, 2010, or as soon thereafter as practical; Applications Due - December 17, 2010, 2:00 p.m. CST; Loan Agreement Execution - as soon as practical.

TRD-201006011
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: October 20, 2010

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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, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/25/10 - 10/31/10 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/25/10 - 10/31/10 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/10 - 11/30/10 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/10 - 11/30/10 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-201005985
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 18, 2010

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Credit Union Department

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Denied

First Central Credit Union, Waco, Texas - See *Texas Register* issue, dated July 30, 2010.

Application to Amend Articles of Incorporation - Approved

Baylor Health Care Systems Credit Union, Dallas, Texas - See *Texas Register* issue, dated August 27, 2010.

TRD-201006002
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 20, 2010

♦ ♦ ♦

Texas Education Agency

Public Notice Announcing the Availability of Waiver Request to U.S. Department of Education for Extension of Period of Availability of Fiscal Year 2008, Section 1003(g) Funds

Purpose and Scope of the Waiver Request. Texas' federal fiscal year (FY) 2008 funds under the school improvement grants (SIG) program under the Elementary and Secondary Education Act of 1965, Title I, Section 1003(g), were required to have been obligated by September 30, 2010. Currently, Texas has approximately $8.5 million in unobligated/unexpended FY 2008 SIG funds. A portion of these funds remains unobligated because of the changes in the SIG grant implemented by the U.S. Department of Education (USDE), which caused grantees not to receive the expected Year 3 SIP Academy grant funding. Since local education agencies (LEAs) did not receive the anticipated Year 3 funding, much of the carryover funding from Year 2 grants was not expended.

Specifically, the Texas Education Agency (TEA) did not anticipate being able to obligate these funds in a thoughtful manner that would increase the quality of instruction and academic performance for students prior to the September 30, 2010, deadline. USDE invited states to submit this type of waiver request, and TEA, therefore, requested a waiver to USDE to extend the period of availability of the funds for an additional 24 months.

The proposed requested waiver will allow TEA to combine the remaining federal FY 2008 SIG funds with its 2010 SIG funds and the FY 2009 SIG funds that it carried over and use the combined funds to make FY 2010 SIG awards consistent with the SIG final requirements. TEA has determined that receiving this waiver will enable it to use FY 2008 funds to make SIG awards that will allow LEAs to support the implementation of required school intervention models in additional Tier I and Tier II schools. These funds will help increase the quality of instruction and improve the academic achievement of students in these schools by supporting rigorous reforms. TEA will hold each LEA that receives FY 2008 SIG funds accountable in accordance with the annual goals that the LEA includes in its FY 2010 SIG application.

Texas must ensure in the waiver request that the state will obligate future funds in a timely manner. TEA will conduct the requisite competitive discretionary grant process to allocate the SIG funding in a timely manner as soon as the state receives approval of its FY 2010 application from USDE. As long as the USDE does not change the grant requirements, as previously was done with the FY 2009 funds and caused this unexpended balance of carryover funds, it is not expected that another similar waiver to extend the period of availability for this funding would be needed again in the future.

Further Information. For more information, contact Dorothy White with the TEA Division of NCLB Program Coordination by mail at 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9374; by fax at (512) 305-9447; or by email at NCLBissues@tea.state.tx.us.

TRD-201006003
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: October 20, 2010

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 29, 2010.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 29, 2010.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: 153, Inc. dba Quick Stop Food Store; DOCKET NUMBER: 2010-0992-PST-E; IDENTIFIER: RN102719861; LOCATION: Port Lavaca, Calhoun County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases; 30 TAC §334.50(b)(2)(A)(ii) and the Code, §26.3475(a), by failing to monitor the pressurized piping system for releases; 30 TAC §334.50(b)(2)((A)(i)(III) and the Code, §26.3475(a), by failing to test line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide release detection by failing to conduct reconciliation of detailed inventory control records; and 30 TAC §334.7(d)(3), by failing to provide an amended registration to the agency for any change or additional information regarding the USTs; PENALTY: $3,621; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 6300 Ocean Drive, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: Akzo Nobel Surface Chemistry, LLC; DOCKET NUMBER: 2010-0738-AIR-E; IDENTIFIER: RN100219393; LOCATION: Houston, Fort Bend County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4) and

THSC, §382.085(b), by failing to maintain the minimum liquid flow rate on the scrubbers; and 30 TAC §122.143(4) and §122.145(2)(A) and THSC, §382.085(b), by failing to submit a complete semi-annual deviation report; PENALTY: $3,621; Supplemental Environmental Project (SEP) offset amount of $7,980 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: City of Asherton; DOCKET NUMBER: 2009-0176-MWD-E; IDENTIFIER: RN101721348; LOCATION: Dimmit County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013746001, Other Requirements Number 4, by failing to provide documentation of the pond liner certification; 30 TAC §305.125(1) and §309.13(e) and TPDES Permit Number WQ0013746001, Other Requirements Number 7, by failing to submit a nuisance odor prevention request and obtain approval; and 30 TAC §21.4 and §290.51(a)(3) and the Code, §5.702, by failing to pay fees and associated late fees; PENALTY: $2,540; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Robert James Williamson dba Aspen Tree and Landscape; DOCKET NUMBER: 2010-0885-LII-E; IDENTIFIER: RN105922090; LOCATION: Austin, Travis County; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §30.5(b) and §344.30(a)(2) and the Code, §37.003, by failing to refrain from advertising or representing themselves to the public as a holder of a license or registration unless they possess a current license or registration or unless they employ an individual who holds a current license; PENALTY: $1,575; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(5) COMPANY: Woochun Chung dba Bay Texaco; DOCKET NUMBER: 2010-1142-PST-E; IDENTIFIER: RN100874056; LOCATION: Seabrook, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifolding, and dynamic back pressure; PENALTY: $2,515; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: City of Bremond; DOCKET NUMBER: 2010-1053-MWD-E; IDENTIFIER: RN101720910; LOCATION: Robertson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number WQ0010917001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia nitrogen (NH_3N) and fecal coliform; PENALTY: $4,940; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Frank James Pokluda dba Circle N Grocery; DOCKET NUMBER: 2010-1167-PST-E; IDENTIFIER: RN101251379; LOCATION: Waller County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(d)(1)(B)(ii), by failing to reconcile inventory control records; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the station; 30 TAC §334.51(b)(2)(C), by failing to equip the UST system with overfill prevention equipment; 30 TAC §115.222(3) and §115.242(4) and THSC, §382.085(b), by failing to prevent gasoline leaks detected by sight, sound, or smell anywhere in the liquid transfer or vapor balance systems; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition; PENALTY: $14,050; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Citgo Refining and Chemicals Company, L.P.; DOCKET NUMBER: 2010-1150-AIR-E; IDENTIFIER: RN102555166; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), Air Permit Number 9604A and PSD-TX-653, Special Condition (SC) Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: Craftmasters Powder Coating, Inc.; DOCKET NUMBER: 2010-0970-AIR-E; DENTIFIER: RN105508436; LOCATION: Waco, McLennan County; TYPE OF FACILITY: surface coating; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization for the surface coating operation; PENALTY: $3,270; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Dauva, LLC dba One Stop Mart; DOCKET NUMBER: 2010-1107-PST-E; IDENTIFIER: RN102445293; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain all required UST records and make them immediately available for inspection; 30 TAC §334.50(b)(2)(A)(i) and the Code, §26.3475(a), by failing to equip each separate pressurized line with an automatic line leak detector; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition and free of defects; PENALTY: $3,765; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2010-1272-AIR-E; IDENTIFIER: RN100229335; LOCATION: Ochiltree County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(C), and 122.146(2), General Operating Permit Number O-00724, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit the permit compliance certification and associated deviation reports; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Gena Hawkins, (512) 239-2583; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(12) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2010-1058-AIR-E; IDENTIFIER: RN100216035; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), and §122.143(4), New Source Review (NSR) Permit Number 4351, SC Number 1, Federal Operating Permit Number O-01961, GTC and Special Terms and Conditions Number 13, and THSC, §382.085(b), by failing to prevent the discharge of

unauthorized emissions; PENALTY: $7,875; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: Equistar Chemicals, L.P.; DOCKET NUMBER: 2010-0243-IHW-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County; TYPE OF FACILITY: organic chemical manufacturing; RULE VIOLATED: 30 TAC §335.69(b) and 40 Code of Federal Regulations (CFR) §262.34(b), by failing to prevent the accumulation of hazardous waste for more than 90 days without authorization; 30 TAC §334.5 and §334.8(b) and 40 CFR §265.197, by failing to prevent the unauthorized discharge of industrial solid waste; and 30 TAC §335.6(c), by failing to update the facility's notice of registration (NOR) to accurately reflect waste management activities; PENALTY: $53,381; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2009-1848-IHW-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §335.2(a) and Industrial Hazardous Waste Permit Number 50111, Provision Number V.D.1. and V.D.3., by failing to prevent hazardous waste from entering surface impoundments; and 40 CFR §268.1(a) and §268.40(a), by failing to comply with land disposal restrictions requirements; PENALTY: $69,600; SEP offset amount of $27,840 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2010-0656-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and§116.715(a), Flexible Air Permit Number 18287 and PSD-TX-730M4, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $80,000; SEP offset amount of $40,000 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Joseph David Fitts; DOCKET NUMBER: 2010-1049-PST-E; IDENTIFIER: RN101843498; LOCATION: Yorktown, Dewitt County; TYPE OF FACILITY: inactive UST; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(17) COMPANY: GOODRICH CORPORATION; DOCKET NUMBER: 2010-1061-IHW-E; IDENTIFIER: RN100868009; LOCATION: Houston, Harris County; TYPE OF FACILITY: industrial metal coating and engraving processing; RULE VIOLATED: 30 TAC §335.2(a), by failing to prevent the disposal of hazardous waste at an unauthorized facility; and 30 TAC §335.6(c), by failing to update the facility's NOR; PENALTY: $6,469; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77024-1452, (713) 767-3500.

