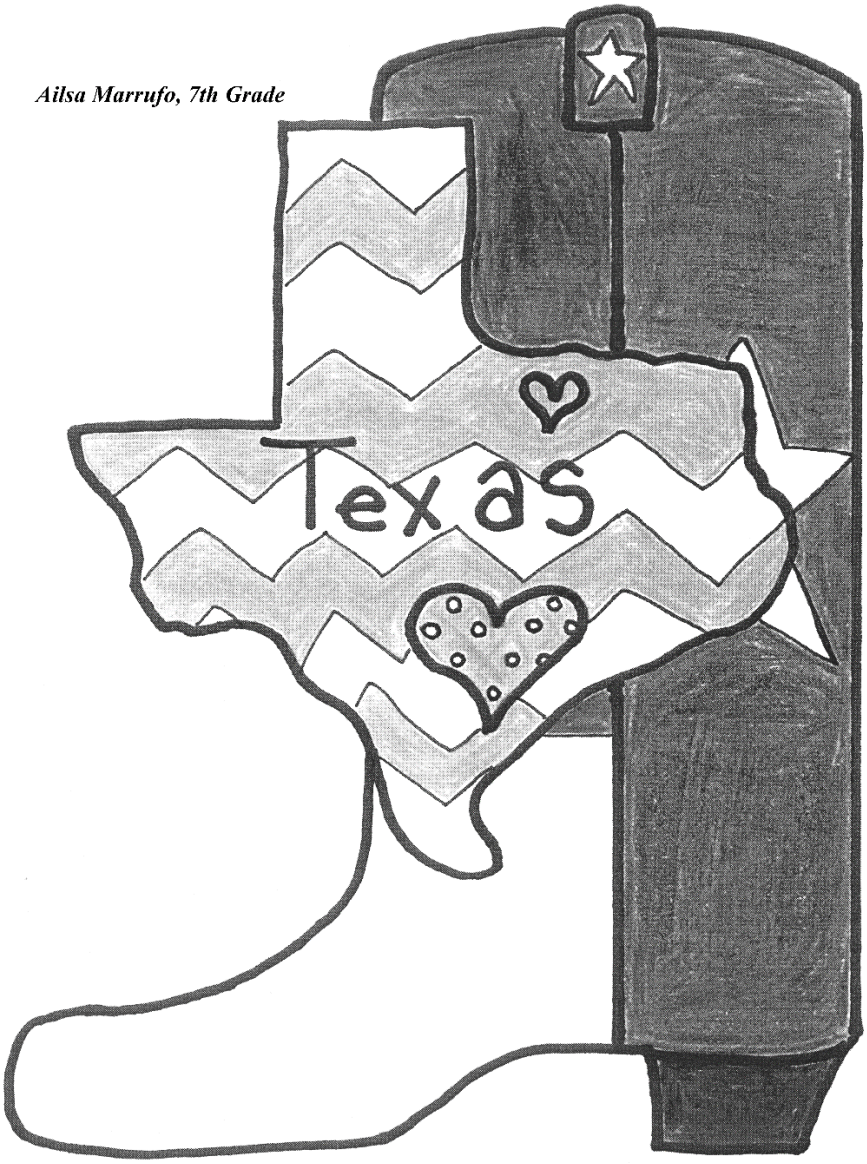
TEXAS REGISTER

Volume 41 Number 10 *March 4, 2016* *Pages 1545 - 1760*

Ailsa Marrufo, 7th 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*.

***Texas Register*, (ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $259.00 ($382.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P O Box 1710, Latham, NY 12110.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register*, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, TX 78711
(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.texas.gov

Secretary of State –
Carlos H. Cascos

Director – Robert Sumners

Staff
Leti Benavides
Dana Blanton
Audrey Bradshaw
Deana Lackey
Jill S. Ledbetter
Michelle Miner
Joy L. Morgan
Barbara Strickland
Tami Washburn

IN THIS ISSUE

ATTORNEY GENERAL

Requests for Opinions....1551

PROPOSED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID MANAGED CARE

1 TAC §353.608....1553

MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

1 TAC §371.35....1559

TEXAS DEPARTMENT OF AGRICULTURE

COMMUNITY DEVELOPMENT

4 TAC §30.52....1560

TEXAS GRAIN PRODUCER INDEMNITY BOARD

TEXAS GRAIN PRODUCER INDEMNITY FUND PROGRAM RULES

4 TAC §90.21....1561

4 TAC §90.43....1561

TEXAS DEPARTMENT OF BANKING

CORPORATE ACTIVITIES

7 TAC §15.2, §15.3....1561

7 TAC §15.42....1562

TRUST COMPANY LOANS AND INVESTMENTS

7 TAC §19.1....1563

7 TAC §19.21....1564

TRUST COMPANY CORPORATE ACTIVITIES

7 TAC §21.24....1564

7 TAC §21.43, §21.44....1565

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHARTER APPLICATIONS

7 TAC §§51.1 - 51.9, 51.13, 51.14....1567

ADDITIONAL OFFICES

7 TAC §§53.1 - 53.4, 53.8 - 53.10, 53.17, 53.18....1569

CHANGE OF OFFICE LOCATION OR NAME

7 TAC §§57.1 - 57.4....1572

FOREIGN BUILDING AND LOAN ASSOCIATION

7 TAC §59.1....1573

HEARINGS

7 TAC §61.1, §61.3....1573

FEES AND CHARGES

7 TAC §§63.1 - 63.9, 63.11, 63.12, 63.15....1574

7 TAC §63.10, §63.14....1576

BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, RESERVES, NET WORTH, EXAMINATIONS, CONSUMER COMPLAINTS

7 TAC §§64.1, 64.3, 64.4, 64.6, 64.7, 64.9, 64.10....1577

LOANS AND INVESTMENTS

7 TAC §§65.1 - 65.20, 65.23....1579

7 TAC §65.22....1588

SAVINGS AND DEPOSIT ACCOUNTS

7 TAC §§67.3, 67.6 - 67.8, 67.10 - 67.13, 67.15, 67.17....1588

7 TAC §67.4, §67.14....1590

REORGANIZATION, MERGER, CONSOLIDATION, ACQUISITION, AND CONVERSION

7 TAC §§69.2 - 69.11....1591

CHANGE OF CONTROL

7 TAC §§71.1 - 71.8....1593

SUBSIDIARY CORPORATIONS

7 TAC §§73.1 - 73.4, 73.6....1596

APPLICATIONS

7 TAC §§75.1 - 75.3, 75.5, 75.6, 75.10....1597

7 TAC §75.4....1599

7 TAC §§75.33, 75.35, 75.36, 75.38, 75.41....1599

7 TAC §§75.83 - 75.88, 75.90, 75.91....1601

7 TAC §§75.121 - 75.124....1602

MISCELLANEOUS

7 TAC §§76.1, 76.3, 76.4, 76.6, 76.12....1604

7 TAC §76.21, §76.22....1605

7 TAC §76.71....1606

7 TAC §§76.95, 76.98, 76.99, 76.108....1607

7 TAC §76.122....1608

LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

7 TAC §§77.2, 77.4, 77.5, 77.8, 77.11, 77.31, 77.33, 77.35, 77.51, 77.71, 77.91, 77.94....1609

7 TAC §77.116....1613

OFFICE OF CONSUMER CREDIT COMMISSIONER

MOTOR VEHICLE INSTALLMENT SALES

7 TAC §84.102....1621

7 TAC §§84.201, 84.203, 84.205....1621

7 TAC §84.205....1627

7 TAC §84.309 1627

7 TAC §§84.601, 84.602, 84.604, 84.605, 84.607, 84.610, 84.611, 84.613 1628

7 TAC §84.604 1632

7 TAC §84.613, §84.614 1632

7 TAC §84.708, §84.709 1633

7 TAC §§84.804, 84.808, 84.809 1633

TEXAS EDUCATION AGENCY

CURRICULUM REQUIREMENTS

19 TAC §74.5 1635

TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS

19 TAC §126.65 1636

TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT

19 TAC §127.16 1637

COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL

19 TAC §150.1021, §150.1022 1639

19 TAC §§150.1021 - 150.1028 1639

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

RULES OF PRACTICE

22 TAC §78.6 1641

DEPARTMENT OF STATE HEALTH SERVICES

COMMUNICABLE DISEASES

25 TAC §§97.61 - 97.72 1642

CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING THE ACCEPTANCE OF GIFTS AND DONATIONS TO THE INSTITUTE

25 TAC §702.11 1648

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

GENERAL AIR QUALITY RULES

30 TAC §101.1, §101.10 1650

TEACHER RETIREMENT SYSTEM OF TEXAS

EMPLOYMENT AFTER RETIREMENT

34 TAC §31.1 1662

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

GENERAL PROVISIONS

37 TAC §151.55 1663

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHILD PROTECTIVE SERVICES

40 TAC §700.1630 1664

MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

40 TAC §748.4551 1667

40 TAC §748.4759, §748.4763 1667

MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

40 TAC §749.4051 1669

40 TAC §749.4259, §749.4263 1670

ADOPTED RULES

TEXAS ANIMAL HEALTH COMMISSION

FEES

4 TAC §33.4, §33.5 1671

EQUINE

4 TAC §49.7 1671

FINANCE COMMISSION OF TEXAS

ADMINISTRATION OF FINANCE AGENCIES

7 TAC §5.101 1672

TEXAS DEPARTMENT OF BANKING

MONEY SERVICES BUSINESSES

7 TAC §33.13 1672

OFFICE OF CONSUMER CREDIT COMMISSIONER

REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

7 TAC §83.3003 1676

7 TAC §83.3003, §83.3004 1676

7 TAC §83.5001 1678

7 TAC §§83.6003, 83.6006 - 83.6008 1678

PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS

7 TAC §85.1001, §85.1009 1680

7 TAC §85.2001 1681

PUBLIC UTILITY COMMISSION OF TEXAS

SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

16 TAC §25.24 1681

16 TAC §25.478 1681

SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

16 TAC §26.24, §26.27 1682

TEXAS DEPARTMENT OF LICENSING AND REGULATION

COMBATIVE SPORTS

16 TAC §61.120 1682

16 TAC §61.120 1683

VEHICLE TOWING AND BOOTING

16 TAC §§86.225 - 86.228 1683

TEXAS RACING COMMISSION

DEFINITIONS

16 TAC §301.1 1683

GENERAL PROVISIONS

16 TAC §303.31, §303.42 1684

RACETRACK LICENSES AND OPERATIONS

16 TAC §309.8 1685

16 TAC §309.297, §309.299 1685

16 TAC §309.361 1685

PARI-MUTUEL WAGERING

16 TAC §§321.5, 321.12, 321.13 1686

16 TAC §§321.23, 321.25, 321.27 1686

16 TAC §§321.701, 321.703, 321.705, 321.707, 321.709, 321.711, 321.713, 321.715, 321.717, 321.719 1686

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

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

22 TAC §153.18 1688

22 TAC §153.22 1688

22 TAC §153.27 1689

TEXAS STATE BOARD OF PHARMACY

ADMINISTRATIVE PRACTICE AND PROCEDURES

22 TAC §281.8 1689

LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.2, §283.5 1689

CONTROLLED SUBSTANCES

22 TAC §§315.1 - 315.14 1690

CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.3, 703.11, 703.12, 703.14, 703.20, 703.21 1694

TEXAS DEPARTMENT OF INSURANCE

PROPERTY AND CASUALTY INSURANCE

28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4127, 5.4134 - 5.4136, 5.4141 - 5.4145, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4190 1703

28 TAC §§5.4126 - 5.4128, 5.4142, 5.4143, 5.4145 - 5.4149 1711

28 TAC §5.4912 1711

TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

GENERAL PROVISIONS--RULEMAKING

28 TAC §104.1 1711

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

INVESTIGATIONS

37 TAC §156.1 1712

PAROLE

37 TAC §195.71 1713

37 TAC §§195.72 - 195.78 1713

DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

DIVISION FOR REHABILITATION SERVICES

40 TAC §107.705, §107.714 1713

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHILD PROTECTIVE SERVICES

40 TAC §§700.451, 700.453, 700.455, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.469, 700.471, 700.473, 700.475, 700.477, 700.479, 700.481, 700.506, 700.507, 700.511, 700.513.1718

40 TAC §§700.501 - 700.504, 700.510 1720

TEXAS DEPARTMENT OF MOTOR VEHICLES

MANAGEMENT

43 TAC §§206.93 - 206.95 1720

CONTRACT MANAGEMENT

43 TAC §210.3 1721

VEHICLE TITLES AND REGISTRATION

43 TAC §217.3 1721

RULE REVIEW

Proposed Rule Reviews

Texas Department of Criminal Justice 1723

Texas Board of Professional Engineers 1723

Adopted Rule Reviews

Texas Department of Banking 1724

Office of Consumer Credit Commissioner 1724

Employees Retirement System of Texas.....1725

Texas State Board of Pharmacy 1725

TABLES AND GRAPHICS

.....1727

IN ADDITION

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice.....1739

Cancer Prevention and Research Institute of Texas

Request for Applications R-17.1-ETRA 1739

Request for Applications R-17.1-IIRA.....1739

Request for Applications R-17.1-IIRACB.....1740

Request for Applications R-17.1-IIRACCA.....1740

Request for Applications R-17.1-IIRAP.....1740

Request for Applications R-17.1-RTA.....1741

Office of Consumer Credit Commissioner

Notice of Rate Ceilings.....1741

Texas Council for Developmental Disabilities

Request for Proposals: Public Policy Fellows.....1741

Education Service Center, Region 6

Notice of Regular Meeting of the Education Service Center, Region 6 Board of Directors.....1742

Texas Commission on Environmental Quality

Agreed Orders.....1742

Enforcement Orders.....1745

Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application Number 40287 1746

Notice of Correction to Agreed Order Number 13 1747

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 101 and to the State Implementation Plan 1747

Notice of Public Meeting 1748

Notice of Public Meeting.....1749

Notice of Water Quality Application 1750

Texas Facilities Commission

Request for Proposals #303-6-20547.....1750

Request for Proposals #303-6-20549.....1750

Department of Family and Protective Services

Additional Information Regarding 40 Texas Administrative Code §748.7 1751

Texas Health and Human Services Commission

Public Notice.....1751

Public Notice.....1751

Public Notice - Health and Human Services System Transition Plan 1752

Texas Department of Housing and Community Affairs

Notice of Public Comment Period on the Amended 2016 State of Texas Consolidated Plan: One-Year Action Plan 1752