(18) COMPANY: City of Hallsville; DOCKET NUMBER: 2010-1263-MWD-E; IDENTIFIER: RN102181872; LOCATION: Harrison County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010460001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limits for NH_3N; PENALTY: $5,420; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: JOHN J. HEBERT DISTRIBUTOR, INC. dba J J Chevron 4; DOCKET NUMBER: 2010-1401-PST-E; IDENTIFIER: RN102424389; LOCATION: Huffman, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifolding, and dynamic back pressure; PENALTY: $6,257; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Dennis Jordan; DOCKET NUMBER: 2010-1653-WOC-E; IDENTIFIER: RN105966022; LOCATION: Sanger, Denton County; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Laredo Paving, Inc.; DOCKET NUMBER: 2010-0954-AIR-E; IDENTIFIER: RN105468144; LOCATION: Laredo, Webb County; TYPE OF FACILITY: portable rock crushing unit; RULE VIOLATED: 30 TAC §116.115(b) and §116.615(2) and THSC, §382.085(b), by failing to comply with the standard permit conditions limiting the facility to be located on-site for no more than 180 non-consecutive days; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(22) COMPANY: Lone Star Industries, Inc.; DOCKET NUMBER: 2010-1266-AIR-E; IDENTIFIER: RN100220847; LOCATION: Maryneal, Nolan County; TYPE OF FACILITY: portland cement plant; RULE VIOLATED: 30 TAC §101.20(2) and §116.115(c), NSR Permit Number 49046, SC Number 3, and THSC, §382.085(b), by failing to maintain the three-hour rolling average inlet temperature; PENALTY: $1,360; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: MEMC Pasadena, Inc.; DOCKET NUMBER: 2010-1078-AIR-E; IDENTIFIER: RN101062099; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: ultrapure silica production plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 9597, SC Numbers 1 and 6, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and (b)(1)(H) and THSC, §382.085(b), by failing to properly report Incident Number 137503; PENALTY: $6,604; SEP offset amount of $2,642 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: NOGALES PRODUCE, INC. dba Nogales Produce; DOCKET NUMBER: 2010-1290-PST-E; IDENTIFIER: RN101536662; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: produce distribution operation with an UST; RULE VIO-

LATED: 30 TAC §334.7(d)(3), by failing to provide an amended UST registration; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.42(i), by failing to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system; 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition and that such devices are inspected and serviced in accordance with manufacturer's specifications; and 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; PENALTY: $12,643; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: PARKWAY FOOD MART, INC. dba Parkway Food Mart; DOCKET NUMBER: 2010-1229-PST-E; IDENTIFIER: RN102267622; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.246(5) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection; and 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; PENALTY: $5,406; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: Q M MARKETS, INC. dba Quick Mart 2; DOCKET NUMBER: 2010-0925-PST-E; IDENTIFIER: RN102853488; LOCATION: Clute, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; and 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; PENALTY: $8,550; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: James Rodriguez dba Rioseco Dairy; DOCKET NUMBER: 2010-0974-AGR-E; IDENTIFIER: RN102792694; LOCATION: Harriet, Tom Green County; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.36(c) and §321.39(f) and TCEQ General Permit Number TXG920888, Part III.B.4 and Part V.D, by failing to ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including runoff and direct precipitation from the design rainfall event; 30 TAC §321.36(e)(2) and TCEQ General Permit Number TXG920888, Part IV.A.(2)(b)(2), by failing to maintain a log of manure given to other persons for off-site land application; 30 TAC §321.39(b) and TCEQ General Permit Number TXG920888, Part III.A.9.(a), by failing to ensure that the required capacity in the retention control structure (RCS) is available to contain rainfall and rainfall runoff from the required rainfall event; 30 TAC §305.125(1) and TCEQ General Permit Number TXG920888, Part III.A.6.(e), by failing to equip the RSC with irrigation or liquid removal systems capable of dewatering the RSC whenever needed to restore the operating capacity; 30 TAC §321.31(a), TCEQ General Permit Number TXG920888, Part III.a.5(a)(1), and the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge of wastewater and contaminated runoff into water in the state; 30 TAC §321.36(l) and TCEQ General Permit Number TXG920888, Part III.A.10(c), by failing to collect carcasses within 24 hours of death; and 30 TAC §305.125(1) and TCEQ General Permit Number TXG920888, Part IV.B.5, by failing to notify the TCEQ orally within 24 hours and in writing within 14 days of becoming aware of an unauthorized discharge; PENALTY: $4,955; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(28) COMPANY: STEINHAGEN OIL COMPANY, INC. dba Fastlane Number 28; DOCKET NUMBER: 2010-1014-PST-E; IDENTIFIER: RN101905560; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.245(3) and THSC, §382.085(b), by failing to submit a pre-test notification ten working days in advance of a test; 30 TAC §115.242(3)(C) and THSC, §382.085(b), by failing to maintain the Stage II VRS; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump for each dispenser equipped with a Stage II VRS; PENALTY: $11,878; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(29) COMPANY: Texas A&M University Corpus Christi; DOCKET NUMBER: 2010-1660-WQ-E; IDENTIFIER: RN105997498; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(30) COMPANY: City of Waelder; DOCKET NUMBER: 2010-1215-MWD-E; IDENTIFIER: RN102916046; LOCATION: Gonzales County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014252001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for biochemical oxygen demand; PENALTY: $1,800; SEP offset amount of $1,440 applied to Keep Texas Beautiful - Stop Trashing Texas Program; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201005994

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 19, 2010

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Enforcement Orders

An agreed order was entered regarding Anna Jeffcoat dba Lakeshore Sites Water Company, Docket No. 2007-1565-PWS-E on October 5, 2010 assessing $3,424 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cardinal Meadows Improvement District, Docket No. 2008-0117-MWD-E on October 5, 2010 assessing $19,880 in administrative penalties with $10,280 deferred.

Information concerning any aspect of this order may be obtained by contacting Gary K. Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2008-1520-IHW-E on October 5, 2010 assessing $38,688 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hexion Specialty Chemicals, Inc., Docket No. 2009-0965-IHW-E on October 5, 2010 assessing $79,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Travis Vista Water and Sewer Supply Corporation, Docket No. 2009-1008-MWD-E on October 5, 2010 assessing $27,974 in administrative penalties with $27,974 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Covington, Docket No. 2009-1089-MWD-E on October 5, 2010 assessing $8,250 in administrative penalties with $8,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Candelaria Water Supply Corporation, Docket No. 2009-1210-PWS-E on October 5, 2010 assessing $7,923 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAGIC FIRST, INC. dba Magic Food Mart, Docket No. 2009-1340-PST-E on October 5, 2010 assessing $20,340 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0654, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2009-1343-AIR-E on October 5, 2010 assessing $3,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DIXIE IN INC. dba Dixie Drive In, Docket No. 2009-1479-PST-E on October 5, 2010 assessing $6,631 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Tempe Water Supply Corporation, Docket No. 2009-1497-MWD-E on October 5, 2010 assessing $12,240 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Larry E. Skero, Docket No. 2009-1557-LII-E on October 5, 2010 assessing $952 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jorge Magallanes Martinez, Docket No. 2009-1731-PST-E on October 5, 2010 assessing $3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G. L. PROPERTIES, INC., Docket No. 2009-1733-PST-E on October 5, 2010 assessing $2,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SARBALI, INC. dba JOC 27, Docket No. 2009-1882-PST-E on October 5, 2010 assessing $5,337 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brownfield Farmers, L.L.C., Docket No. 2009-2000-AIR-E on October 5, 2010 assessing $1,160 in administrative penalties with $232 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Penelope, Docket No. 2010-0092-MWD-E on October 5, 2010 assessing $10,197 in administrative penalties with $2,039 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2010-0134-AIR-E on October 5, 2010 assessing $40,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hanson Pipe & Precast LLC fka Hanson Pipe & Precast, Inc., Docket No. 2010-0153-IWD-E on October 5, 2010 assessing $4,320 in administrative penalties with $864 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Devon Gas Services, L.P., Docket No. 2010-0232-AIR-E on October 5, 2010 assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Gena Hawkins, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bridgestone Municipal Utility District, Docket No. 2010-0248-MWD-E on October 5, 2010 assessing $18,888 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ismael Medina, Docket No. 2010-0254-LII-E on October 5, 2010 assessing $563 in administrative penalties with $112 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bharath U. Govindram, Docket No. 2010-0306-PST-E on October 5, 2010 assessing $36,100 in administrative penalties with $7,220 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bayshore Industrial, L.P., Docket No. 2010-0307-IWD-E on October 5, 2010 assessing $6,090 in administrative penalties with $1,218 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry Robinson, Docket No. 2010-0337-MSW-E on October 5, 2010 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pearsall, Docket No. 2010-0343-MWD-E on October 5, 2010 assessing $3,025 in administrative penalties with $605 deferred.

Information concerning any aspect of this order may be obtained by contacting Marty Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Steve M. Le Beau, Docket No. 2010-0350-LII-E on October 5, 2010 assessing $813 in administrative penalties with $162 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOVA ENTERPRISES INC. dba Stella Link Valero, Docket No. 2010-0351-PST-E on October 5, 2010 assessing $8,040 in administrative penalties with $1,608 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding I.S.S. Enterprises Inc dba Bammel Food Store, Docket No. 2010-0368-PST-E on October 5, 2010 assessing $8,565 in administrative penalties with $1,713 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STAR FUELS, INC. dba Star Fuels-West Shepherd, Docket No. 2010-0371-PST-E on October 5, 2010 assessing $8,554 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Laguna Tres, Inc., Docket No. 2010-0378-PWS-E on October 5, 2010 assessing $214 in administrative penalties with $42 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SLK DEVELOPMENT LLC dba Quality Cleaners, Docket No. 2010-0387-DCL-E on October 5, 2010 assessing $2,283 in administrative penalties with $456 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2010-0390-AIR-E on October 5, 2010 assessing $233,000 in administrative penalties with $46,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JWK AUTO GROUP, INC., Docket No. 2010-0392-PST-E on October 5, 2010 assessing $6,673 in administrative penalties with $1,334 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry Hawkins dba Hawkins Septic Tanks, Docket No. 2010-0394-SLG-E on October 5, 2010 assessing $5,040 in administrative penalties with $1,008 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2010-0410-AIR-E on October 5, 2010 assessing $30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WSWS Company, Docket No. 2010-0434-PWS-E on October 5, 2010 assessing $1,495 in administrative penalties with $299 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert John Gill, Docket No. 2010-0437-PST-E on October 5, 2010 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW ALIA ENTERPRISE, INC. dba Fuel Express 6, Docket No. 2010-0446-PST-E on October 5, 2010 assessing $2,244 in administrative penalties with $448 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PFHC, LTD. dba KB Express, Docket No. 2010-0464-PST-E on October 5, 2010 assessing $18,980 in administrative penalties with $3,796 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Steinhagen Oil Company, Inc. dba Fastlane 16, Docket No. 2010-0469-PST-E on October 5, 2010 assessing $11,205 in administrative penalties with $2,241 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack D. Williams, Docket No. 2010-0473-PST-E on October 5, 2010 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RACETRAC PETROLEUM, INC. dba Raceway 6774, Docket No. 2010-0483-PST-E on October 5, 2010 assessing $9,454 in administrative penalties with $1,890 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Akber Ali dba Best Stop Food Mart, Docket No. 2010-0484-PST-E on October 5, 2010 assessing $5,331 in administrative penalties with $1,066 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cotulla, Docket No. 2010-0487-PWS-E on October 5, 2010 assessing $5,363 in administrative penalties with $1,072 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M&O SERVICES, L.L.C. dba Shell Super Stop 10, Docket No. 2010-0499-PST-E on October 5, 2010 assessing $14,560 in administrative penalties with $2,912 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Skinny's, LLC dba Skinnys 141, Docket No. 2010-0504-PST-E on October 5, 2010 assessing $6,095 in administrative penalties with $1,219 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Capitol Products, Inc., Docket No. 2010-0511-MLM-E on October 5, 2010 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2010-0525-AIR-E on October 5, 2010 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Anderson Water Company, Inc., Docket No. 2010-0529-PWS-E on October 5, 2010 assessing $157 in administrative penalties with $31 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lower Colorado River Authority, Docket No. 2010-0533-MWD-E on October 5, 2010 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BOPCO, L.P., Docket No. 2010-0536-AIR-E on October 5, 2010 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kwang Soon Lee dba Lee's One Stop, Docket No. 2010-0559-PST-E on October 5, 2010 assessing $4,188 in administrative penalties with $837 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kobra Mirhaj, Docket No. 2010-0561-MWD-E on October 5, 2010 assessing $60,083 in administrative penalties with $12,016 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walter A. Young, Docket No. 2010-0566-MSW-E on October 5, 2010 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2010-0586-AIR-E on October 5, 2010 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Army & Air Force Exchange Service, Docket No. 2010-0622-PST-E on October 5, 2010 assessing $8,000 in administrative penalties with $1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Municipal Utility District, Docket No. 2010-0643-MWD-E on October 5, 2010 assessing $3,300 in administrative penalties with $660 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Methodist Healthcare System of San Antonio, Ltd., L.L.P. dba Metropolitan Methodist Hospital, Docket No. 2010-0669-PST-E on October 5, 2010 assessing $2,305 in administrative penalties with $461 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Henderson, Docket No. 2010-0674-MWD-E on October 5, 2010 assessing $4,600 in administrative penalties with $920 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Willburr and Co., Inc., Docket No. 2010-0678-PWS-E on October 5, 2010 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R & D Distributing, Ltd dba Hurst Street Bulk Plant, Docket No. 2010-0680-PST-E on October 5, 2010 assessing $8,025 in administrative penalties with $1,605 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Midwest Wood Treating Inc, Docket No. 2010-0682-AIR-E on October 5, 2010 assessing $12,000 in administrative penalties with $2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Southside Place, Docket No. 2010-0716-PWS-E on October 5, 2010 assessing $296 in administrative penalties with $59 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dollie Jobe, Docket No. 2010-0719-PST-E on October 5, 2010 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brownsville Public Utilities Board, Docket No. 2010-0777-MWD-E on October 5, 2010 assessing $7,850 in administrative penalties with $1,570 deferred.

Information concerning any aspect of this order may be obtained by contacting Marty Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Plainview BioEnergy, LLC, Docket No. 2010-0825-IWD-E on October 5, 2010 assessing $3,660 in administrative penalties with $732 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Angelina and Neches River Authority, Docket No. 2010-0872-MWD-E on October 5, 2010 assessing $2,880 in administrative penalties with $576 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huber Garden, Inc. dba Huber Garden Estates, Docket No. 2010-0861-PWS-E on October 5, 2010 assessing $1,144 in administrative penalties with $228 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201006015
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 20, 2010

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Notice of Water Quality Applications

The following notice was issued on October 8, 2010 through October 15, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

TASMAN AMARILLO L P which operates Tasman Amarillo, an animal hide processing plant that produces brine-cured hides, has applied for a renewal of TCEQ Permit No. WQ0002030000, which authorizes the disposal of brine wastewater from the hide treatment operations and equipment and process area washdown water at a daily average flow not to exceed 0.0154 million gallons per day via evaporation. The draft permit authorizes the disposal of brine process wastewater from the hide treatment operations; and equipment and process area washdown water at a daily average flow not exceed 0.01449 million gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located at 102 Beefco Road in the City of Amarillo, Potter County, Texas 79118.

MONARCH UTILITIES I L P has applied for a renewal of TPDES Permit No. WQ0014179001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located east and adjacent to U.S. Highway 190 in the Blue Water Cove Subdivision and approximately 6,500 feet northeast of the intersection of U.S. Highway 190 and State Highway 980 in San Jacinto County, Texas 77364.

TRS ENVIROGANICS INC has applied for a new permit, Proposed TCEQ Permit No. WQ0004923000, to authorize the land application of sewage sludge and water treatment plant sludge for beneficial use on 598.75 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge land application site will be located adjacent to an unnamed road north of Farm-to-Market Road 490, located approximately 6 miles west of McCook, Texas and 2 miles north of Farm-to-Market Road 490, in Starr County, Texas 78541.

TRS ENVIROGANICS INC has applied for a new permit, Proposed TCEQ Permit No. WQ0004924000, to authorize the land application of sewage sludge and water treatment plant sludge for beneficial use on 601.47 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge land application site will be located at the northeast corner of the intersection of County Road 3239 and Mile 16 Road, approximately 1.78 miles south of the intersection of Farm-to-Market Road 490 and County Road 3239, approximately 2.75 miles west of McCook, in Hidalgo County, Texas 78541.

THE GOODYEAR TIRE AND RUBBER COMPANY which operates the Goodyear Tire and Rubber Beaumont Chemical Plant which manufactures synthetic rubber, adhesive resins, antioxidants, and isoprene, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0000519000 to increase the daily average effluent limitation for temperature at Outfall 001; authorize the effluent sampling at Outfall 001 to be either proportional to flow or proportional to time; and authorize an alternate sampling location for flow determinations at Outfall 001 during large rain events. The current permit authorizes treated process wastewater, process wastewater from the adjacent Sartomer Company facility, utility waters, domestic wastewater and process area storm water at a daily average flow not to exceed 6,000,000 gallons per day via Outfall 001; and process area storm water on an intermittent and flow variable basis via Outfall 003. The facility is located south of Interstate Highway 10 (between Interstate Highway 10 and State Highway 124,) approximately nine (9) miles southwest of the City of Beaumont, Jefferson County, Texas 77720. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has

determined that the action is consistent with the applicable CMP goals and policies.

EXXON MOBIL CORPORATION P.O. Box 4004, Baytown, Texas 77522, which operates the ExxonMobil Baytown Refinery Complex, an integrated petroleum refinery and organic chemical manufacturing facility, which receives compatible wastes from an adjacent sulfuric acid manufacturing plant, has applied for a major amendment without renewal to TPDES Permit No. WQ0000592000 to add Biofuel Research & Development Facility effluent and demineralizer plant regenerate water to the definition of facility wastewaters which are authorized for discharge via Outfall 001 and to add Other Requirement No. 17 to address the types of algae and conditions for use of any algae species at the Biofuel Research and Development Facility. The current permit authorizes the discharge of facility wastewater (process wastewater, storm water runoff from the process areas and some non-process areas, contaminated groundwater, cooling tower blowdown, steam condensate, treated domestic wastewater, ballast water, firewater [test waters and other normal process activities], hydrostatic test water, gray water [excluding untreated wastes from any form of toilet facilities], periodic construction storm waters, and silt settling pond effluent routed to the wastewater treatment plant) at a daily average flow not to exceed 33,000,000 gallons per day via Outfall 001; the discharge of previously monitored effluents (PMEs; facility wastewater excluding domestic wastewater on an intermittent and flow variable basis via internal Outfall 102) on an intermittent and flow variable basis via Outfall 002; and the discharge of regenerate water from a demineralizer plant at a daily average flow not to exceed 3,000,000 gallons per day via Outfall 003. The facility is located at 2800 Decker Drive, adjacent to the Houston Ship Channel, in the City of Baytown, Harris County, Texas 77520. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

PONDERA CAPITAL MANAGEMENT G P INC which proposes to operate the Pondera King Power Station, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004914000, to discharge cooling tower blowdown and previously monitored effluent (low volume wastewaters via internal Outfall 101 and treated domestic wastewater via internal Outfall 201) at a daily average flow not to exceed 860,000 gallons per day via Outfall 001. The facility is located on the west side of Lockwood Road, 1.6 miles south of the Lockwood Road and Sam Houston Parkway interchange, Harris County, Texas 77044.

J M HUBER CORPORATION which operates the J. M. Huber Plant, a limestone mine and processing plant, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004922000, to authorize the discharge of mine dewatering wastewater at a daily average flow not to exceed 25,000 gallons per day via Outfall 001. The facility is located at 849 South U.S. Highway 281, in the City of Marble Falls, Burnet County, Texas 78654.

CITY OF DEL RIO has applied for a renewal of TPDES Permit No. WQ0010159003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed a 2,760,000 gallons per day. The facility is located approximately 0.5 mile south of the intersection of Cinegas Creek and the Southern Pacific Railroad, 2,500 feet southwest of the intersection of Garza Lane and Cinegas Road in Val Verde County, Texas 78840.

CITY OF GRAPEVINE has applied for a renewal of TPDES Permit No. WQ0010486002 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,750,000 gallons per day. The facility is located immediately northwest of the intersection of North Scribner and Shady Brook Road in the City of Grapevine in Tarrant County, Texas 76051.

CITY OF ANSON has applied for a major amendment to TCEQ Permit No. WQ0010500002, to authorize an increase in the daily average flow from 340,000 gallons per day to 450,000 gallons per day and to increase the acreage irrigated from 91 acres to 125.8 acres. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 275,000 gallons per day via surface irrigation of 58 acres of non-public access agricultural land in the interim phase and a daily average flow not to exceed 340,000 gallons per day via surface irrigation of 91 acres of non-public access agricultural land in the final phase. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 4,500 feet east northeast of the intersection of U.S. Highway 83 and U.S. Highway 180 in Jones County, Texas 79501.

THE CITY OF RHOME has applied for a renewal of TPDES Permit No. WQ0010701002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 150 feet east of the intersection of County Road 4651 and Oates Branch in Wise County, Texas 76078.