Notice of Public Hearing - Multifamily Housing Revenue Bonds (Garden City Apartments).....1752

Re-Release of the Notice of Funding Availability (NOFA) for the "2016 Amy Young Barrier Removal Program".....1753

Texas Department of Insurance

Company Licensing 1753

Lavaca Regional Water Planning Group (Region P)

Notice of Public Meeting - Regional Water Planning 1753

Texas Lottery Commission

Scratch Ticket Game Number 1797 "Cashword Multiplier" 1753

Panhandle Regional Planning Commission

Legal Notice.....1758

Public Utility Commission of Texas

Notice of Application for Sale, Transfer, or Merger.....1758

Notice of Application for Sale, Transfer, or Merger.....1758

Notice of Application for Sale, Transfer, or Merger.....1758

Notice of Application for Sale, Transfer, or Merger.....1759

Notice of Petition for True-Up of 2013 Federal Universal Service Fund Impacts to the Texas Universal Service Fund.....1759

Sam Houston State University

Notice of Intent to Seek Consulting Services 1759

Texas Department of Transportation

Notice of Renewal - Private Consulting Services.....1760

Public Notice - Aviation.....1760

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0096-KP

Requestor:

Chairman J. Winston Krause

Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

Re: Authority if the Texas Lottery Commission to deny, suspend, or revoke a lottery ticket sales agent license in specific instances (RQ-0096-KP)

Briefs requested by March 17, 2016

RQ-0097-KP

Requestor:

The Honorable Lisa Pence

Erath County Attorney

100 West Washington

Stephenville, Texas 76401

Re: Whether a non-profit entity that has offices on land owned by a municipality may restrict the carrying of concealed handguns on the property (RQ-0097-KP)

Briefs requested by March 18, 2016

RQ-0098-KP

Requestor:

The Honorable Nicholas "Nico" LaHood

Bexar County Criminal District Attorney

101 West Nueva, 7th Floor

San Antonio, Texas 78205-3030

Re: Whether a county may exclude county employees from contracting with the county in a private capacity for goods or services unrelated to their official duties (RQ-0098-KP)

Briefs requested by March 18, 2016

RQ-0099-KP

Requestor:

The Honorable Dan Patrick

Lieutenant Governor of Texas

Post Office Box 12068

Austin, Texas 78711-2068

Requestor:

Ms. Seana Willing, Executive Director

State Commission on Judicial Conduct

Post Office Box 12265

Austin, Texas 78711-2265

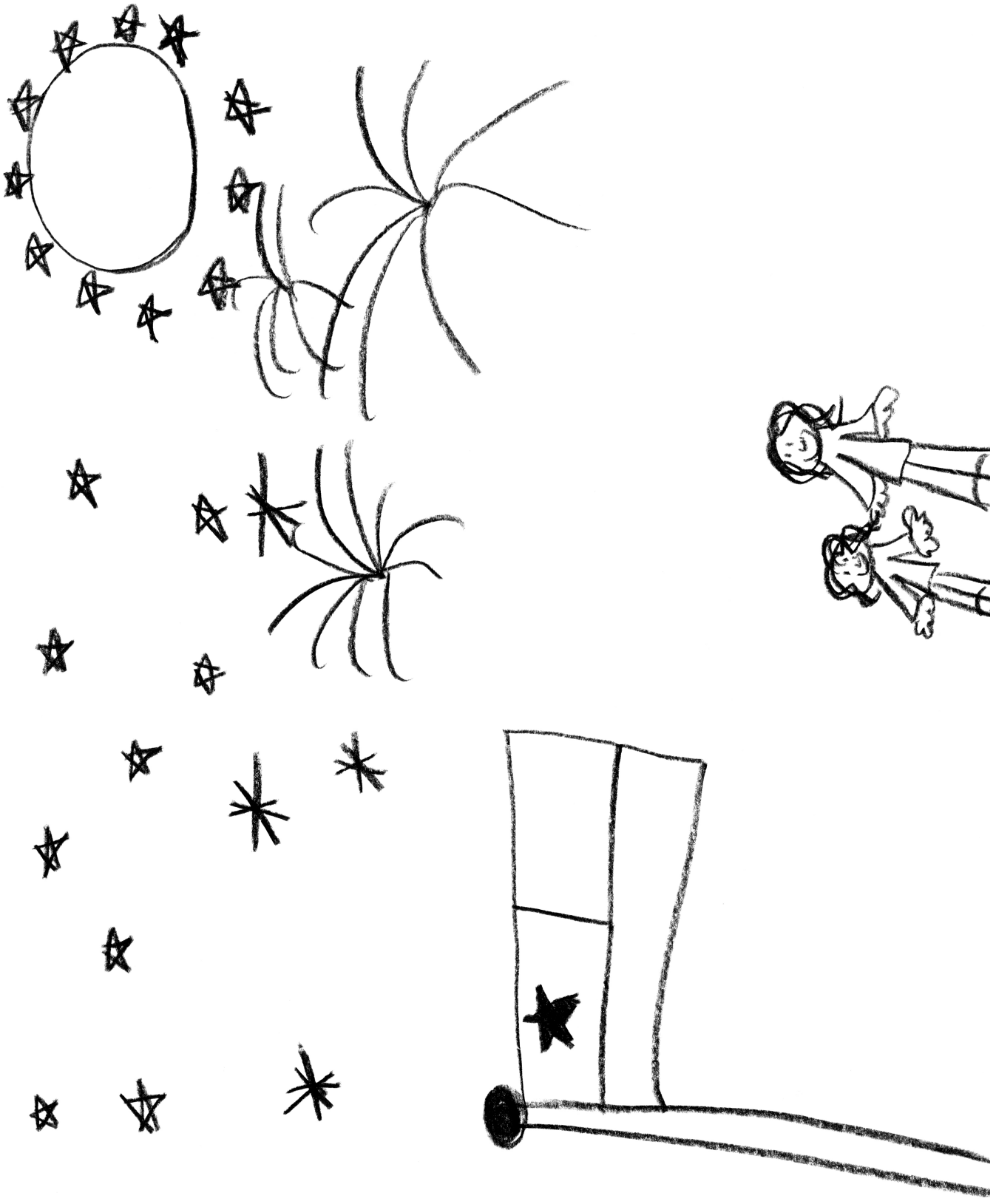
Re: The constitutionality of a volunteer justice court chaplaincy program and opening daily judicial proceedings with a prayer (RQ-0099-KP)

Briefs requested by March 21, 2016

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201600900
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: February 24, 2016

♦ ♦ ♦



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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

SUBCHAPTER G. STAR+PLUS

1 TAC §353.608

The Texas Health and Human Services Commission (HHSC) proposes amendments to §353.608, concerning Minimum Payment Amounts to Qualified Nursing Facilities.

BACKGROUND AND JUSTIFICATION

During the 84th Session, the Texas Legislature, through the 2016 - 2017 General Appropriations Act (Article II, House Bill 1, 84th Legislature, Regular Session, 2015, Rider 97), directed HHSC to transition the Nursing Facility Minimum Payment Amounts Program (MPAP) from a program solely based on enhanced payment rates to publicly owned nursing facilities to a Quality Incentive Payment Program (QIPP) for all nursing facilities that have a source of public funding for the non-federal share. The additional payments to nursing facilities through the QIPP are to be based on improvements in quality and innovation in the provision of nursing facility services.

Proposed new §353.609 which was published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 11), concerning Quality Incentive Payment Program for Nursing Facilities, describes the QIPP.

The proposed amendments to §353.608 allow a transition period for existing MPAP participants to make the shift to QIPP. In this transition period, current MPAP participants will be allowed to receive MPAP payments at approximately 50 percent of their current MPAP payment level. Facilities not currently enrolled in MPAP will not be eligible for transition MPAP payments.

The proposed amendment adds a new eligibility period; describes eligibility requirements for the new eligibility period; and indicates that, for the new eligibility period, the MPAP payment is equal to that calculated as per the existing MPAP methodology divided by two. Additionally, this amendment changes the time period in which reconciliations will occur, adds the option for HHSC to perform interim reconciliations for the new eligibility period only, and updates the consequences to participants that do not timely provide the non-federal share of the MPAP payment. This approach to the transition period retains the current MPAP calculation and payment methodologies. HHSC is interested in comments from stakeholders regarding other possible approaches to calculating transition period payments.

SECTION-BY-SECTION SUMMARY

Proposed subsection (b)(9) provides a definition of Eligibility Period Three.

Proposed subsection (d)(2)(D)(ii)(III) describes the calculation of the weighted average per diem payment for nursing facility add-on services for Eligibility Period Two-A.

Proposed subsection (d)(2)(D)(ii)(IV) describes the calculation of the weighted average per diem payment for nursing facility add-on services for Eligibility Period Three.

Proposed subsection (d)(4) describes the calculation of the second payment for Eligibility Period Three.

Proposed subsection (e)(5) describes the eligibility requirements for Eligibility Period Three.

Proposed amendment to subsection (e)(6)(B) describes geographic proximity requirements for Eligibility Periods Two, Two-A, and Three.

Proposed amendment to subsection (g)(4)(A) changes the deadline by which HHSC will complete the first reconciliation.

Proposed subsection (g)(4)(B) allows HHSC to complete interim reconciliations between August 31, 2017 and August 31, 2019, for Eligibility Period Three only.

Proposed amendment to subsection (g)(4)(D) updates the consequences to MPAP participants that do not provide the non-federal share of MPAP payments as required.

Proposed subsection (j) describes the dates the Minimum Payment Amount is available.

The proposed rule also includes numbering revisions.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services has determined that, for each year of the first five years the proposed rule will be in effect, there will be no fiscal impact to state government. MPAP is funded through intergovernmental transfers (IGTs) from non-state governmental entities and federal matching funds.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because there are no small businesses or micro-businesses currently participating in MPAP.

PUBLIC BENEFITS AND COSTS

Pam McDonald, Director of Rate Analysis, has determined that, for each year of the first five years the rules will be in effect, the public benefit expected as a result of adopting the proposed rule

amendment is that current MPAP participants will experience a smoother transition from MPAP to QIPP.

Ms. Rymal anticipates that there will be no economic cost to persons required to comply with the rule. There is no anticipated impact to a local economy or to local employment.

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 Pam McDonald, Health and Human Services Commission, Mail Code-H400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to (512) 730-7475; or by e-mail to Pam.McDonald@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021, and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The amendment implements Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.608. Minimum Payment Amounts to Qualified Nursing Facilities.

(a) Introduction. This section establishes minimum payment amounts for certain non-state government-owned nursing facility providers participating in the STAR+PLUS Program, or other Medicaid managed care programs offering nursing facility services, and the conditions for receipt of these amounts.

(b) Definitions.

(1) Calculation Period--A month used to calculate the Minimum Payment Amount. There are six calculation periods in Eligibility Period One and twelve calculation periods in Eligibility Period Two.

(2) CHOW Application--An application filed with the Department of Aging and Disability Services for a nursing facility change of ownership.

(3) Clean Claim--A claim submitted by a provider for health care services rendered to an enrollee with the data necessary for the managed care organization to adjudicate and accurately report the claim. Claims for Nursing Facility Unit Rate services that meet the Department of Aging and Disability Services' criteria for clean claims submission are considered Clean Claims. Additional information regarding Department of Aging and Disability Services' criteria for clean claims submission is included in HHSC's Uniform Managed Care Manual, which is available on HHSC's website.

(4) DADS--The Texas Department of Aging and Disability Services.

(5) Eligibility Period--A period of time for which a Qualified Nursing Facility may receive the Minimum Payment Amounts described in this section.

(6) Eligibility Period One--The first period of time for which a Qualified Nursing Facility may receive the Minimum Payment Amounts described in this section, covering dates of service from the later of March 1, 2015, or the date on which nursing facility services become managed care services, to August 31, 2015.

(7) Eligibility Period Two--The second period of time for which a Qualified Nursing Facility may receive the Minimum Payment Amounts described in this section, covering dates of service from September 1, 2015, to August 31, 2016.

(8) Eligibility Period Two-A--The third period of time for which a Qualified Nursing Facility may receive the Minimum Payment Amounts described in this section, covering dates of service from December 1, 2015, to August 31, 2016.

(9) Eligibility Period Three--The fourth period of time for which a Qualified Nursing Facility may receive the Minimum Payment Amounts described in this section, covering dates of service from September 1, 2016, to August 31, 2017.

(10) [~~(9)~~] First Payment--The payment made in the ordinary course of business by MCOs to Qualified Nursing Facilities for the provision of covered services to Medicaid recipients.

(11) [~~(10)~~] HHSC--The Texas Health and Human Services Commission or its designee.

(12) [~~(11)~~] Intergovernmental transfer (IGT)--A transfer of public funds from a non-state governmental entity to HHSC.

(13) [~~(12)~~] IGT Responsibility--The IGT owed by a non-state governmental entity, as determined by HHSC, for funding the non-federal share of the increase in the payments to the MCOs due to the Minimum Payment Amount program.

(14) [~~(13)~~] MCO--A Medicaid managed care organization contracted with HHSC to provide nursing facility services to Medicaid recipients.

(15) [~~(14)~~] Minimum Payment Amount--The minimum payment amount for a Qualified Nursing Facility, as calculated under subsection (d) of this section.

(16) [~~(15)~~] Network Nursing Facility--A nursing facility that has a contract with an MCO for the delivery of Medicaid covered benefits to the MCO's enrollees.

(17) [~~(16)~~] Non-state Governmental Entity--A hospital authority, hospital district, health district, city or county.

(18) [~~(17)~~] Non-state Government-owned Nursing Facility--A network nursing facility where a non-state governmental entity holds the license and is a party to the nursing facility's Medicaid provider enrollment agreement with the state.

(19) [~~(18)~~] Nursing Facility Add-on Services--The types of services that are provided in the nursing facility setting by a provider, but are not included in the Nursing Facility Unit Rate, including but not limited to emergency dental services, physician-ordered rehabilitative

services, customized power wheel chairs, and augmentative communication devices.