THE CITY OF DEPORT has applied for a renewal of TPDES Permit No. WQ0010741001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 183,000 gallons per day. The facility is located approximately 1,000 feet south of U.S. Highway 271 and 1,400 feet west of the intersection of Farm-to-Market Road 1149 and U.S. Highway 271 in Lamar County, Texas 75435.

CITY OF DEVERS has applied for a renewal of TPDES Permit No. WQ0011540001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located south of the City of Devers, on the south side of U.S. Highway 90 and adjacent to Chism Street in Liberty County, Texas 77538.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 25 has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0012003001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located at 18230 Old Richmond Road, approximately 400 feet north of Old Richmond Road (Richmond-Gains Road) and approximately 2,900 feet east of Farm-to-Market Road 1464 in Fort Bend County, Texas 77498.

CITY OF LA JOYA has applied for a renewal of TPDES Permit No. WQ0012675001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,470,000 gallons per day. The facility is located approximately 1.5 miles south-southwest of the intersection of U.S. Highway 83 and Farm-to-Market Road 2521 in Hidalgo County, Texas 78560.

THE CITY OF CAMPBELL has applied for a renewal of TPDES Permit No. WQ0013791001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 116,000 gallons per day. The facility is located adjacent to the northwest bank of Timber Creek; approximately 1,000 feet south of State Highway 24, approximately 0.75 mile north of Interstate Highway 30, approximately 0.75 mile southwest of the northern intersection of State Highway 24 and Farm-to-Market Road 499, and approximately one mile southwest of the City of Campbell in Hunt County, Texas 75422.

ARROWHEAD RANCH UTILITY COMPANY LLC has applied for a renewal of TPDES Permit No. WQ0014815001, which authorizes the

discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located on the southwest side of State Highway 185, approximately 5,500 feet northwest of its intersection with State Highway 238 in Calhoun County, Texas 77983.

BEACON ESTATES WATER SUPPLY CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014963001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0012848001 which expired on June 1, 2009. The facility is located approximately 800 feet east of Farm-to-Market Road 359; approximately 3 miles north of the intersection of Farm-to-Market Road 359 and Farm-to-Market Road 1458 in Waller County, Texas 77423.

HAYS COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO 1 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014293001 to authorize a change in the requirement for effluent storage to include a fabricated tank. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day via subsurface drip irrigation of 35 acres on non-public access land and 350,000 gallons per day via discharge to a receiving body of water. The facility is located approximately 1,100 feet west of County Road 163 (Nutty Brown Road) and approximately 1.16 miles south of the intersection of County Road 163 and U.S. Highway 290 in Hays County, Texas. The disposal site is located adjacent to the wastewater treatment facility.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201006014
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 20, 2010

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 13, 2010, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Ameer Ali Jasani; SOAH Docket No. 582-10-1882; TCEQ Docket No. 2009-0959-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Ameer Ali Jasani on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201006016
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 20, 2010

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 19, 2010, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Earnest M. Teel; SOAH Docket No. 582-10-3449; TCEQ Docket No. 2009-1612-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Earnest M. Teel on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201006017
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 20, 2010

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Texas Ethics Commission

List of Later Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual Report due July 15, 2010 for Candidates and Officeholders

Star Locke, P.O. Box 338, Port Aransas, Texas 78373-0338

Hiram McBeth III, 5521 Greenville Ave. #659, Dallas, Texas 75206-2925

Ruby Jeanette Eddins Parham, 916 Wilkins St., Hempstead, Texas 77445-4502

Edith E. "Eve" Schatelowitz-Alcantar, 707 W. 10th St., Austin, Texas 78701

Deadline: Semiannual Report due July 15, 2010 for Committees

Leslie Beasley, Bexar County Democratic Party (CEC), P.O. Box 17719, San Antonio, Texas 78217

Janice L. Burkholder, Pathfinders Republican Women's Club, 21 Towering Pines Dr., The Woodlands, Texas 77381

Deadline: Monthly Report due August 5, 2010 for Committees

Gilbert L. Gomez, Galveston Municipal Police Association Political Action Committee, P.O. Box 8004, Galveston, Texas 77553-8004

Deadline: Lobby Activities Report due May 10, 2010

Luke Bellsnyder, P.O. Box 11510, Austin, Texas 78711

Deadline: Lobby Activities Report due August 10, 2010

Kym N. Olson, 2450 Louisiana St., Ste. 400-109, Houston, Texas 77006

TRD-201005991
David Reisman
Executive Director
Texas Ethics Commission
Filed: October 19, 2010

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective November 1, 2010.

HHSC proposes to amend the payment methodology for inpatient hospital services to rebase the payment division standard dollar amounts (PDSDAs) and diagnosis related group (DRG) factors with more recent cost data and at no additional cost to the State. To accomplish this, the rebased PDSDA will be proportionately reduced to remain within available funds. A transitional adjustment will be applied to the proportionally rebased PDSDA that limits any hospital's loss of estimated revenue to 10 percent of the estimated loss of the proportional rebased rates. In order to incur no additional cost to the State, the amendment also outlines a transitional adjustment of the proportional rebased PDSDAs to limit the amount of revenue gained by positively impacted hospitals. These transitional adjustments will remain in effect until August 31, 2011. Effective September 1, 2011 the transitional adjustments will end and payments will be based on the proportionally reduced rebased PDSDAs.

The proposed amendment described above will not result in a fiscal impact to the state or federal government. However, individual hospitals will still experience changes in their reimbursement as their rates are adjusted to more closely align with their recent cost experience.

The proposed amendments are estimated to result in an annual aggregate expenditure adjustment of $0 for the remainder of federal fiscal year (FFY) 2011, with approximately $0 in federal funds and $0 in State General Revenue (GR). For FFY 2012, the estimated additional aggregate expenditure is $0, with approximately $0 in federal funds and $0 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Kevin Nolting, Director of Rate Analysis for Hospital Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1348; by facsimile at (512) 491-1998; or by e-mail at Kevin.Nolting@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201005986
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 18, 2010

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Public Notice

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 4, 2010 from 10:00 a.m. to 11:00 a.m. to receive comments on the proposed amendment to §353.601 to Title 1, Part 15, Chapter 353, Subchapter G, STAR+PLUS, General Provisions, Member Participation, Participating Providers, and STAR+PLUS Handbook. The hearing will be held at Health and Human Services, Braker Center, Lone Star Conference Room,11209 Metric Boulevard, Building H, Austin, Texas.

The STAR+PLUS program is a combination 1915(b) and 1915(c) waiver administrated by the Medicaid/CHIP Managed Care Division at HHSC. Several program functions are delegated to other state entities or contractors including the Department of Aging and Disability Services, managed care organizations, and the Texas Medicaid & Healthcare Partnership.

The proposed changes to §§353.601, 353.603 and 353.605 will more accurately describe the current STAR+PLUS program; update the member participation guidelines; and update the list of geographic areas of the state where the program is available.

Proposed new §353.607 authorizes the STAR+PLUS Handbook to serve as the policies and procedures manual to be used by all agencies and stakeholders in the delivery of 1915(b) and/or 1915(c) STAR+PLUS waiver services. Since the STAR+PLUS program began, policies and procedures that apply to all involved agencies and stakeholders have been developed, but have not been put into rule and applied universally to all entities. The new rule will allow the STAR+PLUS Handbook which is published on the HHSC website, to be designated as the official policies and procedures manual for the program.

Written Comments. Written comments on the proposed amendments and new rule may be submitted to DJ Johnson, STAR+PLUS Specialist, Medicaid/CHIP Division, Health and Human Services Commission, at 11209 Metric Boulevard, Bldg. H, H-312, Austin, Texas 78758; by fax to (512) 491-1969; or by e-mail to david.johnson@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.* People requiring Americans with Disabilities Act accommodation, auxiliary aids or services should call Leigh A. Van Kirk at (512) 491-2813 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201006018
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 20, 2010

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Department of State Health Services

Designation of the Dallas County Health and Human Services Refugee Clinic as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a site serving medically underserved populations: Dallas County Health and Human Services Refugee Clinic, 7313 Holly Hill Drive, Suite A, Dallas, Texas 75207. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Director, Health Professions Resource Center, Mail Code 1898, Center for Health Statistics, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-201005851
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: October 14, 2010

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Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Texas Oncology P.A.	L06349	Austin	00	09/24/10
Baytown	Clarus Imaging Baytown LP	L06346	Baytown	00	09/24/10
Houston	The Methodist Hospital Research Institute	L06331	Houston	00	09/14/10
Lubbock	Cardinal Health Nuclear Pharmacy Services	L06290	Lubbock	00	09/27/10
Midland	Casedhole Solutions Inc.	L06356	Midland	00	09/23/10
Odessa	Spectrum Tracer Services LLC	L06361	Odessa	00	09/27/10
Throughout TX	D & S Engineering Labs PLLC	L06365	Sanger	00	09/17/10

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Austin Radiological Association	L00545	Austin	166	09/22/10
Austin	Seton Healthcare dba Seton Medical Center Austin	L02896	Austin	111	09/24/10
Austin	St. David's Healthcare Partnership LP, LLP dba St. David's Medical Center	L06335	Austin	02	09/28/10
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	125	09/20/10
Beaumont	Exxonmobile Corporation dba Exxonmobile Chemical Company	L02316	Beaumont	39	09/21/10
Bellaire	Texas Nuclear Imaging Inc. dba Excel Diagnostics Imaging Clinic Medical Center	L05009	Bellaire	35	09/28/10
Bryan	Texas Municipal Power Agency	L02913	Bryan	24	09/22/10
Bryan	St. Joseph Regional Health Center	L00573	Bryan	75	09/24/10
Dallas	Dallas Cardiology Associates P.A. dba Heartplace East	L04607	Dallas	56	09/10/10
Dallas	Cardinal Health	L02048	Dallas	133	09/21/10
Dallas	IBA Molecular North America Inc. dba IBA Molecular	L06174	Dallas	05	09/15/10
Dallas	IBA Molecular North America Inc. dba IBA Molecular	L06174	Dallas	06	09/24/10
Dallas	Presbyterian Cancer Center-Dallas LLC	L06056	Dallas	03	09/27/10
Dumas	Moore County Hospital District	L03540	Dumas	26	09/24/10
Ennis	Ellis County Medical Associates	L05759	Ennis	06	09/27/10
Fort Worth	Texas Health Harris Methodist Hospital Fort Worth	L01837	Fort Worth	127	09/20/10
Fort Worth	Texas Health Harris Methodist Hospital Fort Worth	L01837	Fort Worth	128	09/21/10
Fort Worth	Kiewit Infrastructure South Company	L04569	Fort Worth	24	09/16/10
Fort Worth	Radiology Associates	L03953	Fort Worth	61	09/16/10
Fort Worth	Lockheed Martin Corporation dba Lockheed Martin Aeronautics Company	L05633	Fort Worth	11	09/23/10
Galveston	The University of Texas Medical Branch	L01299	Galveston	88	09/20/10
Groesbeck	South Limestone Hospital District dba Limestone Medical Center	L05932	Groesbeck	03	09/15/10
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	157	09/14/10
Houston	The Methodist Hospital	L00457	Houston	175	09/07/10
Houston	Sightline West Houston IMRT, LLC dba Sightline West Houston	L06299	Houston	02	09/15/10
Houston	Cardinal Health	L01911	Houston	144	09/17/10

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Gammatron Inc.	L02148	Houston	21	09/23/10
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	125	09/24/10
Houston	Hotwell US Ltd.	L06145	Houston	10	09/24/10
Houston	Conocophillips Pipe Line Company dba Petroleum Transportation	L02083	Houston	23	09/29/10
Jourdanton	Jourdanton Hospital Corporation dba South Texas Regional Medical Center	L04966	Jourdanton	18	09/15/10
Katy	St. Catherine Health and Wellness Center	L05310	Katy	21	09/14/10
Kingsville	Texas A&M University Kingsville	L01821	Kingsville	43	09/21/10
La Porte	Akzo Nobel Polymer Chemicals	L04372	La Porte	15	09/20/10
Laredo	Laredo Texas Hospital Company LP dba Laredo Medical Center	L01306	Laredo	69	09/20/10
Linden	Good Shepherd Medical Center Linden Inc.	L02721	Linden	24	09/27/10
Longview	Good Shepherd Medical Center	L02411	Longview	85	09/27/10
Lubbock	University Medical Center	L04719	Lubbock	115	09/17/10
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	50	09/23/10
Lubbock	Cardinal Health	L02737	Lubbock	59	09/23/10
Marshall	Harrison County Hospital Association dba Good Shepherd Medical Center-Marshall	L02572	Marshall	29	09/27/10
North Richland Hills	Columbia North Hills Hospital Subsidiary LP dba North Hills Hospital	L02271	North Richland Hills	68	09/21/10
North Richland Hills	Dallas Cardiology Associates dba Heartplace North Richland Hills	L05548	North Richland Hills	15	09/23/10
Plano	Texas Heart Hospital of the Southwest LLP dba The Heart Hospital Baylor Plano	L06004	Plano	13	09/15/10
Queen City	International Paper Company	L01686	Queen City	36	09/21/10
San Antonio	Methodist Healthcare System of San Antonio Ltd., LLP	L00594	San Antonio	278	09/20/10
San Antonio	Methodist Healthcare System of San Antonio Ltd., LLP	L00594	San Antonio	279	09/22/10
San Antonio	Schnitzler Cardiovascular Consultants	L05792	San Antonio	10	09/17/10
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	124	09/22/10
San Antonio	VHS San Antonio Imaging Partners LP	L04506	San Antonio	75	09/23/10
San Antonio	VHS San Antonio Partners LLC	L00455	San Antonio	201	09/20/10
San Antonio	Alamo Heart Associates, P.A.	L04909	San Antonio	14	09/27/10
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	124	09/27/10
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	36	09/22/10
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	37	09/24/10
Sherman	Texas Oncology P.A. dba Texas Cancer Center Sherman	L05019	Sherman	22	09/20/10
Silsbee	Meadwestvaco Texas LLP	L01095	Silsbee	58	09/16/10
Stafford	Aloki Enterprise Inc.	L06257	Stafford	07	09/17/10
Stafford	Aloki Enterprise Inc.	L06257	Stafford	08	09/21/10
Stephenville	Stephenville Medical and Surgical Clinic	L05309	Stephenville	19	09/17/10
Sugar Land	Sugar Land Veterinary Specialists, P.C.	L05903	Sugar Land	09	09/20/10
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	26	09/17/10
Sunray	Diamond Shamrock Refining Company, LP	L04398	Sunray	19	09/16/10
Texarkana	J. M. Hurley, M.D. P.A. dba Texarkana Cardiology Associates	L04738	Texarkana	13	09/14/10
Texas City	BP Products North America Inc.	L00254	Texas City	64	09/29/10
Throughout TX	Ametek Process and Analytical Instruments	L06291	Austin	01	09/17/10
Throughout TX	Weatherford International Inc.	L04286	Benbrook	86	09/17/10

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	NDE Solutions, LLC	L05879	College Station	27	09/20/10
Throughout TX	Terracon Consultants Inc.	L05268	Dallas	34	09/28/10
Throughout TX	IRISNDT Inc.	L04769	Deer Park	90	09/28/10
Throughout TX	Millennium Engineers Group Inc.	L05388	Edinburg	07	09/20/10
Throughout TX	Professional Service Industries Inc.	L06332	Grapevine	02	09/21/10
Throughout TX	Southwestern Electric Power Company	L03297	Hallsville	22	09/20/10
Throughout TX	HVJ Associates Inc.	L03813	Houston	45	09/20/10
Throughout TX	Wood Group Logging Services Inc.	L05262	Houston	39	09/16/10
Throughout TX	Cardinal Health	L01911	Houston	143	09/15/10
Throughout TX	Halliburton Energy Services Inc.	L00442	Houston	121	09/28/10
Throughout TX	Oceaneering International Inc.	L04463	Ingleside	75	09/24/10
Throughout TX	Sivalls Inc.	L02298	Odessa	39	09/16/10
Throughout TX	Tracerco	L03096	Pasadena	72	09/16/10
Throughout TX	GCT Inspection Inc.	L02378	Pasadena	108	09/29/10
Throughout TX	Kakivik Asset Management, LLC	L06211	Trinity	02	09/15/10
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	159	09/22/10
Waxahachie	Baylor Medical Center at Waxahachie	L04536	Waxahachie	33	09/23/10

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Environmental Health Center-Dallas	L05327	Dallas	07	09/21/10
Throughout TX	Testmasters Inc.	L03651	Houston	31	09/29/10

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Lubbock	IBA Molecular North America Inc.	L05482	Lubbock	18	09/29/10
Plainview	Plainview Cardiology, P.A.	L05446	Plainview	10	09/28/10
Richmond	Silva Contracting Co. Inc.	L05266	Richmond	07	09/23/10
Texas City	Sterling Chemical Inc.	L03952	Texas City	22	09/21/10
Throughout TX	DFW Group Inc.	L05928	Arlington	02	09/27/10
Throughout TX	Texas Perforators Inc.	L05086	Kingsville	12	09/28/10
Webster	Beckman Coulter Inc. dba Diagnostics Systems Laboratories Inc.	L03084	Webster	38	09/14/10

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347. For information call (512) 834-6688.

TRD-201005988
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: October 19, 2010

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Texas Department of Insurance

Company Licensing

Application to change the name of AGL LIFE ASSURANCE COMPANY to PHILADELPHIA FINANCIAL LIFE ASSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Plymouth Meeting, Pennsylvania.

Application for admission to the State of Texas by NORCAL MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in San Francisco, California.

Application to do business in the State of Texas by TEAM DENTAL, INC., a domestic Health Maintenance Organization. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201006004
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 20, 2010

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Notice of Premium Finance Assessment, Examination Fee/Assessment and Maintenance Tax Rate Determination

Rates of Assessment for Expenses of Examination of Foreign and Domestic Insurance Companies and Workers' Compensation Self-Insurance Groups, Costs of Examinations and Investigations and General Administrative Expenses for the Regulation of Insurance Premium Finance Companies, and the Assessment of Insurance Maintenance Taxes and Fees.

Sections 401.151 - 401.152, 401.155 - 401.156, 651.006, and Subtitles C and D of Title 3 of the Texas Insurance Code, and Chapters 403, 405, and 407A of the Labor Code require the Commissioner of Insurance to determine rates for the assessment for expenses of examination of foreign and domestic insurance companies and workers' compensation self-insurance groups; the assessment to cover the cost of examinations, investigations and general administrative expenses for the regulation of insurance premium finance companies; and the assessment of insurance maintenance taxes and fees. The Department is gathering information to be utilized in determining the rates of assessment of each tax and assessment.

NOTICE OF INFORMAL MEETING

An informal meeting to provide information, receive comments and information from all parties is scheduled for Wednesday, November 10, 2010, at 2:00 p.m. in Room 102, at the William P. Hobby, Jr., State Office Building, Tower III, 333 Guadalupe Street, Austin, Texas, to informally discuss the preliminary estimates of the projected rates of assessment, and to make available certain back-up documentation regarding the process and information related to determining the estimated projected rates of assessment and fees.

NOTICE OF PROJECTED RATES OF ASSESSMENT, FEES, AND PROCESS

Before the informal meeting, the Department will submit the projected rates of assessment and fees to the Chief Clerk and will post the projected rates of assessment and fees on the web at http://www.tdi.state.tx.us/ on Wednesday, November 3, 2010. The projected rates of assessment and fees can be viewed at the site and persons may obtain copies of the projected rates of assessment by submitting a request to Mr. Joe Meyer, Deputy Chief Financial Officer, Texas Department of Insurance, Financial Services Division, MC108-3A, and P.O. Box 149104, Austin, TX 78714-9104.

Written comments on the projected rates of assessment and fees may be submitted to the Office of the Chief Clerk, Texas Department of Insurance, MC 113-2A, P.O. Box 149104, Austin, TX 78714-9104, on or before Monday, November 15, 2010, at 5:00 p.m. An additional copy of the comments must be simultaneously submitted to Joe Meyer, Deputy Chief Financial Officer, Texas Department of Insurance Financial Services Division, P.O. Box 149104, MC 108-3A, Austin, TX. 78714-9104.

ASSESSMENT FEES AND DETERMINATION

The Commissioner may determine the rates of assessment and fees 30 days after the projected rates are filed in the Chief Clerk's Office and posted on the Department's web site. Any request for a hearing should be submitted separately and in writing no later than Thursday, November 18, 2010. The written request should be submitted to the Office of the Chief Clerk, Texas Department of Insurance, MC 113-2A, P.O. Box 149104, Austin, TX 78714-9104.

TRD-201006005
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: October 20, 2010

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Texas Lottery Commission

Instant Game Number 1142 "Maximum Millions"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1142 is "MAXIMUM MILLIONS". The play style is "key number match with auto win and 10X multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1142 shall be $20.00 per ticket.