(20) [~~(19)~~] Nursing Facility Unit Rate--The types of services included in the DADS daily rate for nursing facility providers, such as room and board, medical supplies and equipment, personal needs items, social services, and over-the-counter drugs. The Nursing Facility Unit Rate also includes applicable nursing facility rate enhancements as described in §355.308 of this title (relating to Direct Care Staff Rate Component), and professional and general liability insurance. Nursing Facility Unit Rates exclude Nursing Facility Add-on Services.

(21) [~~(20)~~] Qualified Nursing Facility--A Non-state Government-Owned Network Nursing Facility that meets the eligibility requirements described in subsection (e) of this section.

(22) [~~(21)~~] Public Funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a non-state governmental entity that holds the license and is party to the Medicaid provider enrollment agreement with the state. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(23) [~~(22)~~] Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform as defined and established under Chapter 354, Subchapter D of this title (relating to Texas Healthcare Transformation and Quality Improvement Program).

(24) [~~(23)~~] RUG--For the purpose of calculations described in subsection (d)(1) of this section, a resource utilization group under Medicare Part A as established by the Centers for Medicare & Medicaid Services (CMS). For the purpose of calculations described in subsection (d)(2) of this section, a resource utilization group under the RUG-III 34 group classification system, Version 5.20, index maximizing, as established by the state and CMS.

(25) [~~(24)~~] Second Payment--The amount a Qualified Nursing Facility can receive that is equal to the Minimum Payment Amount less adjustments to that amount, as described in subsection (d) of this section.

(c) Payment of Minimum Payment Amount to Qualified Nursing Facilities.

(1) An MCO must pay a Qualified Nursing Facility at or above the Minimum Payment Amount in two installment payments for a Calculation Period, using the calculation methodology described in subsection (d) of this section.

(A) The MCO must make the First Payment no later than ten calendar days after a Qualified Nursing Facility or its agent submits a Clean Claim for a Nursing Facility Unit Rate to the HHSC-designated portal or the MCO's portal, whichever occurs first. The MCO will make the First Payment for the Nursing Facility Unit Rate at or above the prevailing rate established by HHSC for the date of service. HHSC's website includes information concerning HHSC's prevailing rates. The MCO must make the Second Payment no later than 10 calendar days after being notified of the Second Payment amount by HHSC. The Second Payment will be the difference between the Minimum Payment Amount and the adjustment to the Minimum Payment Amount, as calculated by HHSC and described in subsection (d) of this section.

(B) For purposes of illustration only, if a Qualified Nursing Facility provider files a Clean Claim for a Nursing Facility Unit Rate on March 6, 2015, the MCO must make the First Payment no later than March 16, 2015, and the Second Payment no later than 10 calendar days after being notified of the Second Payment amount by HHSC.

(2) HHSC will provide each MCO with a list of its Qualified Nursing Facilities for each Calculation Period as well as the Second Payment amount, as calculated by HHSC and described in subsection (d) of this section, associated with the MCO's members for each of its Qualified Nursing Facilities.

(d) Calculation of the Second Payment. HHSC will calculate the Second Payment for each Qualified Nursing Facility using the methodology detailed in this subsection. If a Qualified Nursing Facility is contracted with more than one MCO, HHSC will calculate a separate Second Payment for each MCO with which the Qualified Nursing Facility is contracted.

(1) Calculate the Minimum Payment Amount. The Minimum Payment Amount is made up of multiple subsidiary amounts. There is a subsidiary amount for each RUG.

(A) To determine the subsidiary amount for a particular RUG, use the formula: Subsidiary Amount = Days of Service x Medicare Rate, where:

(i) "Days of Service" is the total Medicaid days of service for a particular RUG for clean claims for services that were provided during the Calculation Period; and

(ii) "Medicare Rate" is the Medicare skilled nursing facility payment rate for the RUG in effect on the date of service.

(B) The Minimum Payment Amount is equal to the sum of all subsidiary amounts calculated in accordance with subparagraph (A) of this paragraph.

(2) Calculate the Adjustment to the Minimum Payment Amount. The adjustment to the Minimum Payment Amount is equal to the sum of all adjustments for each RUG. The adjustment to the Minimum Payment Amount is determined as follows:

(A) First, determine the amount of the First Payment to the nursing facility using the formula: First Payment = Days of Service x MCO Rate, where:

(i) "Days of Service" is the total Medicaid days of service for a particular RUG for clean claims for services that were provided during the Calculation Period; and

(ii) "MCO Rate" is the rate paid by the MCO for the particular RUG.

(B) Second, sum the result in subparagraph (A) of this paragraph for each RUG.

(C) Third, add or subtract, as necessary, the amount of payment adjustments to Nursing Facility Unit Rate claims for services that were provided during the Calculation Period from the result in subparagraph (B) of this paragraph.

(D) Fourth, determine the amount related to the Nursing Facility Add-on Services using the formula: Nursing Facility Add-on Amount = Days of Service x Per Diem, where:

(i) "Days of Service" equals the number used in subparagraph (A)(i) of this paragraph; and

(ii) "Per Diem" is an estimate, as determined by HHSC, of the weighted average per diem payment amount for Nursing Facility Add-on Services provided to Medicaid recipients in Qualified Nursing Facilities.

(I) For Eligibility Period One, the per diem will equal $3.48.

(II) For Eligibility Period Two, the per diem will equal $3.48 plus medical inflation between the mid-point of Eligibility Period One and the mid-point of Eligibility Period Two, as determined by HHSC.

(III) For Eligibility Period Two-A, the per diem will equal $3.48 plus medical inflation between the mid-point of Eligibility Period One and the mid-point of Eligibility Period Two-A, as determined by HHSC.

(IV) For Eligibility Period Three, the per diem will equal $3.48 plus medical inflation between the mid-point of Eligibility Period One and the mid-point of Eligibility Period Three, as determined by HHSC.

(E) Fifth, sum the result in subparagraph (D) of this paragraph for each RUG.

(F) Sixth, determine the adjustment to the Minimum Payment Amount by subtracting the result from subparagraph (E) of this paragraph from the result from subparagraph (C) of this paragraph.

(3) Calculate the Second Payment. To determine the Second Payment, subtract the adjustment to the Minimum Payment Amount described in paragraph (2)(F) of this subsection from the Minimum Payment Amount described in paragraph (1) of this subsection.

(4) Adjustment for Eligibility Period Three. For Eligibility Period Three, the Second Payment is equal to the value calculated in paragraph (3) of this subsection divided by two.

(e) Eligibility for Receipt of Minimum Payment Amounts.

(1) A nursing facility is eligible to receive the Minimum Payment Amounts described in this section if it complies with the requirements described in this subsection for each Eligibility Period.

(2) Eligibility Period One. A nursing facility is eligible to receive Minimum Payment Amounts for Eligibility Period One if it meets the following requirements:

(A) The nursing facility must be a Non-state Government-owned Nursing Facility with a Medicaid contract effective date of October 1, 2014, or earlier. HHSC will finalize its list of eligible facilities on November 1, 2014. A facility may only be eligible if its contract is assigned by DADS to a non-state government entity by October 31, 2014, with an effective date of October 1, 2014, or earlier.

(B) The Non-state Governmental Entity that owns the nursing facility must have entered into an IGT Responsibility agreement with HHSC by November 3, 2014. The IGT Responsibility agreement will cover the estimated IGT Responsibility for the nursing facility for the Eligibility Period.

(C) The Non-state Governmental Entity that owns the nursing facility must certify the following facts on a form prescribed by HHSC and the form must be received by HHSC by November 3, 2014.

(i) That it is a Non-state Government-owned Nursing Facility where a Non-state Governmental Entity holds the license and is party to the facility's Medicaid contract.

(ii) That all funds transferred to HHSC via IGT for use as the state share of payments are Public Funds.

(iii) That no part of any payment made under the Minimum Payment Amount program under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the Minimum Payment Amount funds.

(3) Eligibility Period Two. A nursing facility is eligible to receive the Minimum Payment Amounts for Eligibility Period Two if it has met the following requirements:

(A) The nursing facility must be a Non-state Government-owned Nursing Facility with a Medicaid contract effective date of March 1, 2015, or earlier. HHSC will finalize its list of eligible facilities on March 1, 2015. A facility may only be eligible if its contract is assigned by DADS to a non-state government entity by February 28, 2015, with an effective date of March 1, 2015, or earlier.

(B) The Non-state Governmental Entity that owns the nursing facility must have entered into an IGT Responsibility agreement with HHSC by February 28, 2015. The IGT Responsibility agreement will cover the estimated IGT Responsibility for the nursing facility for the Eligibility Period.

(C) The Non-state Governmental Entity that owns the nursing facility must certify the following facts on a form prescribed by HHSC and the form must be received by HHSC by February 28, 2014.

(i) That it is a Non-state Government-owned Nursing Facility where a Non-state Governmental Entity holds the license and is party to the facility's Medicaid contract.

(ii) That all funds transferred to HHSC via IGT for use as the state share of payments are Public Funds.

(iii) That no part of any payment made under the Minimum Payment Amount program under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the Minimum Payment Amount funds.

(D) The Non-state Governmental Entity that owns the nursing facility must submit to HHSC, upon demand, copies of any contracts it has with third parties that reference the administration of, or payments from, the Minimum Payment Amount program.

(4) Eligibility Period Two-A. A nursing facility is eligible to receive the Minimum Payment Amounts for Eligibility Period Two-A if it has met the following requirements:

(A) The nursing facility must not be eligible to receive the Minimum Payment Amounts for Eligibility Period Two.

(B) The nursing facility must be a Non-state Government-owned Nursing Facility with a Medicaid contract effective date of June 1, 2015, or earlier. HHSC will finalize its list of eligible facilities on June 1, 2015. A facility may only be eligible if its contract is assigned by DADS to a non-state government entity by May 31, 2015, with an effective date of June 1, 2015, or earlier.

(C) The nursing facility must have given DADS written notice of the change of ownership on or before February 1, 2015, but have not qualified for Eligibility Period Two because its contract was not assigned by DADS to a non-state government entity by February 28, 2015.

(D) DADS must have received all required documents pertaining to the change of ownership (i.e., DADS must have a complete application for a change of ownership license as described under 40 TAC §19.201(b) (relating to Criteria for Licensing)) by April 15, 2015.

(E) The Non-state Governmental Entity that owns the nursing facility must have entered into an IGT Responsibility agreement with HHSC by May 31, 2015. The IGT Responsibility agreement

must cover the estimated IGT Responsibility for the nursing facility for the Eligibility Period.

(F) The Non-state Governmental Entity that owns the nursing facility must certify the following facts on a form prescribed by HHSC and the form must be received by HHSC by May 31, 2015:

(i) that it is a Non-state Government-owned Nursing Facility where a Non-state Governmental Entity holds the license and is party to the facility's Medicaid contract;

(ii) that all funds transferred to HHSC via IGT for use as the state share of payments are Public Funds; and

(iii) that no part of any payment made under the Minimum Payment Amount program under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the Minimum Payment Amount funds.

(G) The Non-state Governmental Entity that owns the nursing facility must submit to HHSC, upon demand, copies of any contracts it has with third parties that reference the administration of, or payments from, the Minimum Payment Amount program.

(5) Eligibility Period Three. A nursing facility is eligible to receive the Minimum Payment Amounts for Eligibility Period Three if it has met the following requirements:

(A) The nursing facility was eligible to receive the Minimum Payment Amounts for Eligibility Period Two or Eligibility Period Two-A.

(B) The Non-state Governmental Entity that owns the nursing facility must have entered into an IGT Responsibility agreement with HHSC by a date determined by HHSC. The IGT Responsibility agreement must cover the estimated IGT Responsibility for the nursing facility for the Eligibility Period.

(C) The Non-state Governmental Entity that owns the nursing facility must certify the following facts on a form prescribed by HHSC and the form must be received by HHSC by a date determined by HHSC:

(i) that it is a Non-state Government-owned Nursing Facility where a Non-state Governmental Entity holds the license and is party to the facility's Medicaid contract;

(ii) that all funds transferred to HHSC via IGT for use as the state share of payments are Public Funds; and

(iii) that no part of any payment made under the Minimum Payment Amount program under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the Minimum Payment Amount funds.

(D) The Non-state Governmental Entity that owns the nursing facility must submit to HHSC, upon demand, copies of any contracts it has with third parties that reference the administration of, or payments from, the Minimum Payment Amount program.

(6) [~~(5)~~] Geographic Proximity to Nursing Facility.

(A) For eligibility period one, any nursing facility with a CHOW Application approved by DADS with an effective date on or after October 1, 2014, must be located in the same Regional Healthcare Partnership (RHP) as the Non-state Governmental Entity taking ownership of the nursing facility.

(B) For eligibility periods [~~period~~] two, [~~and~~] two-A, and three, any nursing facility with a CHOW Application approved by DADS with an effective date on or after October 1, 2014, must be located in the same RHP as, or within 150 miles of, the Non-state Governmental Entity taking ownership of the nursing facility.

(f) Claims Filing Deadline. A Qualified Nursing Facility must file a Clean Claim for a Nursing Facility Unit Rate no later than 60 calendar days after the end of the Calculation Period within which the service is provided for the claim to qualify for the Minimum Payment Amount described in this section. The MCO must pay a Clean Claim that is filed after this deadline but within 365 calendar days of the date of service, at the standard rate established in the network provider agreement for Nursing Facility Unit Services; however, claims filed after the 60 deadline will not be incorporated in the calculation of the Minimum Payment Amount.

(g) IGT Responsibility.

(1) Timing. HHSC will determine IGT responsibilities prior to the first day of the Eligibility Period.

(2) Aggregate IGT Responsibility. The aggregate IGT responsibility for all Qualified Nursing Facilities for an Eligibility Period will be equal to the non-federal share of the increase in the MCOs' capitation rates due to the Minimum Payment Amount program multiplied by the estimated number of member months for which the MCOs will receive the capitation rate during the eligibility period multiplied by 1.1.

(3) Allocation of Aggregate IGT Responsibility to Individual Nursing Facilities. HHSC will allocate the aggregate IGT responsibility to each qualified nursing facility based on the percentage of the total increase in the MCOs' capitation rates due to the Minimum Payment Amount program associated with the nursing facility in the base period data used to develop the capitation rates.

(4) Reconciliation. HHSC will complete the reconciliation in two parts.