1.2 Definitions in Instant Game No. 1142.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY BAG SYMBOL, DOLLAR BILL SYMBOL, $20.00, $50.00, $100, $200, $500, $1,000, $10,000 and $1MILL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1142 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
MONEY BAG SYMBOL	WINX10
DOLLAR BILL SYMBOL	AUTO
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND

$500	FIV HUND
$1,000	ONE THOU
$10,000	10 THOU
$1MILL SYMBOL	ONE MIL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000, $10,000 or $1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1142), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 25 within each pack. The format will be: 1142-0000001-001.

K. Pack - A pack of "MAXIMUM MILLIONS" Instant Game tickets contains 25 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MAXIMUM MILLIONS" Instant Game No. 1142 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MAXIMUM MILLIONS" Instant Game is determined once the latex on the ticket is scratched off to expose 54 (fifty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE for that number. If a player reveals a "dollar bill" play symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a "money bag" play symbol, the player wins 10 TIMES the prize for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 54 (fifty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 54 (fifty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 54 (fifty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 54 (fifty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate WINNING NUMBERS play symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 20 and $20).

E. Non-winning prize symbols will not match winning prize symbols on a ticket.

F. No more than five matching non-winning prize symbols on a ticket.

G. The "DOLLAR BILL" (auto win) play symbol may only appear once on a ticket.

H. The "MONEY BAG" (win x 10) play symbol will only appear on winning tickets as dictated by the prize structure.

I. The top prize will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "MAXIMUM MILLIONS" Instant Game prize of $20.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MAXIMUM MILLIONS" Instant Game prize of $1,000, $5,000 or $10,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "MAXIMUM MILLIONS" top level prize of $1,000,000 the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "MAXIMUM MILLIONS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MAXIMUM MILLIONS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MAXIMUM MILLIONS" Instant Game, the

Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,600,000 tickets in the Instant Game No. 1142. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1142 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$20	720,000	5.00
$50	504,000	7.14
$100	35,700	100.84
$200	18,000	200.00
$500	3,040	1,184.21
$1,000	1,290	2,790.70
$5,000	60	60,000.00
$10,000	16	225,000.00
$1,000,000	4	900,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1142 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1142, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201005996

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 19, 2010

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Instant Game Number 1296 "Monopoly"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1296 is "MONOPOLY™". The play style is "coordinate".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1296 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1296.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: MEDITERRANEAN AVENUE SYMBOL, BALTIC AVENUE SYMBOL, ORIENTAL AVENUE SYMBOL, VERMONT AVENUE SYMBOL, TENNESSEE AVENUE SYMBOL, NEW YORK AVENUE SYMBOL, KENTUCKY AVENUE SYMBOL, INDIANA AVENUE SYMBOL, NORTH CAROLINA AVENUE SYMBOL, PENNSYLVANIA AVENUE SYMBOL, PARK PLACE SYMBOL, BOARDWALK SYMBOL, CONNECTICUT AVENUE SYMBOL, ST CHARLES PLACE SYMBOL, STATES AVENUE SYMBOL, VIRGINIA AVENUE SYMBOL, ILLINOIS AVENUE SYMBOL, ATLANTIC AVENUE SYMBOL, VENTNOR AVENUE SYMBOL, MARVIN GARDENS SYMBOL, RAILROAD READING SYMBOL, RAILROAD PENNSYLVANIA SYMBOL, RAILROAD B & O SYMBOL, RAILROAD SHORT LINE SYMBOL, ST JAMES PLACE SYMBOL, PACIFIC AVENUE SYMBOL, WATER WORKS SYMBOL, ELECTRIC COMPANY SYMBOL, $3, $5, $10, $15, $20, $50, $100, $500, $1,000, $35,000 and TRYAGAIN SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1296 - 1.2D

PLAY SYMBOL	CAPTION
MEDITERRANEAN AVENUE SYMBOL	MEDITER
BALTIC AVENUE SYMBOL	BALTIC
ORIENTAL AVENUE SYMBOL	ORIENTL
VERMONT AVENUE SYMBOL	VERMNT
TENNESSEE AVENUE SYMBOL	TENNSE
NEW YORK AVENUE SYMBOL	NEWYRK
KENTUCKY AVENUE SYMBOL	KENTUK
INDIANA AVENUE SYMBOL	INDIANA
NORTH CAROLINA AVENUE SYMBOL	NORCAR
PENNSYLVANIA AVENUE SYMBOL	PENNSY
PARK PLACE SYMBOL	PARKPL
BOARDWALK SYMBOL	BORDWK
CONNECTICUT AVENUE SYMBOL	CONCUT
ST CHARLES PLACE SYMBOL	STCHRL
STATES AVENUE SYMBOL	STATES
VIRGINIA AVENUE SYMBOL	VIRGNIA
ILLINOIS AVENUE SYMBOL	ILLINOI
ATLANTIC AVENUE SYMBOL	ATLNTC
VENTNOR AVENUE SYMBOL	VNTNOR
MARVIN GARDENS SYMBOL	MARVIN
RAILROAD READING SYMBOL	READRR
RAILROAD PENNSYLVANIA SYMBOL	PENNRR
RAILROAD B & O SYMBOL	B&ORR
RAILROAD SHORT LINE SYMBOL	SHRTRR
ST JAMES PLACE SYMBOL	STJMES
PACIFIC AVENUE SYMBOL	PACIFIC
WATER WORKS SYMBOL	WTRWKS
ELECTRIC COMPANY SYMBOL	ELECCO
$3	THREE$
$5	FIVE$
$10	TEN$
$15	FIFTN
$20	TWENTY
$50	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$35,000	35 THOU
TRY AGAIN SYMBOL	AGAIN

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $5.00, $6.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000 or $35,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1296), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1296-0000001-001.

K. Pack - A pack of "MONOPOLY™" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONOPOLY™" Instant Game No. 1296 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MONOPOLY™" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. A player must scratch only each ROLL, then scratch only the corresponding property. If a player reveals a prize amount for that property, the player will WIN that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. A ticket may win up to nine (9) times per the prize structure.

C. No duplicate ROLL play symbols on a ticket.

D. Duplicate prize symbols that correspond with a ROLL play symbol will only appear on winning tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONOPOLY™" Instant Game prize of $3.00, $5.00, $6.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas

Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONOPOLY™" Instant Game prize of $1,000 or $35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONOPOLY™" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MONOPOLY™" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MONOPOLY™" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1296. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1296 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	528,000	11.36
$5	432,000	13.89
$6	192,000	31.25
$10	192,000	31.25
$15	72,000	83.33
$20	36,000	166.67
$50	23,900	251.05
$100	4,500	1,333.33
$500	500	12,000.00
$1,000	20	300,000.00
$35,000	10	600,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.05. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1296 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1296, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201005987
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 18, 2010

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 12, 2010, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications to Amend its State-Issued Certificate of Franchise Authority, Project Number 38803 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of McLendon-Chisholm, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38803.

TRD-201005983
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 18, 2010

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 13, 2010, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Windjammer Communications LLC to Amend its State-Issued Certificate of Franchise Authority, Project Number 38805 before the Public Utility Commission of Texas.

The requested amendment seeks to change the company's address and delete the following areas from the service area footprint: the city limits of Blanco and Granger, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38805.

TRD-201005984
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 18, 2010

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Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 15, 2010, for an amendment to certificated service area for a service area exception within Parmer County, Texas.

Docket Style and Number: Application of Deaf Smith Electric Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for an Electric Service Area Exception within Parmer County. Docket Number 38811.

The Application: Deaf Smith Electric Cooperative, Inc. (Deaf Smith) filed an application for a service area boundary exception to allow Deaf Smith to provide service to a specific customer located within the certificated service area of Southwestern Public Service (SPS). SPS has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 5, 2010 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 38811.

TRD-201006001
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 19, 2010

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Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 15, 2010, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of ten (10) thousand-blocks of numbers on behalf of its customer, Laredo Independent School District, in the 956 NPA, in the Laredo rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources for Laredo Rate Center, Docket Number 38819.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than November 5, 2010. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 38819.

TRD-201005999
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 19, 2010

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Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 15, 2010, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of one (1) thousand-block of numbers on behalf of its customer, USA Mobility, in the 972 NPA, in the Plano rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources for Plano Rate Center, Docket Number 38820.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than November 5, 2010. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 38820.

TRD-201006000
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 19, 2010

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Railroad Commission of Texas

Notice of Changes to Four SMRD Forms (Uranium)

The Railroad Commission of Texas adopts changes to Surface Mining and Reclamation Division forms, SMRD-3U, SMRD-5U, SMRD-38U, and SMRD-39U, as part of some adopted repeals, new rules, and amendments in 16 TAC Chapter 11 (relating to Surface Mining and Reclamation Division), published in this issue of the *Texas Register*. The rulemaking, pursuant to House Bill 3837, 80th Legislature (2007), implements the Commission's expanded statutory authority to regulate uranium exploration. The adopted forms are as follows:

SMRD-3U, Application to Conduct Uranium Exploration Activities by Drilling

RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

1701 N. CONGRESS | CAPITOL STATION - P.O. BOX 12967 | AUSTIN, TEXAS 78711-2967

APPLICATION TO CONDUCT URANIUM EXPLORATION ACTIVITIES BY DRILLING

All items applicable to the type of application must be addressed. File in triplicate with the Director of the Surface Mining and Reclamation Division along with the appropriate application fees. (Refer to 16 TEXAS ADMINISTRATIVE CODE §§11.132, 11.133, and 11.134 for more information concerning this form.)

Application Type: ☐ New Permit ☐ Renewal ☐ Revision

Application Fees: [Refer to 16 TEXAS ADMINISTRATIVE CODE §11.136]: New/renewal: $1.50 per acre plus $50 for each exploration borehole drilled during 12-month permit term; Revision: $1.50 per additional acre.

I. Applicant Name: _____

Physical Address: _____
(Street or P.O. Box)

Mailing Address: _____
(Street or P.O. Box)

_____
(City) (State) (Zip Code) (Telephone)

II. Name of Applicant's Authorized Representative(s): _____
(additional authorized representatives may be provided on an attached sheet)

Address: _____
(Street or P.O. Box)

_____
(City) (State) (Zip Code) (Telephone)

III. Required Information For New and Renewal Applications (Responses may be provided as referenced attachments to this form.)

A. A description of the geographic location, including the acreage of the proposed area of exploration. The name of the county(s) in which exploration activities are to be conducted must also be provided.

B. A U.S. Geological Survey topographic map(s) (scale 1:24,000) in paper and digital format on which is shown the following: (1) proposed exploration area boundary with acreage stated to nearest acre; (2) land tracts within the permit area; (3) identification of those land tracts for which right-of-entry has been obtained to conduct exploration activities; and (4) the location of private and public water wells, including those identified by the Texas Water Development Board, interior to and within 1,000 feet of the proposed permit boundary.

C. Provide the name, address and telephone number for the following:

(1) each groundwater conservation district encompassing the area in which the exploration activities will occur;

(2) the mayor and health authority of each municipality within 10 miles in all directions of the boundary of the area in which the exploration activities will occur;

(3) the county judge and health authority of each county in which the exploration activities will occur;

(4) each member of the Texas Legislature who represents the area in which the exploration activities will occur;

(5) each landowner of record of the surface within the proposed exploration permit area, indexed to land tracts shown on the map provided in III.B. above; and

(6) each owner of record of the mineral estate for which right of entry has been obtained to conduct exploration activities, indexed to land tracts shown on the map provided in III.B. above.

D. Provide the following information:

(1) a description of the geology and hydrogeology for the proposed permit area, including cross-sections and maps;

(2) a description of the exploration drilling method, including the depth of subsurface penetration and the estimated size of the surface disturbance;

(3) an estimate of the number of exploration boreholes to be drilled during the permit term and the physical method for marking each borehole location for inspection;

(4) a description of the proposed plugging and well construction methods. (Note: These methods must conform to the requirements in 16 TEXAS ADMINISTRATIVE CODE §11.138.)

(5) an explanation of the proposed methods for disposing of cuttings produced by the drilling activity and protecting mud pits from rainfall runoff; and

(6) a description of the proposed procedures for leveling any disturbance caused by the drilling activities. (Note: These procedures must conform to the requirements in 16 TEXAS ADMINISTRATIVE CODE §11.138.)

IV. Revision Applications (Refer to 16 TEXAS ADMINISTRATIVE CODE §11.133)

Provide a detailed description of the changes proposed to the exploration activities. Changes may include a revised operation plan or reclamation plan, or revised administrative information.

CERTIFICATION

I, (name) _____, (title) _____ state that I have knowledge of the facts set forth in this Application to Conduct Uranium Exploration Activities by Drilling and that same are true and correct to the best of my knowledge and belief. I further state that, to the best of my knowledge and belief, the project for which application is made will not in any way violate any law, rule, ordinance, or decree of any duly authorized governmental entity having jurisdiction.

Signature: _____

Title: _____

Date: _____

SMRD-5U (10/10)

RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

1701 N. CONGRESS | CAPITOL STATION - P.O. BOX 12967 | AUSTIN, TEXAS 78711-2967

APPLICATION TO TRANSFER A URANIUM EXPLORATION PERMIT

All items must be addressed by permittee. File in triplicate with the Director of the Surface Mining and Reclamation Division. (Refer to 16 TEXAS ADMINISTRATIVE CODE §11.135.)

Permit No.: _____ Permittee: _____

I. Name of Transferee: _____

Transferee Physical Address: _____
(Street or P.O. Box)

Transferee Mailing Address: _____
(Street or P.O. Box)

_____
(City) (State) (Zip Code) (Telephone)

II. Name of Transferee's On-site Representative: _____

Representative's Address: _____
(Street or P.O. Box)

_____
(City) (State) (Zip Code) (Telephone)

III. Required Information

a. A U.S. Geological Survey topographic map(s) (scale 1:24,000) provided in paper and digital format on which are identified the permit area proposed for transfer, including all tracts to be transferred for which the permittee has obtained right-of-entry for exploration activities. (Refer to 16 TEXAS ADMINISTRATIVE CODE §11.132(6)).

b. A cased borehole report (Form SMRD-38U) or plugging report (Form SMRD-39U) from the permittee for each borehole drilled by the permittee that has not already been submitted, by which the permittee attests that all plugging and reclamation requirements have been met prior to application. (Refer to 16 TEXAS ADMINISTRATIVE CODE §11.139.)

CERTIFICATIONS

I, (name) _____, (title) _____, for the permittee, state that I have knowledge of the facts set forth herein and that same are true and correct to the best of my knowledge and belief.

Date: _____ Signature: _____

I, (name) _____, (title) _____, for the transferee, state that I have knowledge of the requirements of the permit for which application is made. I further state that, to the best of my knowledge and belief, this permit, upon transfer, will not in any way violate any law, rule, ordinance, or decree of any duly authorized governmental entity having jurisdiction.

Date: _____ Signature: _____

RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

1701 N. CONGRESS | CAPITOL STATION - P.O. BOX 12967 | AUSTIN, TEXAS 78711-2967

Cased Exploration Well Completion Report

(Refer to 16 TEXAS ADMINISTRATIVE CODE §11.139)

Uranium Exploration Permit No. _____

Permittee: _____ Well name: _____

Person performing completion of well, if different from Permittee: _____

Drilling date: Start: _____ End: _____ Re-entry date(s): Start: End:

Completion date: Start: _____ End: _____

Logging date: Start: _____ End: _____ TCEQ Registration/Permit No.: _____

Well Completion Information:

Location (State Plane coordinates) ☐ NAD27 or ☐ NAD83: N _____ E _____

Drilling depth: _____ ft Casing material/diameter: _____

Completion depth: _____ ft Screen type: _____

Borehole diameter: _____ in. Screened interval: _____ to _____ ft

Seal Information:

Zone	Cement (sacks)	Water (bbl)	Bentonite† (lb)	Additives† (lb)	Slurry Volume (bbl)	Slurry Density (lb/gal)
Annular seal*						
Surface seal						
Topping of hole						

* if more than three downhole annular seal zones are installed, attach additional page with relevant information
† if bentonite or other additives are approved, indicate amounts used

Surface Completion Information:

Ground elevation: _____ ft amsl Top-of-casing elevation: _____ ft amsl

Static water level: _____ ft (depth from top-of-casing) Date: _____

Well marking and protection measures: _____

_____

CERTIFICATION

I, (name) _____, (title) _____, state that I have actual, personal knowledge of the facts set forth in this cased borehole completion report, and that same are true and correct to the best of my knowledge and belief. I further state that, to the best of my knowledge and belief, the reclamation, casing, and completion requirements as set forth in the Act, the rules, and in the provisions of the approved permit for this borehole have been satisfied.

I further certify that this borehole has been ☐ registered as Well No. _____ under the regulatory responsibility of the Texas Commission on Environmental Quality in Austin, Texas, or ☐ transferred to Permit No. _____, issued by and held under the regulatory responsibility of the Texas Commission on Environmental Quality in Austin, Texas, for use pursuant to that permit. The location of this cased exploration well is accurately reported in this document.

Signature: _____

Title: _____

Date: _____

SMRD-39U (10/10)
Page 1 of 2

RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

1701 N. CONGRESS | CAPITOL STATION - P.O. BOX 12967 | AUSTIN, TEXAS 78711-2967

Borehole Plugging Report

(Refer to 16 TEXAS ADMINISTRATIVE CODE §11.139)

Uranium Exploration Permit No. _____

Permittee: _____ Hole identifier: _____

Person performing plugging of borehole, if different from Permittee: _____

Drilling date: Start: _____ *End: _____ Plugging date: Start: _____ End: _____
*End date is date that drill reaches total depth.
Re-entry/Log date(s): Start: _____ End: _____ Start: _____ End: _____

Plugging and Abandonment Information:

Location (State Plane coordinates) ☐ NAD27 or ☐ NAD83: N _____ E _____

Borehole total depth: _____ ft Borehole diameter: _____ in.

Cement Type: _____ Emplacement Method: _____

Additional information*: _____

*pertinent descriptive information: e.g., downhole manufactured plugs used; special conditions encountered, etc.

Seal Information:

Zone	Cement (sacks)	Water (bbl)	Bentonite† (lb)	Additives† (lb)	Slurry Volume (bbl)	Slurry Density (lb/gal)
Water-zone seal#						
Downhole seal*						
Surface seal						
Topping of hole						

if a single downhole seal is used, seal information may be included here and no additional information needed for downhole seal.
* if more than three downhole seals are installed, attach additional page with relevant information
† if bentonite or other additives are approved, indicate amounts used

Surface Reclamation:

Ground leveled: ____ Date Seeded: ____ Date Depth from surface to top of seal: ____ ft

Plugged-hole marking method used: _____

CERTIFICATION

I, (name) _____, (title) _____, state that I have actual, personal knowledge of the facts set forth in this borehole plugging report, and that same are true and correct to the best of my knowledge and belief. I further state that, to the best of my knowledge and belief, the plugging and reclamation requirements as set forth in the Act, the rules, and in the provisions of the approved permit for this borehole have been satisfied.

Signature: _____

Title: _____

Date: _____

The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

TRD-201005852
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: October 14, 2010

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of McKinney, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of McKinney, Collin County Regional Airport. TxDOT CSJ No. 11ALKINNY. Scope: Update the Airport Layout Plan.

There is no DBE goal. TxDOT Project Manager is Daniel Benson.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Six completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **November 22, 2010 at 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating consultants for airport planning projects can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Daniel Benson, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201005976

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 18, 2010

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Request for Proposal - Private Consultant Services

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for private consultant services pursuant to Government Code, Chapter 2254, Subchapter B. The Rail Division of the department will administer the contract. The RFP will be released on October 29, 2010 and is contingent upon the finding of fact from the Governor's Office.

Purpose: The intent of the division and this RFP is to procure the services of a consultant to conduct an on-site safety and security review of the Metropolitan Transit Authority of Harris County (METRORail) and the Dallas Area Rapid Transit (DART) rail fixed guideway systems in accordance with the 49 C.F.R. Part 659.29, Federal Transit Administration guidance entitled Recommended Best Practices for States Conducting Three-Year Safety Reviews, dated March 2009 and the department's System Safety Program Plan and Security Program Plan. The department will award and issue a separate contract for each safety and security review. At the conclusion of each on-site review, the consultant must prepare and issue a report containing findings and recommendations resulting from that review which includes an analysis of the effectiveness of the department's System Safety Program Plan and the System Security Plan and a determination of whether either should be updated. The consultant must work with their respective rail fixed guideway system to resolve all outstanding issues resulting from the review within 140 working days of the conclusion of the on-site review.

Eligible Applicants: Eligible applicants include, but are not limited to, organizations that provide private consulting services.