(A) The first reconciliation will occur no later than 120 [~~30~~] days after the end of the eligibility period.

(i) HHSC will compare the amount transferred by the Non-state Governmental Entity to HHSC for the eligibility period to the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity.

(ii) The calculation of the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity will be the same as the calculation of allocated aggregate IGT responsibility to all Qualified Nursing Facilities owned by the Non-state Governmental Entity as described in paragraphs (2) and (3) of this subsection with two exceptions:

(I) "Member months" will be revised to reflect actual known member months for the eligibility period. The revision will be conducted no sooner than the day after the last day of the eligibility period and no later than 120 [~~30~~] days after the end of the eligibility period.

(II) The "Aggregate IGT Responsibility" described in paragraph (2) of this subsection will be equal to the non-federal share of the increase in the MCO's capitation rates due to the Minimum Payment Amount program multiplied by the revised member months. The calculation will not include the additional ten percent included in the calculation of the original aggregate IGT responsibility.

(III) No other changes will be made to the calculation of the allocated aggregate IGT responsibility and no other data

points included in the calculation will be updated for purposes of this reconciliation.

(iii) If the amount transferred by the Non-state Governmental Entity exceeds the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity, HHSC will refund the excess amount to the Non-state Governmental Entity, less two percent of the amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity.

(iv) If the amount transferred by the Non-state Governmental Entity is less than the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity, HHSC will notify the Non-state Governmental Entity of the amount of the shortfall and of a deadline for the Non-state Governmental Entity to transfer the shortfall plus two percent of the amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity.

(B) For Eligibility Period Three only, HHSC may complete interim reconciliations between August 31, 2017, and August 31, 2019, as updated enrollment data for the Program Period, as reflected in adjusted member months, becomes available. HHSC will follow the process described in subparagraph (A) of this paragraph for such interim reconciliations.

(C) [~~(B)~~] The second reconciliation will occur no later than 25 months after the end of the eligibility period.

(i) HHSC will compare the amount transferred by the Non-state Governmental Entity to HHSC for the eligibility period to the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity.

(ii) The calculation of the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity will be the same as the calculation of allocated aggregate IGT responsibility to all Qualified Nursing Facilities owned by the Non-state Governmental Entity as described in subparagraph (A) of this paragraph except that member months will be revised to reflect updated actual known member months for the eligibility period. The revision will be conducted sometime during the 25th month after the end of the eligibility period.

(iii) If the amount transferred by the Non-state Governmental Entity exceeds the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity, HHSC will refund the excess amount to the Non-state Governmental Entity.

(iv) If the amount transferred by the Non-state Governmental Entity is less than the non-federal amount expended during the eligibility period by HHSC for all Qualified Nursing Facilities owned by the Non-state Governmental Entity, HHSC will notify the Non-state Governmental Entity of the amount of the shortfall and of a deadline for the Non-state Governmental Entity to transfer the shortfall.

(D) [~~(C)~~] If the Non-state Governmental Entity does not timely complete the transfer described in subparagraph (A), [~~or~~] (B), or (C) of this paragraph, HHSC may: [~~will withhold any or all future Medicaid payments from the Non-state Governmental Entity until HHSC has recovered an amount equal to the amount of the shortfall and nursing facilities owned by the Non-state Governmental Entity will be ineligible for future Minimum Payment Amount eligibility periods.~~]

(i) determine that all nursing facilities owned by the Non-state Governmental Entity are ineligible to receive the Minimum Payment Amount for future eligibility periods;

(ii) withhold any or all future Medicaid payments from the Non-state Governmental Entity until HHSC has recovered an amount equal to the shortfall; and

(iii) retain any funds that would normally be returned to the Non-state Governmental Entity as part of the reconciliation process.

(5) All IGT calculations are solely at the discretion of HHSC and are not open to desk review or appeal.

(h) Changes of Ownership. If a Qualified Nursing Facility changes ownership to another non-state government entity during either of the eligibility periods described in subsection (e) of this section, then the data used for the calculations described in subsection (d) of this section will include data from the facility for the entire Calculation Period, including data relating to payments for days of service provided under the prior owner.

(i) Recoupment.

(1) If payments under this section result in an overpayment to a nursing facility, or in the event of a disallowance by CMS of federal participation related to a nursing facility's receipt of or use of payment amounts authorized under subsection (d) of this section, the MCO(s) may recoup an amount equivalent to the amount of the second payment amount that was overpaid or disallowed.

(2) Second payment amount payments under this section may be subject to any adjustments for payments made in error, including, without limitation, adjustments made under the Texas Administrative Code, the Code of Federal Regulations and state and federal statutes. The MCO(s) may recoup an amount equivalent to any such adjustment from the nursing facility in question.

(3) If HHSC determines that part of any payment made under the Minimum Payment Amount program was used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the Minimum Payment Amount funds, the MCO(s) may recoup an amount equal to the second payment amount from the nursing facility in question.

(4) If HHSC determines that an ownership change to a Non-state Governmental Entity was based on fraudulent or misleading statements on a nursing facility CHOW application or during the CHOW process, the MCO(s) may recoup an amount equal to the second payment amount from the nursing facility in question for any eligibility period affected by the fraudulent or misleading statement.

(j) Dates the Minimum Payment Amount is available. The minimum payment requirements described in this section will only cover dates of service from the later of March 1, 2015, or the date on which nursing facility services become managed care services, to August 31, 2017 [~~2016~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600774

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

SUBCHAPTER B. OFFICE OF INSPECTOR GENERAL

1 TAC §371.35

The Texas Health and Human Services Commission (HHSC) proposes new §371.35, concerning Use of Statistical Sampling and Extrapolation.

BACKGROUND AND JUSTIFICATION

Proposed §371.35 implements Texas Government Code §531.102(s), adopted in 2015 by the passage of Senate Bill 207 (S.B. 207). *See* Act of May 31, 2015, 84th Leg., R.S., ch. 945, §2, 2015 Tex. Gen. Laws. S.B. 207 amended various provisions in Texas Government Code Chapter 531 related to the Office of Inspector General's (OIG's) authority and duties. Texas Government Code §531.102(r), also adopted by S.B. 207, requires the OIG to review its process of sampling and extrapolation. Based in part on this review and generally accepted standards among other offices of inspector general, §531.102(s) requires the HHSC Executive Commissioner, in consultation with the OIG, to adopt rules standardizing sampling and extrapolation techniques for OIG.

HHSC intends that any obligations or requirements that accrued under Chapter 371 before the effective date of this rule will be governed by the prior rules in Chapter 371, and that those rules continue in effect for this purpose. HHSC does not intend for the adoption of this new rule to affect the prior operation of the rules; any prior actions taken under the rules or statute; any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under the rules; any violation of the rules or any penalty, forfeiture, or punishment incurred under the rules before their amendment; or any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment. HHSC additionally intends that any investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the rule had not been added.

HHSC intends that should any sentence, paragraph, subdivision, clause, phrase, or section of the new rule in Chapter 371 be determined, adjudged, or held to be unconstitutional, illegal, or invalid, the same will not affect the validity of the subchapter as a whole, or any part or provision hereof other than the part so declared to be unconstitutional, illegal, or invalid, and will not affect the validity of the subchapter as a whole.

SECTION-BY-SECTION SUMMARY

Proposed §371.35 states that, when determining overpayments that are not based on a 100 percent review of items, the OIG will use RAT-STATS, a free statistical software package available from the Office of Inspector General for the United States Department of Health & Human Services. The section also states that the OIG will model its mathematical processes for statistical sampling and overpayment estimation on those of the Centers for Medicare & Medicaid Services.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rule is in effect, there will be no impact to costs and revenues of state and local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the proposed rule, as they will not be required to alter their business practices as a result of implementing the proposed rule.

PUBLIC BENEFIT

Stuart Bowen, Inspector General, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be that the rules will ensure the integrity of Medicaid and other HHS programs by discovering, preventing, and correcting fraud, waste, and abuse consistently with generally accepted standards.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the proposed rule.

HHSC has determined that the proposed rule will not affect a local economy. There is no anticipated negative impact on local employment.

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 Lisa Barragan, Texas Health and Human Services Commission-OIG, Broadmoor 902 (MC 1350), 11501 Burnet Road, Austin, Texas 78758; by fax to (512) 833-6484; or by e-mail to Lisa.Barragan@hhsc.state.tx.us within 30 days of publication in the *Texas Register.*

LEGAL AUTHORITY

The new rule implements Texas Government Code §531.102(s), which requires the HHSC Executive Commissioner, in consultation with the OIG, to adopt rules setting out sampling and

extrapolation standards. The rule is proposed under Texas Government Code §531.102(a-2), which provides that the Executive Commissioner will work in consultation with the OIG to adopt rules necessary to implement a power or duty of the office; 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, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

§371.35. Use of Statistical Sampling and Extrapolation.

(a) When the OIG is determining the amount of a recoupment due because of an overpayment, and a review of all items in the population where the suspected overpayment has occurred is not practical or reasonable, the OIG uses statistical sampling and extrapolation to estimate the amount of the recoupment.

(b) When using statistical sampling and extrapolation, the OIG:

(1) uses the RAT-STATS software available from the Office of Inspector General for the United States Department of Health and Human Services for purposes of selecting the sample and calculating the overpayment estimate; and

(2) adopts and follows policies and procedures that are consistent with the mathematical processes for sampling and overpayment estimation as described by CMS's Medicare Program Integrity Manual.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 17, 2016.

TRD-201600743
Karen Ray
Chief Counsel
Texas Health and human Services Commission
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 30. COMMUNITY DEVELOPMENT

SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

4 TAC §30.52

The Texas Department of Agriculture (Department) proposes amendments to §30.52, relating to match requirements under the Texas Capital Fund Real Estate and Infrastructure Development Programs, to formalize existing policy and guidelines.

TDA has proposed changes to the community match requirements for future Real Estate and Infrastructure Development applications in its 2016 Application Guide, which currently conflict with §30.52. In order to ensure consistency and avoid conflicts and necessary rule changes each time an update is made, §30.52 is revised to reference the application guide.

Suzanne Barnard, Director for Community Development Block Programs at the Texas Department of Agriculture, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of the proposal.

Ms. Barnard has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the section will be the clarification of match requirements for the Texas Capital Fund- Real Estate and Infrastructure Development Programs to ensure consistency with the application guide. There will be no adverse economic effect on micro-businesses, small businesses or individuals who are required to comply with the sections. Therefore, no regulatory flexibility analysis is necessary.

Written comments on the proposal may be submitted for 30 days following publication of this proposal to Suzanne Barnard, Office of Rural Affairs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email to *Suzanne.Barnard@TexasAgriculture.gov.*

The proposal is made under Texas Government Code §487.051, which provides the Department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is Texas Government Code Chapter 487.

§30.52. Texas Capital Fund--Real Estate and Infrastructure Development Programs.

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

(f) Match requirements. The leverage ratio between all funding sources to the TCF fund request may not be less than the amounts described in the application guide. [~~The following match requirements apply to the Real Estate and Infrastructure Development programs.~~]

[~~(1) Community match. The leverage ratio between all funding sources to the TCF fund request may not be less than:~~]

[~~(A) 1:1 for awards of $750,000 or less;~~]

[~~(B) 4:1 for awards of $750,100 to $1,000,000; and~~]

[~~(C) 5.1 for awards of $1,000,000 to $1,500,000.~~]

[~~(2) Contribution by each benefitting business. Each benefitting business is required to make financial contributions to the proposed project. A cash injection of a minimum of 2.5% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost. Equity participation may be in the form of cash and/or net equity value in fixed assets utilized within the proposed project. For businesses that have been operating for less than three years and are utilizing the Real Estate program, a minimum of 33% equity injection (of the total projects costs) in the form of cash and/or net equity value in fixed assets is required.~~]

(g) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600745
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 463-4075

♦ ♦ ♦

PART 6. TEXAS GRAIN PRODUCER INDEMNITY BOARD

CHAPTER 90. TEXAS GRAIN PRODUCER INDEMNITY FUND PROGRAM RULES

The Texas Grain Producer Indemnity Board (Board) proposes amendments to Title 4, Part 6, Chapter 90, Subchapter B, §90.21, concerning election of officers, and Subchapter D, §90.43, relating to award of claims. The changes to §90.21 are to reconcile the Board's bylaws regarding terms of officers. The proposed changes to §90.43 are made in order to reconcile statutory changes adopted in Senate Bill 1099 in the 84th Legislative Session. Senate Bill 1099 became effective September 1, 2015.

Daniel Berglund, Chairman of the Board, has determined that for the first five years the amended sections are in effect, there will be no anticipated costs to state or local government, because any costs incurred will be covered by the Board.

Mr. Berglund has determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the amended sections will be to provide a financial safety net for grain producers who have not been compensated for their stored or contracted grain.

Written comments on the proposal may be submitted to Daniel Berglund, Chairman, Texas Grain Producer Indemnity Board, 4205 North I-27, Lubbock, Texas 79403 or by email at: *info@TexasGrainIndemnity.org.* Comments must be received no later than 30 days from the date of publication of the proposal in the proposal in the *Texas Register.*

SUBCHAPTER B. BOARD MEMBERS

4 TAC §90.21

The amendments are proposed pursuant to §41.202 of the Agriculture Code, which provides the Board with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§90.21. Election of Officers.

Annually, the Board shall select a Chairman, Vice-Chairman, Secretary, and Treasurer among the Board members. Each officers shall be selected by a majority of Board members present at the time of the elections. Each person elected to serve as an officer shall serve in that particular office for no more than 2 years [~~1 year~~] consecutively.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600841
Jessica Escobar
Assistant General Counsel, Texas Department of Agriculture
Texas Grain Producer Indemnity Board
Earliest possible date of adoption: April 4, 2016
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER D. CLAIMS

4 TAC §90.43

The amendments are proposed pursuant to §41.202 of the Agriculture Code, which provides the Board with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§90.43. Award.

(a) For all claims that are approved by the Board, the Board will determine the amount of the indemnification award, based on the Board's current operating budget, and the numbers of claims that are filed with the Board based on the event of financial failure. The Board may award the claimant [~~up to~~] 85% of the value of the grain, less the value of the assessment submitted by the producer for that grain, delivered to the buyer but not paid for.

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600842
Jessica Escobar
Assistant General Counsel, Texas Department of Agriculture
Texas Grain Producer Indemnity Board
Earliest possible date of adoption: April 4, 2016
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 15. CORPORATE ACTIVITIES

SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

7 TAC §15.2, §15.3

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes

to amend §15.2, concerning filing and investigation fees, and §15.3, concerning expedited filings. The amended rules are proposed to conform to an amendment of 7 TAC §15.42(j), concerning relocation of bank branch offices.

Current rules provide that branch relocations within a one-mile radius may be filed with an expedited status, provided several conditions are met. The current fee for filing an application for a branch relocation is $2,000, or $1,000 if filed under expedited status. Under the proposed amendment to 7 TAC §15.42(j), filings for branch relocations within a one-mile radius would be effective immediately upon the banking commissioner's acknowledgement of receipt of the reduced filing fee of $200 and the form prescribed by the banking commissioner. The proposed amendment to §15.2 would reduce the filing fee from $2,000 to $200 for branch relocations within a one-mile radius. The proposed amendment to §15.3 would delete the provision concerning expedited filings for branch relocations of less than one mile.

Deputy Commissioner Robert L. Bacon, Texas Department of Banking, has determined that for the first five-year period the proposed amendments are in effect, there will be a minimal decrease in revenue from filing fees submitted as a result of enforcing or administering the rules. However, staff time to process the notices of these relocations will be reduced accordingly, and Mr. Bacon estimates that the lower fees will still be sufficient to recover the cost of staff time needed to process the notices. Mr. Bacon has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for local government.

Mr. Bacon also has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that banks will have greater clarity on the streamlined requirements for branch relocations.

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

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

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on April 4, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

The amendments are proposed under Finance Code, §32.203(b), which provides that the commission may adopt rules establishing standards for the approval of branch offices.

Finance Code, §203.001, is affected by the proposed amended sections.

§15.2. Filing and Investigation Fees.

(a) (No change.)

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

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

(8) $200 for a notice of branch relocation [~~$2,000 for an application to relocate a branch office~~] pursuant to §15.42(j) of this title[~~, or $1,000 if the application is eligible for expedited treatment pursuant to §15.3 of this title, provided that the department will not require a filing fee for an application for a branch office to be relocated in a low or moderate income area and where no other depository institution operates a branch or home office~~];

(9) - (23) (No change.)

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

§15.3. Expedited Filings.

(a) An eligible bank may file an expedited filing according to forms and instructions provided by the department solely for the following matters, together with the fee required by §15.2 of this title (relating to Filing and Investigation Fees):

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

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

(2) [~~(3)~~] home office relocations less than one mile with no abandonment of the community pursuant to the Finance Code, §32.202(c), and §15.41 of this title (relating to Written Notice or Application for Change of Home Office).

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600762
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1301

♦ ♦ ♦

SUBCHAPTER C. BANK OFFICES

7 TAC §15.42

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §15.42, concerning establishment and closing of a branch office. The amended rule is proposed to streamline and clarify the requirements concerning relocation of bank branch offices within a one-mile radius.

Under current rules, banks wishing to relocate a branch must file an application and receive approval by the banking commissioner, regardless of the distance of relocation. These requirements are inconsistent with and more burdensome than corresponding requirements imposed by federal banking regulators. In addition, the burdensomeness of the current requirements effectively encourages banks desiring to relocate a branch to circumvent the rules by opening a new branch and then closing the old branch soon after. These amendments provide that for relocations within a one-mile radius, only notice and a nominal filing fee are required. Banks seeking to relocate a branch outside a one-mile radius would follow the procedures for closing and opening a branch.

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

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that banks will be better able to serve their customers by more easily relocating branches within a one-mile radius.

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

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

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on April 4, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

The amendment is proposed under Finance Code, §32.203(b), which provides that the commission may adopt rules establishing standards for the approval of branch offices.

Finance Code, §203.001 is affected by the proposed amended section.

§15.42. Establishment and Closing of a Branch Office.

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

(f) Protest.

(1) A person may initiate a protest by submitting a written notice of intent to protest the application with the department within the time period allowed by subsection (d) of this section, accompanied by the filing fee required by §15.2 of this title (relating to Filing and Investigation Fees [~~and Cost Deposits~~]). If the protest is untimely, the filing fee will be returned to the protesting party. If the protest is timely, the department will notify the applicant of the protest and mail or deliver a complete copy of the non-confidential sections of the application to the protesting party on or before the 14th day after receipt of the protest or the application, whichever occurs later.

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

(g) - (i) (No change.)

(j) Branch relocation. A bank may relocate a branch within a one-mile radius by submitting a completed written notice on a form prescribed by the banking commissioner and tendering the required filing fee pursuant to §15.2 of this title. A bank may relocate the branch immediately after the banking commissioner notifies the bank in writing that the required fee has been paid and the notice is complete and accepted for filing. [~~With prior written approval of the banking commissioner, a bank may relocate an approved branch. The bank must file an application to relocate a branch accompanied by the required application fee pursuant to §15.2 of this title. The bank must publish notice pursuant to §15.5 of this title in the community of the current branch and of the proposed branch. With respect to relocating an interstate branch office maintained pursuant to Finance Code, §32.203 and §203.001(a), the applicant must provide information regarding applicable host state law and evidence of compliance with the law.~~]

(k) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600763
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1301

♦ ♦ ♦

CHAPTER 19. TRUST COMPANY LOANS AND INVESTMENTS

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to repeal §19.1 and §19.21, concerning Grandfathered Loans and Grandfathered Investments, respectively.

The provisions proposed for repeal concern loans, extensions of credit, and investments made by trust companies prior to September 1, 1997. The department is unaware of any loans, extensions of credit, or investments currently in force that would be governed by these provisions. Therefore, their repeal is recommended.

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

Mr. Bacon also has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repeal is greater clarity and elimination of obsolete rules.

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

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

To be considered, comments on the proposed repeal must be submitted no later than 5:00 p.m. on April 4, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

SUBCHAPTER A. LOANS

7 TAC §19.1

Repeal of 19.1 is proposed under Finance Code, §181.003, which provides the authority to adopt rules to implement and clarify the Texas Trust Company Act.

Finance Code §184.201 is affected by the proposed repealed section.

§19.1. Grandfathered Loans.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600764
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1301

♦ ♦ ♦

SUBCHAPTER B. INVESTMENTS

7 TAC §19.21

Repeal of 19.21 is proposed under Finance Code, §181.003, which provides the authority to adopt rules to implement and clarify the Texas Trust Company Act.

Finance Code §184.101 is affected by the proposed repealed section.

§19.21. Grandfathered Investments.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600765
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1301

♦ ♦ ♦

CHAPTER 21. TRUST COMPANY CORPORATE ACTIVITIES

SUBCHAPTER B. TRUST COMPANY CHARTERING AND POWERS

7 TAC §21.24

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes an amendment to §21.24, regarding exemptions for family trust companies.

Finance Code §182.011 and §182.012 were amended effective September 1, 2015, by Sections 5 and 6 of S.B. 875 (Acts 2015, 84th Leg., R.S., Ch. 250, §5 - §6), to materially revise the requirements for exemption as a family trust company. Effective September 1, 2015, the exemption is available to a trust company that serves only individuals related within the seventh degree to a shared common ancestor and their related interests, provided the trust company is wholly owned by family members, see Finance Code §182.011(a).

To implement this change in law, §21.24 was amended effective January 7, 2016, to specify the information that must be contained in an application for exemption as a family trust company, and to make other conforming changes, see the January 1, 2016, issue of the *Texas Register* (41 TexReg 110). However, revised language in §21.24(b)(2)(C), regarding the required inclusion and disclosure in an exempt trust company's certificate of formation of eligible family members, was drafted too broadly. As a result, the description of eligible clients could include individuals that are not eligible members of the family as defined by §21.24(a)(1). Section 21.24(b)(2)(C) is therefore proposed to be further amended to clarify that eligible family members must be descendants of the designated shared common ancestor.

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

Mr. Bacon also has determined that, for each year of the first five-year period the section as proposed will be in effect, the public benefit anticipated as a result of enforcing this section is the clarification of highly complex and recently amended statutory standards to aid the industry in compliance.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed, no adverse economic effect on small businesses or micro-businesses, and no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on April 4, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

The amendments are proposed pursuant to Finance Code §181.003, which grants the commission authority to adopt rules to implement and clarify applicable law, and Finance Code §182.011(e)(2) - (4), which grants the commission authority to adopt rules (1) specifying the provisions of Finance Code, Title 3, Subtitle F that are subject to an exemption request, (2) establishing procedures and requirements for obtaining, maintaining, or revoking an exemption, and (3) defining or further defining terms used in Finance Code §182.011.

Finance Code §182.011 and §182.012 are affected by the proposed amendments.

§21.24. Exemptions for Family Trust Companies.

(a) (No change.)

(b) Application for exemption.

(1) (No change.)

(2) The application must:

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

(C) include a copy of the trust company's certificate of formation containing, or a proposed amendment to the certificate of formation that would cause it to contain, the following statement in its purposes clause: "The sole purpose for which the trust company is organized is to act as a corporate fiduciary for accounts in which all beneficiaries are descendants of and related within the seventh degree

of affinity or consanguinity to _____ (name of common ancestor), and their related interests to the extent permitted by the Texas Finance Code or applicable rules and regulations."

(c) - (g) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600766
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1301

SUBCHAPTER D. TRUST COMPANY OFFICES

7 TAC §21.43, §21.44

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §21.43 and §21.44, concerning representative trust offices of out-of-state trust institutions. The new rules are proposed to implement and clarify the requirements of Finance Code §187.202.

Finance Code §187.201 and §187.202 purport to govern the establishment in this state of a representative trust office by an out-of-state trust institution. A representative trust office is a limited purpose office for servicing existing clients and soliciting new clients, and for other purposes specified in Finance Code §187.201. Pursuant to Finance Code §187.202, a trust institution must register such an office with the banking commissioner, who may then allow the office to be established or postpone the office until the banking commissioner approves the office in writing.

With respect to federally chartered banks, the full extent of such approval authority could prevent or significantly interfere with the bank's exercise of its federally granted power to act as a fiduciary, which could result in federal preemption of any infringing requirements, see 12 U.S.C. §25b and §1465. Further, because a state-chartered bank that is federally insured is subject to federal regulation as extensive as that applied to a federally chartered bank, requirements applicable to establishment of a representative trust office should be similar to those imposed on a federally chartered bank to avoid harming the viability of the state charter and to better support the dual banking system.

For these reasons, proposed §21.43 would establish a limited, non-discretionary registration regime applicable to a federally chartered or federally insured bank that wishes to establish a representative trust office in Texas. Based on a simplified registration that identifies the bank and its proposed office location, accompanied by copies of any notice or application filed with a home state regulator or federal regulatory agency and proof that the bank has registered to do business in Texas pursuant to Finance Code §201.102, the office may be established immediately after filing. A registration submitted under proposed §21.43 would not be subject to banking commissioner approval or disapproval.

With respect to a state-chartered trust company or bank that is not federally insured, the depth and breadth of regulatory supervision can vary greatly depending on the state of formation. With respect to these institutions, proposed §21.44 would fully implement Finance Code §187.202, enabling the banking commissioner to exercise judgment and discretion regarding whether such an out-of-state institution may establish a representative trust office in Texas.

A state-chartered trust company or uninsured bank that wishes to establish a representative trust office in Texas would be required to file a notice with the banking commissioner containing the information specified by proposed §21.44(a). Pursuant to proposed §21.44(b), the institution must also submit its written agreement to, among other provisions, maintain tangible equity capital in an amount that equals or exceeds the minimum amount of restricted capital required for a state trust company pursuant to Finance Code §182.008 while it has an office in Texas. (Tangible equity capital is equal to the total of owner's equity, surplus, and undivided profits reduced by the total of intangible assets, see proposed §21.44(a)(9).)

Proposed §21.44(c) would permit the institution to commence business at its proposed office on the 31st day after the date the banking commissioner receives the notice unless the banking commissioner specifies an earlier or later date, except that the banking commissioner would be able to extend the 30-day statutory period of review based on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the institution would not be able to open the proposed representative trust office unless the banking commissioner approves establishment of the office in writing. The banking commissioner may deny approval of the representative trust office if the banking commissioner finds that the institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interests.

Finally, both proposed §21.43(c) and proposed §21.44(d) would permit an institution that has lawfully established and is maintaining a representative trust office in Texas to establish additional representative trust offices in Texas without providing additional notice to the banking commissioner.

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

Mr. Bacon also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is the clarification of statutory requirements and decision criteria applicable to an out-of-state trust institution seeking to establish a representative trust office in this state.

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

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

To be considered, comments on the proposed new sections must be submitted no later than 5:00 p.m. on April 4, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

The new rules are proposed under Finance Code, §181.003(a)(1), which authorizes the commission to adopt rules that are necessary or reasonable to implement and clarify the Texas Trust Company Act, codified as Finance Code, Title 3, Subtitle F.

Finance Code, §187.202, is affected by the proposed new sections.

§21.43. Representative Trust Offices of Federally Chartered or Federally Insured Out-of-State Banks.

(a) A bank authorized by its charter to conduct a trust business that maintains its principal office or a branch in this state in accordance with governing law may freely establish one or more representative trust offices in this state to the extent authorized by its primary regulator and governing law, except that a foreign bank must comply with Finance Code §204.106 in lieu of this section.

(b) An out-of-state bank authorized by its charter to conduct a trust business that has not established or acquired a branch in this state may establish a representative trust office in this state:

(1) if not chartered by a federal banking regulatory agency and not insured by the Federal Deposit Insurance Corporation, only after complying with §21.44 of this title; or

(2) if chartered by a federal banking regulatory agency or insured by the Federal Deposit Insurance Corporation, after filing a written notice with the banking commissioner disclosing:

(A) the name of the institution and the address of its principal office;

(B) the physical address and the proposed opening date of the proposed office;

(C) a description of proposed activities at the office consistent with the limitations of Finance Code §187.201;

(D) copies of any regulatory notices, filings, or publications required by the trust institution's home state regulator and/or its primary federal regulator regarding the establishment of the office; and

(E) a copy of the institution's registration filed with the secretary of state pursuant to Finance Code §201.102.