Program Goal: Ensuring the department's System Safety Program Plan and System Security Plan are fully implemented at the two rail fixed guideway systems in Texas and meet the requirements of the federal and state rail safety and security program.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the division will evaluate the proposals as to the private consultant's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

Deadlines: The department must receive proposals prepared according to instructions in the RFP package on or before December 8, 2010, 1:00 p.m. Central Daylight Time.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Susan Hausmann, Texas Department of Transportation, Rail Division (RRD), 125 East 11th Street, Austin, Texas 78701-2483; telephone (512) 416-2833. Copies will also be available on the department's Rail Division web page at http://www.department.gov/safety/rail.htm.

TRD-201005993
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 19, 2010

♦ ♦ ♦

Texas Veterans Commission

Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting Applications from organizations eligible to apply for grant funding. Eligible applicants are units of local government, 501(c)(19) Posts or Organizations of Past or Present Members of the Armed Forces, 501(c)(3) private nonprofit corporations authorized to conduct business in Texas, and Texas chapters of 501(c)(4) veterans service organizations.

Description. The purpose of this solicitation is to receive applications proposing projects that meet the needs of veterans and their families through: emergency financial assistance; transportation services; family and/or individual counseling for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI); employment, training/job placement assistance; housing assistance for homeless veterans; family and child services; non-criminal legal services; development of professional services networks; and enhancement or improvement of veterans' assistance programs, including veterans' representation and counseling. Grant funds must be used to supplement, not supplant, existing funds and/or services.

Dates of Project. The proposed project period is twelve months. The projected start date for these grants is March 1, 2011. TVC will require periodic program and expenditure reports.

Project Amount. For this solicitation, the minimum grant award will be $10,000. The maximum grant award will be $1,000,000. This project is funded 100% from state funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the solicitation. Reviewers from the TVC Fund for Veterans' Assistance Advisory Committee will evaluate applications based on the overall quality and validity of the proposed project and the extent to which they address the primary objectives and intent of the project. Applications must address all requirements to be considered for funding. TVC reserves the right to select from the highest-ranking applications those that address all requirements.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. This solicitation does not commit TVC to pay any costs before an application is approved. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at *http://www.tvc.state.tx.us* on or about November 1, 2010.

Further Information. For clarifying information about the solicitation, contact David Nobles, Director, Fund for Veterans' Assistance, Texas Veterans Commission, (512) 463-6380. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted via email to *grants@tvc.state.tx.us.* All questions and the written answers will be posted on the TVC website in the format of Frequently Asked Questions (FAQs).

Deadline for Receipt of an Application. Applications must be received by TVC no later than 5:00 p.m. (Central Time), November 15, 2010, to be considered eligible for funding.

TRD-201005997
David Nobles
Director, Fund for Veterans' Assistance
Texas Veterans Commission
Filed: October 19, 2010

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Texas Water Development Board

Request for Applications for Agricultural Water Conservation Grants - Fiscal Year 2011

The Texas Water Development Board (TWDB) solicits Request for Applications (RFAs) for the state fiscal year 2011. The total amount of the grants to be awarded by the TWDB shall not exceed $600,000 from the Agricultural Water Conservation Fund. The rules governing the Agricultural Water Conservation Fund (31 Texas Administrative Code Chapter 367), guidelines, and instructions are available upon request from the TWDB. Applicants may submit more than one application; however, individual applicants are only eligible to receive one fiscal year 2011 agricultural water conservation grant not to exceed $250,000.

Summary of the RFA

Solicitation Date (Opening): Date published in the *Texas Register*

Due Date (Closing): 12:00 p.m., Wednesday, January 12, 2011

Anticipated Award Date: Approximately by March 17, 2011

Estimated Total Funding: $600,000

Eligible applicants: State Agencies and Political Subdivisions

Contact: Comer Tuck, Jr., P.E., Director - Conservation Division, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, Phone: (512) 936-2343, email: comer.tuck@twdb.state.tx.us

Agricultural Water Conservation Grant Categories:

1. Irrigation water use measurement

Irrigation water use measurement includes the purchase, installation, maintenance, and data collection services of irrigation measurement devices, automated gates, telemetry, and weather monitoring accessories. Water use data must be reported annually for each piece of equipment installed for a period of at least five years. Annual data reports should include irrigated acreage, crop type, irrigation rate (inches per acre), total water use, and latitude/longitude. Additionally, annual rainfall totals must be provided. The use of funds for this category is limited to the actual cost of measurement devices, telemetry, and weather monitoring equipment and installation costs of the equipment. The applicant will be responsible for all other costs associated with the equipment, including but not limited to labor, maintenance, and reading/reporting of the data. Additional requirements include annually reporting estimates of water savings resulting from use of the equipment.

2. Demonstration of irrigation efficiency improvements

Funding for this category is meant to demonstrate agricultural irrigation best management practices that may improve irrigation water use efficiency. Project sites must include a demonstration of either an on-farm or a delivery system irrigation efficiency improvement, or both. Technologies to be demonstrated in the proposed project should be related to an identified strategy from the most recent applicable regional water plan. Water savings must be directly attainable through implementation of these technologies. A report estimating water savings will be required for each year of the demonstration project. Selected applicants must utilize demonstration sites to promote water conservation efforts by being open to the public, conducting field days, and other outreach efforts including production of educational materials. Applications must include at least a 33 percent cost-share. The applicant will be responsible for maintenance of equipment and structures during the demonstration period.

3. Irrigation system audits

Applications may include the cost to purchase portable flow meters and other related equipment used to measure irrigation pumpage and/or irrigated crop water use. If the applicant wishes to provide complete infield irrigation system audits, funding can be for 50 percent cost-share of labor involved with auditing irrigation systems. An irrigation system audit is intended to assess the efficiency of the irrigation system and recommend improvements to the entire system or to specific components. The audits must be used to educate irrigators about their irrigation efficiency and for determining improvements in their irrigation management. Applicants are required to report estimated accumulative water savings for three irrigation seasons after funding date.

Grant Amount

Up to $600,000 has been initially authorized for fiscal year 2011 assistance for agricultural water conservation grants from the TWDB's Agricultural Water Conservation Fund (Fund). Funds will be awarded through a statewide competitive grants process. TWDB may fund single-and multi-year projects. All proposals will be evaluated based upon the specific criteria set forth in this solicitation. Applicants may submit more than one application; however, individual applicants are only eligible to receive one fiscal year 2011 agricultural water conservation grant not to exceed $250,000.

Description of Applicant Criteria

The applicable scope of work, schedule, and contract amount will be negotiated after the TWDB selects the most qualified applicants. Failure to arrive at mutually agreeable terms of a contract with the most qualified applicant shall constitute a rejection of the Board's offer and may result in subsequent negotiations with the next most qualified applicant. The TWDB reserves the right to reject any or all applications if staff determines that the application(s) does not adequately meet the required criteria or if the funding available is less than the requested funding.

Deadline for Submission of Applications

Six double-sided, double-spaced copies of a completed application must be received by the TWDB prior to 12:00 p.m., Wednesday, January 12, 2011. Applications can be directed either in person to David Carter, Texas Water Development Board, Stephen F. Austin Building, Room 610D, 1700 North Congress Avenue, Austin, Texas 78701; or by mail to David Carter, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231.

TRD-201006006
Ingrid Hansen
Deputy General Counsel
Texas Water Development Board
Filed: October 20, 2010

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Requests for Statements of Qualifications for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications leading to the possible award of contracts for geomor-

phic responses to changes in flow regimes in Texas rivers. Guidelines for Statements of Qualifications, which include an application checklist will be supplied by the TWDB upon request.

Description of Research Objectives

This research study will provide a conceptual model to predict the semi-quantitative geomorphic response of alluvial rivers in Texas to changes due to disturbances in and changes to the water and sediment flow regimes of the rivers. The conceptual model developed for this project will be based on a combination of theoretical concepts and empirical data from observations of the effects of floods, water withdrawals-additions, and wet-dry climate cycles. Observations from the San Antonio, Brazos, Sabine, and other Texas rivers will be used to ensure the conceptual model is representative of conditions of interest to the TIFP.

The approach will be based on the concept of transport- vs. supply-limited fluvial systems, the relationship between sediment supply or availability and transport capacity as measured by stream power, and on critical thresholds for bed and bank erosion. Modes of adjustment (system states) will be based initially on various combinations of increases, decreases, and no change in channel slope, planform, roughness/resistance, width, and depth. Additional modes may be identified during the study. Transitions will be identified based on empirical observations, published literature, and geomorphic theory, analogous as a first approximation to the qualitative model developed by Brandt (2000a; 2000b), and modified for use on the lower Trinity River by Phillips et al. (2005). The fluvial response State Transition Model (STM) will be conceptually similar to the STMs frequently used in rangeland ecology and management to predict vegetation community responses to, e.g., grazing systems, fire, and brush management (c.f. Briske et al., 2005). The STM will be applied to case studies on alluvial rivers in Texas as described in objective (3). From these, several sites will be selected as baseline sites. Specific quantitative data on responses at these sites will be used to develop formulae for semi-quantitative predictions at other sites via the method of relative response (see, e.g., Phillips, 1987; 2004).

The TWDB website site includes (1) guidelines for the Statements of Qualifications, (2) copies of the attachments, (3) a list of Statement of Qualifications Review Criteria, and (4) some supporting material http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals_index.asp.

The Statement of Qualifications shall not be more than 15 pages in length, excluding qualifications and experience of project staff. Applicants should be knowledgeable in geosciences with a specialty in fluvial geomorphology and should have field experience in fluvial landscape mapping and site sampling. The applicant should also have experience in "river styles" mapping and field validation of map units in Texas.

Description of Funding Consideration

Up to $30,000 has been identified for this research study from the TWDB's Research and Planning Fund.

Following the receipt and evaluation of all Statements of Qualifications, oral presentations may be required as part of qualification review. However, invitation for oral presentation is not an indication of probable selection. Up to 100 percent funding may be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services, and funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state and federal agencies. In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

Deadline, Review Criteria, and Contact Person for Additional Information

Six double-sided copies of a complete Statement of Qualifications, including the required attachments, must be filed with the TWDB prior to 12:00 noon, Wednesday, November 10, 2010. Statements of Qualifications must be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231. Statements of Qualifications will be evaluated according to 31 Texas Administrative Code §355.5 and the Statements of Qualifications Review Criteria rating form included in the TWDB's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants may contact the TWDB to obtain these guidelines or visit the TWDB website at http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals_index.asp.

Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research topic information, and the guidelines may be directed to Mr. David Carter at the preceding address or by calling (512) 936-6079.

TRD-201005878
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: October 15, 2010

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 35 (2010) is cited as follows: 35 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*