(c) An out-of-state bank that has established and is maintaining a representative trust office in this state pursuant to subsection (b) of this section may establish additional representative trust offices in this state without providing notice to the banking commissioner.

§21.44. Representative Trust Offices of Out-of-State Trust Companies and Uninsured State Banks.

(a) Required notice. An out-of-state trust company or a state-chartered bank, the deposits of which are not insured by the Federal Deposit Insurance Corporation, may establish an initial representative trust office in this state after registration with the banking commissioner in accordance and in compliance with Finance Code §187.202 and this section, provided that the relevant home state regulator is a current party to regulatory information sharing and cooperation agreements with the banking commissioner that satisfy the requirements of Finance Code §181.303 and §187.301. At least 30 days before the proposed opening date of the proposed office, the institution must submit a written notice to the banking commissioner containing:

(1) the name of the institution and the address of its principal office;

(2) the physical address and the proposed opening date of the proposed office;

(3) a description of the proposed activities at the office consistent with the limitations of Finance Code §187.201;

(4) a copy of the institution's chartering document and evidence that the institution is active and in good standing;

(5) a copy of the resolution adopted by the board of the institution authorizing establishment of the proposed office;

(6) a copy of the institution's registration filed with the secretary of state pursuant to Finance Code §201.102;

(7) copies of any home state regulatory notices or filings required in connection with establishing the proposed office in this state;

(8) contact information for the institution's home state regulator;

(9) current financial statements evidencing tangible equity capital, defined as the total of owner's equity, surplus, and undivided profits reduced by the total of intangible assets, in an amount that equals or exceeds the minimum amount of restricted capital required for a state trust company pursuant to Finance Code §182.008; and

(10) the executed agreement required by subsection (b) of this section.

(b) Required agreement. The institution must submit its enforceable written agreement in the form provided by the banking commissioner, duly executed by an authorized officer of the institution, in which the institution agrees to:

(1) maintain tangible equity capital in an amount that equals or exceeds the minimum amount of restricted capital required for a state trust company pursuant to Finance Code §182.008, at all times during the period an office of the institution is maintained in this state;

(2) cooperate with and participate in examination at least once every 12 months at the discretion of the banking commissioner, and to pay the costs of each such examination as provided by §17.22 of this title (relating to Examination and Investigation Fees); and

(3) provide prompt written notice to the banking commissioner:

(A) pursuant to Finance Code §187.306, at least 30 days before the effective date of the event, or, in the case of an emergency transaction, a shorter period before the effective date consistent with applicable state or federal law, of:

(i) a merger or other transaction that would cause a change of control with respect to the institution and require an application to be filed with the home state regulator;

(ii) a transfer of all or substantially all of the trust accounts or trust assets of the institution to another person; or

(iii) the relocation, closing, or other disposition of an office of the institution in this state.

(B) not later than 30 days after the institution receives notice of the imposition of or a proposed enforcement action or condition by the institution's home state regulator.

(c) When the office may open. The institution may commence business at the representative trust office on the 31st day after the date

the banking commissioner receives the notice unless the banking commissioner specifies an earlier or later date.

(1) The 30-day period of review may be extended by the banking commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the institution may establish the representative trust office only on prior written approval by the banking commissioner.

(2) The banking commissioner may deny approval of the representative trust office if the banking commissioner finds that the institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interests.

(d) Additional offices. An out-of-state trust company or uninsured state-chartered bank that has established and is maintaining a representative trust office in this state pursuant to this section may establish additional representative trust offices in this state without providing notice to the banking commissioner.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600767
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1301

♦ ♦ ♦

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 51. CHARTER APPLICATIONS

7 TAC §§51.1 - 51.9, 51.13, 51.14

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§51.1 - 51.9, 51.13, and 51.14 in 7 Texas Administrative Code Chapter 51, concerning Charter Applications regarding savings and loan associations.

In general, the purpose of the proposal regarding these rules for chapter applications is to implement changes resulting from the commission's review of Chapter 51, under Texas Government Code §2001.039.

The proposed amendments include updates in terminology, improvements in application flexibility and efficiency, gender-neutralization of references to the Commissioner, and improvements in wording and grammar.

Section 51.1 addresses the application process for the incorporation of a savings and loan association. The proposed amendments to this section update terminology to match Business Organizations Code, generalize the format of information provided to the agency, make references to the Commissioner gender neutral, and provide a grammatical clarification.

Section 51.2 addresses the savings and loan charter application form and initial review process. The proposed amendments make references to the Commissioner gender neutral and clarify that the initial application investigation may take the form of an onsite review.

Section 51.3 addresses the hearing process for savings and loan charter applications. The proposed amendment clarifies that an application must be substantially complete before the deadline to set a hearing can be determined.

Section 51.4 addresses the publication of notice of a charter application. The proposed amendment removes the form prescribed in the rule and substitutes that the format must be acceptable to the Commissioner. The agency maintains templates for standard applications that are available to any party on request.

Section 51.5 addresses the notice to other associations of a savings and loan association. The proposed amendment clarifies the notice is permissible to parties outside the immediate geographic area, consistent with the agency's practice to provide notice statewide.

Section 51.6 addresses the proof of publication of a notice of a savings and loan charter application. The proposed amendment removes unnecessary words relating to another section of this title.

Section 51.7 addresses the holding of a hearing on a request of the proposed incorporators. The proposed amendment provides the Commissioner with discretion in this matter.

Section 51.8 addresses the purpose of a hearing on a savings and loan charter application and any post-hearing investigation. The proposed amendments make references to the Commissioner gender neutral.

Section 51.9 addresses the deadline for a decision on a savings and loan charter application. The proposed amendments make references to the Commissioner gender neutral.

Section 51.13 addresses savings and loan management qualifications. The proposed amendments improve grammar, flow, and gender neutrality.

Section 51.14 requires the Commissioner to provide notice of completion status to savings and loan charter applicants within 30 days of receipt of an application. The proposed amendment removes unnecessary words relating to another section of this title.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201,

Austin, Texas 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register.*

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also proposed under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the Finance Commission may adopt rules relating to associations' loans and investments. The amendments are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 61 - 89.

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

(a) When the Certificate of Formation [~~Articles of Incorporation~~] of a new association are presented to the savings and mortgage lending commissioner for [~~his~~] approval, such Certificate of Formations [~~Articles~~] shall be accompanied by an application which conforms to the statutory requirements provided in the Texas Savings and Loan Act, §62.001, and states the proposed location of the principal office of the new association and the identity and qualifications of the proposed managing officer. There shall also be submitted with the application a detailed description [~~facsimile~~] of each proposed loan instrument and such additional information as may be required by the proposed bylaws of the association together with such statements, exhibits, maps, plans, photographs, and other data, sufficiently detailed and comprehensive to enable the commissioner to pass upon matters set forth in the Texas Savings and Loan Act, §62.007. Such information must show that the proposed association will have and maintain independent quarters as considered appropriate by the commissioner with a ground floor location or its equivalent. The Certificate of Formation [~~Articles of Incorporation~~] and all statements of fact tendered to the commissioner shall be verified as required by the Texas Savings and Loan Act, §62.001.

(b) (No change.)

(c) No association with an approved charter shall open or do business as a savings and loan association until the commissioner certifies receipt of [~~that he has received~~] proof satisfactory to him or her that the above-required dollar amounts of capital stock and paid-in surplus, or the savings liability and expense fund, as applicable, have been received by the association in cash, free of encumbrance.

(d) No application to incorporate as an association for an acquisition or merger under the Texas Savings and Loan Act, §62.051, shall be approved unless the application and evidence produced at hearing satisfy the commissioner that the proposed association will be capitalized in an amount sufficient to accomplish the purposes for which incorporation is requested, which shall be an amount sufficient to insure that, after the proposed acquisition or merger, the resulting association will meet and continue to meet applicable minimum net worth requirements.

§51.2. Use of Approved Forms.

The commissioner shall furnish approved forms of application, and other information to aid in the filing of the application. After the application and its supporting data have been received by the commissioner, the commissioner [~~he~~] shall make or cause to be made an investigation or onsite review of the application. The application form is available from the [~~Texas~~] Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

§51.3. Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications.

Within 10 days after the filing of a proper application, the commissioner shall set a date for a hearing on the application, which date shall not be more than 90 days after the date the application is deemed substantially complete [~~filed~~]. If an application for charter is filed at least 10 days before the date set for hearing of a pending charter application, for a location which, in the opinion of the commissioner, is for the same community as the pending application, such applications may be heard in one hearing to be held upon the date set for the pending application. In such cases, the proposed incorporators named in any such subsequent application shall cause the first two paragraphs of the notice required by §51.4 of this title [~~(relating to Publication of Notice of Charter Application)~~] to be published at least five days before the date of such hearing, and shall file proof of such publication at the hearing. In addition, the commissioner shall mail notice of such joint hearing to the parties set out in §51.5 of this title [~~(relating to Notice to Associations)~~]. If any material change occurs in the facts set forth in, or if the applicant files any amendment of, the application filed with the commissioner under the provisions of this chapter, the amendment setting forth such change, together with copies of documents or other material relevant to such change shall be filed with the commissioner no less than 10 days prior to the date of hearing. Any amendment filed fewer than 10 days prior to the date of hearing shall be accepted only at the discretion of the hearing officer and the hearing officer may, upon motion of any interested party having filed notice of intention to appear at said hearing, postpone or delay the hearing to a later date if it appears that such amendment materially alters the application on file. Provided, however, no additional publication of the date of such hearing shall be required.

§51.4. Publication of Notice of Charter Application.

The proposed incorporators shall publish at least 20 days before the date of the hearing, in a newspaper printed in the English language of general circulation in the county where the proposed association will have its principal office, a notice in a format acceptable to the commissioner. [~~the following form:~~]
[~~Figure: 7 TAC §51.4~~]

§51.5. Notice to Associations.

The commissioner shall mail notice of such hearing to at least all state and federal savings and loan associations with offices in the county of the proposed location or in any adjoining or adjacent counties within a proximity that might be served or affected by the proposed association.

§51.6. Filing Proof of Publication.

At least 10 days before the hearing date the proposed incorporators shall file proof of publication in the manner provided in §51.4 of this title [~~(relating to Publication of Notice of Charter Application)~~] with the commissioner and if 10 days before the hearing date the commissioner has received no written statements of intention to appear in person or by attorney to protest the application from one or more parties, the hearing may be dispensed with by the commissioner. The commissioner shall notify the proposed incorporators at least five days before the date of the hearing in the event the hearing has been dispensed with.

§51.7. Hearing When Application Not Protested.

When requested by the proposed incorporators, a hearing may [~~shall~~] be held at the commissioner's discretion on the application even though [~~there are~~] no person has [~~persons who have~~] indicated a desire to be heard against it.

§51.8. Purpose of Hearing; Post-Hearing Investigation.

The purpose of the hearing shall be to accumulate a record of all pertinent information, testimony, records, reports, and other data in favor of

or opposed to the application upon which the commissioner shall make a [~~his~~] determination of whether the application should be granted or denied. The commissioner may, in his or her discretion, make an independent investigation of matters raised in the hearing and, in the event the commissioner [~~he~~] desires to base his or her decision on any evidence disclosed by such investigation which is not a part of the official record, the commissioner [~~he~~] shall make the results of such investigation a part of the official record of the hearing and permit all parties to the hearing an opportunity to be heard in respect thereto by reopening the hearing, if necessary. This shall be done within 30 days after the date of the original hearing.

§51.9. Time of Decision on Charter Applications.

The commissioner shall render a [~~his~~] decision within 60 calendar days after the date the hearing is finally closed if the hearing was held in accordance with §51.3 of this title [~~(relating to Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications)~~], or after the date on which the hearing is dispensed with, as the case may be. Provided, however, in cases of conflicting applications meeting the requirements of §62.008 of the Texas Savings and Loan Act, where one or more subsequent applications are filed before the first application is heard, the commissioner may delay his or her decision on all such competing applications until 60 days after the last such application has been heard.

§51.13. Qualifying Management.

In determining the question of "qualified full-time management" of a proposed or new association:

(1) a person shall be prima facie qualified if [~~he is~~] currently managing a savings and loan association in this state, or if at the date of filing an application [~~he~~] shall have had, next preceding such date, at least three consecutive years of practical experience in the executive management of a savings and loan association in this state; and

(2) a person shall be prima facie disqualified if they have [~~he has~~] less than three years active experience in real estate mortgage lending or has filed for bankruptcy; has [~~been a bankrupt or~~] made a voluntary assignment for benefit of creditors; [~~or~~] has been convicted of a felony; [~~or~~] defaulted on a fidelity bond; or has had a [~~his~~] license revoked under The Real Estate License Act, [~~or~~] The Securities Act, or the Insurance Code of this state.

§51.14. Notice to Applicants.

Within 30 days of receipt of an application for any form of authorization to be granted by the commissioner pursuant to this title, and for which a filing fee is charged pursuant to Chapter 63 of this title [~~(relating to Fees and Charges)~~], the commissioner shall issue a written notice to the applicant informing the applicant either that the application is complete and accepted for filing, or that the application is deficient and that specific additional information is required.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600773
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 53. ADDITIONAL OFFICES

7 TAC §§53.1 - 53.4, 53.8 - 53.10, 53.17, 53.18

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§53.1 - 53.4, 53.8 - 53.10, 53.17 and 53.18 in 7 Texas Administrative Code Chapter 53, concerning Additional Offices.

In general, the purpose of the proposal regarding these rules for additional offices is to implement changes resulting from the commission's review of Chapter 53, under Texas Government Code §2001.039.

The proposed amendments include corrections of wording, capitalization, and punctuation; efforts to enhance consistency between various application and hearing processes; gender neutralization of a reference to the Commissioner, the removal of a restriction on extensions of approved offices, and the addition and revision of language to provide enhanced clarity.

Section 53.1 addresses the establishment of additional offices of a savings and loan association. The proposed amendment corrects and provides word choice and provides a one-year deadline for the applicant to open an approved office.

Section 53.2 addresses the types of additional offices permitted for a savings and loan association. The proposed amendments correct word choice and capitalization.

Section 53.3 addresses branch applications for savings and loan associations. The proposed amendments provide clarification and correct word choice, and make the hearing process for such an application consistent with that prescribed for other types of applications.

Section 53.4 addresses the findings required for the Commissioner to approve a branch application for a savings and loan association. The proposed amendments make references to the commissioner gender neutral, provide clarifying words and phrases, correct capitalization and punctuation, and remove a restriction on extensions available for commencement of operations.

Section 53.8 addresses mobile facilities of savings and loan associations. The proposed amendments correct capitalization and punctuation.

Section 53.9 addresses the exemption from application requirements for a supervisory sale of savings and loan association offices or assets. The proposed amendments provide clarifying language and remove unnecessary words in reference to other sections of this title.

Section 53.10 addresses the conditions necessary for a sale of an office or assets to qualify as a supervisory sale from a savings and loan association. The proposed amendments revise existing language to provide enhanced clarity.

Section 53.17 addresses the temporary closing of additional offices. The proposed amendments revise existing language to provide enhanced clarity.

Section 53.18 addresses savings and loan association offices in other states or territories. The proposed amendments make the application and hearing processes for such offices consistent with those for domestic offices.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also proposed under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the Finance Commission may adopt rules relating to the associations' loans and investments. The amendments are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 61 - 89.

§53.1. Establishment and Operation of Additional Offices.

Except for those additional offices set forth in the alternative procedures established in §53.5 of this title [~~chapter~~], no association shall establish or maintain an office other than its home office without the prior written approval of the commissioner. An association's home office means the place where an association has its headquarters and from where all of its operations are directed. An authorized or approved office of an association means the place where the business of the association is conducted, and with the prior written consent of the commissioner may include facilities ancillary thereto for the extension of the association's services to the public. Any authorized or approved office of an association shall also mean, with the prior written consent of the commissioner, separate quarters or facilities to be used by the association for the purpose of performing service functions in the efficient conduct of its business. All offices of an association which are located outside the county of the domicile of its home office shall display a sign which is suitable to advise the public of the type of additional office which is located therein and the location of the home office of such association. An additional office approved by the commissioner under this chapter shall commence operation within a period of 12 months after the date of approval unless an extension is granted, in writing by the commissioner. However, no more than one 12-month extension may be approved by the commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the authority for such office shall be forfeited.

§53.2. Types of Additional Offices.

Subject to the provisions of §§53.1 - 53.5 of this title [~~chapter~~], the following types of additional offices may be established and maintained by a savings association:

(1) branch [~~Branch~~] offices at which the association may transact any business that could be done in the home office;

(2) loan [~~Loan~~] production offices (loan offices) at which the association, may transact business, as provided by §53.5(a) of this title [~~chapter~~], but at which no other business of the association is transacted;

(3) mobile [~~Mobile~~] facilities at which the association may transact any business of the association that could be done in the home office provided that a[~~. A~~] detailed record of the transactions at such facility shall be maintained;

(4) administrative [~~Administrative~~] offices at which the association may transact administrative functions of the association, as provided by §53.5(b) of this title [~~chapter~~], but at which no other business of the association is transacted - such offices[~~. Such office~~] may be located separate and apart from the location of any other facility of the association, but all [~~. All~~] original records of the association shall be present and maintained at all times at the home office of the association;

(5) courier/messenger [~~Courier/messenger~~] service to transport items relevant to the association's transactions with its customers, including courier services between financial institutions; and

(6) deposit [~~Deposit~~] production offices at which the association may transact business, as provided by §53.5(c) of this title [~~chapter~~], but at which no other business of the association is transacted.

§53.3. Content of Branch Office Application; Filing of Another Application; Notice; Publication; Hearing; Decision.

(a) Each application for permission to establish a branch office shall state the proposed location thereof; the location of other offices of the applicant and other associations within the community; the need for such a location [~~therefore~~]; the personnel and office facilities to be provided; the estimated annual volume of business, income, and expense of such office; and shall be accompanied by a proposed annual budget of the applying association. An association may file additional applications for [~~from~~] branch offices. Each application shall be processed in the same manner as required for any other branch application. The provisions applicable to new charter applications apply to branch office applications, including the provisions related to hearings, notice, and decisions rendered on the application. [~~Each application for a branch office shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as provided in this chapter for new charter applications, and the hearing may be dispensed with under the same conditions.~~]

(b) Upon request, the commissioner shall furnish sample [~~approved~~] forms for [~~of~~] the application and other information to aid in the filing of the application, to the extent permitted by law. After the application and its supporting data have been received by the commissioner, the commissioner [~~he~~] shall make or cause to be made an investigation of the application.

§53.4. Findings Necessary for Approval of Branch Office.

The commissioner may not approve an application for a branch office unless the commissioner finds, based on the information [~~he shall have affirmatively found from the data~~] furnished with the application, [~~the~~] evidence adduced at the hearing, and department [~~his official~~] records that:

(1) the [~~The~~] applying association has had no supervisory problems that [~~which~~] would affect its ability to properly operate the branch [~~such~~] office;[~~.~~]

(2) the [~~The~~] proposed operation will not unduly harm any other association operating in the same community as [~~of~~] the proposed branch;[~~.~~]

(3) a [~~A~~] separate enclosed office area will be provided (utilization of [~~such enclosure may be by~~] counters or railings of less than ceiling height is acceptable);[~~).~~]

(4) the [~~The~~] proposed branch office will have qualified full-time management;[~~.~~]

(5) there [~~There~~] is a public need for the proposed branch office and the volume of business in the community in which the proposed branch office will conduct its business is such that [~~as to indicate a~~] profitable operation is feasible [~~to the association~~] within a reasonable period of time;[~~.~~]

(6) the [~~The~~] facility will commence operation within a period of 12 months after the date of approval unless an extension is granted, in writing, by the commissioner; and[~~. No more than one 12-month extension will be approved by the commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the authority for such office shall be forfeited.~~]

(7) the [~~The~~] character, responsibility, and general fitness of the current directors and officers of the applicant are such that they [~~as to~~] command confidence and warrant belief that the branch office will be honestly and efficiently conducted in accordance with the intent and purpose of the Texas Savings and Loan [~~this~~] Act.

§53.8. Mobile Facility Application; Operation of Mobile Facility; Notice; Publication; Hearing.

In order to obtain permission to establish a mobile facility, the following procedures and conditions shall apply:[~~.~~]

(1) prior [~~Prior~~] to the establishment and operation of such facility, the association shall obtain approval of the commissioner for permission to do so;[~~.~~]

(2) such [~~Such~~] facility shall be operated only at locations approved by the commissioner, each of which shall at all times be appropriately identified at the site and on the facility, within 100 miles of the association's home office;[~~.~~]

(3) the [~~The~~] mobile facility shall be established and operated at two or more locations, each of which at the time of filing of the application shall be more than 10 miles from the locations of any home or branch office of any other savings and loan association;[~~.~~]

(4) any [~~Any~~] such facility shall be open for business at the same location on the same day or days of each week (established holidays excepted) but shall not be consecutive days, during such hours aggregating a total of not less than four hours a day as the association's board of directors may from time to time determine;[~~.~~]

(5) the [~~The~~] mobile equipment used in the establishment and operation of such facility shall not remain at the site except for business hours approved by the association. Further, each applicant shall show that adequate safeguards for the security protection of such mobile facility and its content will exist. The commissioner may require further safeguards if in his opinion the proposed safeguards be inadequate;[~~.~~]

(6) operation [~~Operation~~] of such facility shall not be conducted at any location after the expiration of such period of time as the commissioner shall prescribe which shall not exceed three years except with subsequent approval of the commissioner;[~~.~~]

(7) an [~~An~~] application for a mobile facility shall be filed with the commissioner in the same manner as required for a branch office with such supporting data that is pertinent to the application. Such application and supporting data shall be sworn to as prescribed in the Texas Savings and Loan Act, §62.001;[~~.~~]

(8) each [~~Each~~] application for a mobile facility shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as herein provided for new charter applications; and[~~.~~]

(9) an [~~An~~] application for permission to establish a mobile facility may not be approved unless the commissioner shall have affirmatively 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.

§53.9. Exemption for Supervisory Sale.

Whenever the commissioner designates the purchase of additional offices and/or assets by an association from another association to be a supervisory purchase, the sections relating to the contents of applications for additional offices and the findings necessary for approval, as provided by §§53.3 - 53.8 of this title, are [~~(relating to Additional Offices), shall~~] not [~~be~~] applicable to such purchases, and such purchase shall be effected pursuant to §53.10 of this title [~~(relating to Designation as Supervisory Sale)~~].

§53.10. Designation of Supervisory Sale.

The commissioner may designate a purchase of additional offices and/or assets by an association from another association to be a supervisory purchase when:

(1) the commissioner has placed the selling association under voluntary supervisory control or under conservatorship pursuant to Chapter 66 of the Finance Code; [~~the Texas Savings And Loan Act, Subchapter I, Article 852a; or~~];

(2) the commissioner has determined that the selling association is in an unsafe condition; or

(3) the primary federal regulator of the institution [~~Federal Home Loan Bank Board~~] has determined, and notified the commissioner, that one or more of the grounds specified in the Home Owner's Loan Act of 1933, for appointment of a conservator or receiver, exist with respect to the selling association, or the proposed transaction is necessary to prevent the failure or possible failure of the selling association. For purposes of this section, the term "unsafe condition" shall mean that the selling association is insolvent;[~~, or~~] is in imminent danger of insolvency; that the association has experienced[~~, or that there has been~~] a substantial dissipation of its assets or earnings due to any violation or violations of applicable law, rules, or regulations, or due to any unsafe or unsound condition to transact business in that there has been a substantial reduction of its net worth; [~~or~~] that the association and its directors and officers have violated any material condition of its charter or bylaws, the terms of any order issued by the commissioner or any agreement between the association and the commissioner; [~~or~~] that the association, its directors, or officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs of the association by the commissioner or other duly authorized personnel of the [~~Texas~~] Department of Savings and Mortgage Lending; or that the association is affected by any other conditions [~~affecting the association~~] which the commissioner and the board of directors of the association agree place the association in an unsafe condition.

§53.17. Temporary Closing of Additional Offices.

In the event an association closes any additional office of any type on a temporary basis, said office must be reopened within 12 months [~~or less~~]. In the event such office is not reopened within that timeframe, [~~the allotted 12-month period, such~~] authorization for that [~~the~~] office is [~~shall be~~] forfeited. Written notice of any temporary closing shall be furnished to the commissioner within 10 days of [~~such~~] closing, and no additional office shall be deemed to have reopened until the commissioner receives written notification of [~~such~~] reopening.

§53.18. Offices in Other States or Territories.

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, an association may establish branch offices and loan offices in any state or territory of the United States. Each application for permission to establish such a branch office, or loan office, shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state or territorial regulatory authority approving the office, or other evidence satisfactory to the commissioner that all state or territorial regulatory requirements have [~~had~~] been satisfied. An application under this section is subject to the same provisions and requirements as [~~Each such application shall be set for hearing, if applicable, notice given, hearing held, if applicable, and decision reached in the same manner and within the time provided in this chapter for similar~~] applications for domestic branch and loan offices, including provisions regarding timeframes, hearings, public notice and adjudication of the application [~~in this state~~]. The commissioner may not approve [~~such~~] an application unless the commissioner finds, based on the information [~~he shall have affirmatively found from the data~~] furnished with the application, [~~the~~] evidence adduced at the hearing, if applicable, and department [~~his official~~] records that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600775
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 57. CHANGE OF OFFICE LOCATION OR NAME

7 TAC §§57.1 - 57.4

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§57.1 - 57.4 in 7 Texas Administrative Code Chapter 57, concerning Change of Office Location or Name.

In general, the purpose of the proposal regarding these rules for change of office location or name is to implement changes resulting from the commission's review of Chapter 57, under Texas Government Code §2001.039.

The proposed amendments include clarifying language, gender neutralization of references to the Commissioner, and efforts to enhance consistency between various application and hearing processes.

Section 57.1 addresses changes of office locations for savings and loan associations. The proposed amendments provide clarifying revisions, make references to the Commissioner gender neutral, and provide a specific reference to applicable requirements in this title.

Section 57.2 addresses the hearing process applicable to office relocation for a savings and loan association. The proposed amendment makes the hearing process consistent with that applicable to other types of applications.

Section 57.3 addresses the changing of the name of a savings and loan association. The proposed amendments make references to the Commissioner gender neutral.

Section 57.4 addresses application forms relevant to this chapter. The proposed amendments improve and correct word choices.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also proposed under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the Finance Commission may adopt rules relating to the associations' loans and investments. The amendments are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 61 - 89.

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

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

(c) Each application [~~for such approval~~], or prior written notice provided to the commissioner under this section, [~~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 the terms thereof; estimates of the cost of removal to and maintenance of the new location; information regarding [~~whether~~] any affiliated parties [~~are~~] involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office, if applicable; evidence of the [~~association~~] board's approval of the relocation; and any other information as deemed necessary by the commissioner.

(d) (No change.)

(e) The commissioner may not approve an application to move or relocate any office of a savings association, unless the commissioner finds, based on the information [~~he shall have found from the data~~] furnished with the application, [~~the~~] evidence adduced at a [~~the~~] hearing, and information contained in department [~~his official~~] records and that

all requirements of 7 Texas Administrative Code §§53.4(1) - (7) have been met.[, all of the findings necessary for approval of a branch office.]

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

§57.2. Notice, Publication, Hearing.

An application under this section is subject to the provisions and requirements applicable to new charter applications regarding hearings and public notice. [to move an office location or for change of name 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.]

§57.3. Change of Name.

An association may not change its name without the prior approval of the commissioner, and an association may not operate under any name which has not been approved by the commissioner pursuant to this section. The commissioner may not approve an application by an association to change its name unless the commissioner finds, based on information [he shall have found from the data] furnished with the application, [the] evidence adduced at a [the] hearing, and information contained in department [his official] records that the proposed change of name meets the applicable requirements of the Texas Savings and Loan Act and this chapter, and does not violate other applicable law.

§57.4. Application Forms.

Upon request, the commissioner shall furnish sample [approved] forms for [of] the application for office relocation or application for change of name. Copies of the applications may be obtained from the [Texas] Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600776
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 59. FOREIGN BUILDING AND LOAN ASSOCIATION

7 TAC §59.1

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes the repeal of §59.1 in 7 Texas Administrative Code Chapter 59, concerning Foreign Building and Loan Associations.

In general, the purpose of the repeal of the rule regarding foreign building and loan associations is to implement changes resulting from the commission's review of Chapter 59, under Texas Government Code §2001.039.

If the proposed repeal of §59.1 is adopted, the entirety of Chapter 59 will cease to exist.

Section 59.1 was made unnecessary by federal law which facilitates interstate transactions.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the repealed rule is no longer in effect, there will be no fiscal implications for state government or for local government as a result of repealing the aforementioned rule(s).

Commissioner Jones also has determined that, for each year of the first five years the repealed rule as proposed is no longer in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals due to the repeal as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The repeal is proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The repeal is also proposed under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the Finance Commission may adopt rules relating to the associations' loans and investments. The repeal is also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 61 - 89.

§59.1. Foreign Building and Loan Associations.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600820
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 61. HEARINGS

7 TAC §61.1, §61.3

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §61.1 and §61.3 in 7 Texas Administrative Code Chapter 61, concerning Hearings.

In general, the purpose of the proposal regarding these rules for hearings is to implement changes resulting from the commission's review of Chapter 61, under Texas Government Code §2001.039.

The proposed amendments include the removal of unnecessary words and correction of the names of agencies and the title of the Texas Government Code.

Section 61.1 addresses the use of a hearings officer for savings and loan association matters. The proposed revision reduces and corrects references to the Texas Government Code and Finance Commission agencies.

Section 61.3 addresses the publication of a hearing notice relating to applications of savings and loan associations. The proposed amendments remove unnecessary words in reference to other sections of this title.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also proposed under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the Finance Commission may adopt rules relating to the associations' loans and investments. The amendments are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 61 - 89.

§61.1. Hearings Officer.

Chapter 11 [~~31 of the Texas Banking Act, Title 3, Subtitle A~~] of the Texas Finance Code, provides that the Finance Commission may employ a hearings [~~hearing~~] officer, who for purposes of Texas [~~Civil Statutes,~~] Government Code, §2003.021, is an employee of the [~~Texas~~] Department of Savings and Mortgage Lending, Texas Department of Banking and the Office of the Consumer Credit Commissioner. The Finance Commission hearing officer shall conduct hearings under the provisions of the Act.

§61.3. Publication of Hearing Notice.

The provisions of §51.4 of this title [~~(relating to Publication of Notice of Charter Application)~~] and §69.5 of this title [~~(relating to Publication)~~] of these rules provide specific requirements regarding the form, content and time for publication of notice of hearing. Notwithstanding these provisions, content of the publication notice may be modified with approval of the commissioner to facilitate joint publication of the notice with other regulatory agencies having jurisdiction in the matter, expedite the hearing process, or provide other information relevant to the hearing or arrangement and scheduling therefor.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600777
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 63. FEES AND CHARGES

7 TAC §§63.1 - 63.9, 63.11, 63.12, 63.15

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§63.1, 63.2, 63.3, 63.4, 63.5, 63.6, 63.7, 63.8, 63.9, 63.11, 63.12 and 63.15 in 7 Texas Administrative Code Chapter 63, concerning Fees and Charges.

In general, the purpose of the proposal regarding these rules for fees and charges is to implement changes resulting from the commission's review of Chapter 63, under Texas Government Code §2001.039.

The proposed amendments include improvements in word choice, two reductions in fees and one increase in fees, removal of unnecessary words, updates to covered corporate documents, clarification, gender neutralization of a reference to the Commissioner, and replacement of public information request fees with those prescribed by the Texas Attorney General.

Section 63.1 addresses the application fee for a savings and loan charter. The proposed amendment improves word choice.

Section 63.2 addresses the application fee for a savings and loan branch office. The proposed amendments reduce the fee and improve word choice.

Section 63.3 addresses the application fee for a savings and loan mobile facility. The proposed amendments remove unnecessary words in reference to another Chapter, and improve word choice.

Section 63.4 addresses the application fee for a savings and loan association name change. The proposed amendment improves word choice.

Section 63.5 addresses the fee for special examinations of savings and loan associations. The proposed amendment removes unnecessary words and improves word choice.

Section 63.6 addresses the application fee for amendments to corporate documents of savings and loan associations. The proposed amendment adds "certificate of formation" as such a document.

Section 63.7 addresses the application fee for a savings and loan association to issue a capital obligation. The proposed amendments increases the fee, remove unnecessary words in reference to another section of this title, and provide clarifying language.

Section 63.8 addresses the annual assessments of savings and loan associations. The proposed amendments improve word choice and remove unnecessary words.

Section 63.9 addresses the fees for a savings and loan association to reorganize, merge, or consolidate. The proposed amendments remove unnecessary words in reference to other sections of this title.

Section 63.11 addresses the application fee for a change of control of a savings and loan association. The proposed amendments remove unnecessary words in reference to another chapter within this title.

Section 63.12 addresses the application fees for subsidiaries of savings and loan associations. The proposed amendments reduce the initial fee.

Section 63.15 addresses the fees charged for public information requests. The proposed amendments remove unnecessary words in reference to the Texas Government Code and clarify that reference, replace listed fees with reference to those established and maintained by the Texas Attorney General, make a reference to the Commissioner gender neutral, and provide clarifying language relating to the confidentiality of certain documents.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also proposed under Texas Finance Code §§64.001 - 64.002 and 64.083, which provide that the Finance Commission may adopt rules relating to the associations' loans and investments. The amendments are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 61 - 89.

§63.1. Fee for Charter Application.

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

§63.2. Fee for Branch Office.

Applicants for branch offices under §53.3 of this title [~~(relating to Content of Branch Office Application; Filing of Another Application; Notice; Publication; Hearing; Decision)~~] shall pay a fee of $1,500 [~~$2,500~~]. This fee shall be paid at the time of filing and shall include the cost of filing and processing of the [~~said~~] application. In addition, the applicants shall pay the cost of a formal record and any cost incurred by the department in connection with the hearing, investigation and travel expenses.

§63.3. Fee for Mobile Facility.

Applicants for a mobile facility under Chapter 53 [~~(Additional Offices)~~] shall pay a fee of $500 plus $100 for each location. This fee shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of the [~~said~~] application. In addition, the applicants shall pay the cost of a formal record and any cost incurred by the department in connection with investigation and travel expenses.

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

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

§63.5. Fee for Special Examination or Audit.

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

§63.6. Fee for Corporate Document Amendments [~~Charter and Bylaw Amendments~~].

The commissioner shall collect a filing fee of $100 for each amendment to a charter, certificate of formation, or [~~to the~~] bylaws of an association.

§63.7. Fee for Permission To Issue Capital Obligations.

The commissioner shall collect a filing fee of $1,000 [~~$500~~] for each application by an association for permission to issue capital notes, debentures, bonds, or other capital obligations pursuant to §63.9 of this title [~~(relating to Fee for Reorganization, Merger, Acquisition, and Consolidation)~~] to cover the processing and investigation of such applications.

§63.8. Annual Fees to do Business.

All associations chartered under the laws of this [~~the~~] state and all foreign associations organized under the laws of another state of the United States holding a certificate of authority to do business in this state shall pay to the department [~~savings and mortgage lending commissioner~~] such annual fee or assessment and examination fees as are

set by the Finance Commission of Texas. Annual fees and assessments shall be established based upon the total assets of the association at the close of the calendar quarter immediately preceding the effective date of the fee or assessment.

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

(a) Any association seeking to reorganize, merge, and/or consolidate, pursuant to the Texas Savings and Loan Act, §62.351 or §62.051, and Chapter 69 of this title [~~(relating to Reorganization, Merger, and Consolidation)~~] shall pay to the commissioner, at time of filing its plan, a fee of $2,500 for each financial institution involved in a plan of reorganization, merger and/or consolidation. For each financial institution involved in a plan filed for a purchase and assumption acquisition, a fee of $2,000 shall be paid to the commissioner. No additional fee is required for an interim charter to facilitate a transaction under §§69.1 - 69.11 of this title [~~(relating to Reorganization, Merger, Consolidation, Acquisition, and Conversion)~~].

(b) The fee set forth in subsection (a) of this section shall cover the cost of filing, processing, and hearing, if applicable, with respect to the plan. In addition, such association shall pay the cost of a formal record, if applicable, any cost incurred by the department in connection with investigation and travel expenses, and the fees required pursuant to §63.6 of this title [~~(relating to Fee for Charter and Bylaw Amendments)~~].

§63.11. Fee for Change of Control.

The commissioner shall collect a filing fee of $10,000 for each change of control application filed pursuant to Chapter 71 of this title [~~(relating to Change of Control)~~] and $2,500 for rebuttal of control of an association or rebuttal of concerted action.

§63.12. Fee for Subsidiaries.

The commissioner shall collect a fee of $1,500 [~~$2,500~~] for each application by an association for permission to make an initial investment in a subsidiary corporation pursuant to Chapter 73 of this title [~~(relating to Subsidiary Corporations)~~] to cover the processing and investigation of such applications, and an additional fee of $100 for each office other than the home office of a subsidiary that is applied for. The commissioner shall collect a fee of $500 for service corporation application to engage in a new activity; $300 for redesignation of an operating subsidiary; and $100 for each application by an association to change the name of a subsidiary or the location of a subsidiary office.

§63.15. Fees for Public Information [~~Open Records~~] Requests.

(a) The fees for copies of records of the department which are subject to public examination pursuant to Chapter 552 of the Texas Government Code [~~the Texas Open Records Act~~] shall in accordance with Tex. Gov't Code §552.262, be those adopted by the rules of the attorney general as reflected in 1 Tex. Admin. Code Ch. 70. [~~as follows:~~]

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

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

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

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

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

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

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

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

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

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

(b) All requests will be treated equally. Charges may be waived at the commissioner's discretion. [~~The commissioner may waive charges at his discretion.~~]

(c) (No change.)

(d) Confidential documents will not be made available for examination or copying except under court order or as otherwise permitted or required by a rule adopted under this title or other applicable law [~~other directive~~].

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600778
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

7 TAC §63.10, §63.14

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes the repeal of §63.10 and §63.14 in 7 Texas Administrative Code Chapter 63, concerning Fees and Charges.

In general, the purpose of the repeal of the rules regarding fees and charges is to implement changes resulting from the commission's review of Chapter 63, under Texas Government Code §2001.039.

Section 63.10 addresses the fee for remote applications such as automated teller machines ("ATMs"). Such a fee is not charged to state savings banks and is therefore deemed unnecessary for savings and loan associations.

Section 63.14 addresses the fee for conversion into another institution. Such a fee is not charged to state savings banks and is therefore deemed unnecessary for savings and loan associations.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the repealed rules are no longer in effect, there will be no fiscal implications for state government or for local government as a result of repealing the aforementioned rule(s).

Commissioner Jones also has determined that, for each year of the first five years the repealed rules as proposed are no longer in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals due to the repeal as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The repeals are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The s are also proposed under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the Finance Commission may adopt rules relating to the associations' loans and investments. The repeals are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed repeals are contained in Texas Finance Code, Chapters 61 - 89.

§63.10. Fee for Remote Service Unit Applications.

§63.14. Fee for Conversion into Another Financial Institution.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600821
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

CHAPTER 64. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, RESERVES, NET WORTH, EXAMINATIONS, CONSUMER COMPLAINTS

7 TAC §§64.1, 64.3, 64.4, 64.6, 64.7, 64.9, 64.10

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§64.1, 64.3, 64.4, 64.6, 64.7, 64.9, and 64.10 in 7 Texas Administrative Code Chapter 64, concerning Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations and Consumer Complaints.

In general, the purpose of the proposal regarding these rules for books, records, accounting practices, financial statements, reserves, net worth, examinations and consumer complaints is to implement changes resulting from the commission's review of Chapter 64, under Texas Government Code §2001.039.

The proposed amendments include enhanced clarity of language, expansion of permissible record keeping processes, enhancement of financial audit requirements, enhancement to the consistency of accounting guidance, clarity of examination authority, and updated complaint processes.

Section 64.1 addresses the proper location of books and records of a savings and loan association. The proposed amendments improve word choice and punctuation, and expand on the permissibility of offsite electronic backups.

Section 64.3 permits the use of copies of savings and loan association records to substitute for destroyed physical documents. The proposed amendments improve phrasing and correct word choice, and expand the acceptable format of such copies to include electronic records.

Section 64.4 addresses annual financial reporting to the department. The proposed amendments remove distinctions of size and the requirement to submit an annual statement of condition, and instead require the submission of an annual independent audit consistent with predominant accounting and regulatory standards.

Section 64.6 addresses chargeoffs of and reserves against bad debts of savings and loan associations. The proposed amendment removes specific guidance and replaces it with a requirement to conform to Generally Accepted Accounting Principles (GAAP).

Section 64.7 addresses capital requirements for savings and loan associations. The proposed amendments clarify the interchangeable meaning of the terms "capital" and "net worth," and remove an unnecessary definition for "total liabilities," which is defined in existing and applicable accounting guidance.

Section 64.9 addresses examinations of savings and loan associations. The proposed amendments clarify that the Commissioner may designate personnel to examine an association, and add clarifying words.

Section 64.10 addresses the procedures a savings and loan association must follow to inform consumers of the appropriate means by which they may file a complaint against the association. The proposed amendments clarify the procedures and update the contact information for the Department.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of

Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register.*

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also proposed under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the Finance Commission may adopt rules relating to the associations' loans and investments. The amendments are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 61 - 89.

§64.1. Location of Books and Records.

Unless otherwise authorized by the commissioner, an association shall keep at its home office correct and complete books of account and minutes of the meeting of members and directors. Complete records of all business transacted at the home office shall be maintained at the home office. Records of business transacted at any branch or agency office may be kept at that [such] branch or agency office[,] provided that control records of all business transacted at any branch or agency office shall be kept at the home office. An association may keep duplicate electronic records offsite as a part of its business continuity planning if done in a manner that meets applicable regulatory requirements, including those provided by the Federal Deposit Insurance Corporation and the Federal Financial Institution Examination Council.

§64.3. Reproduction and Destruction of Records.

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

§64.4. Financial Statements; Annual Reports.

[(a) Before January 31 of each year, each association shall submit a statement of condition (balance sheet) as of the last business day of December of the preceding year to the commissioner, upon a form to be prescribed and furnished by the commissioner.]

[(b)] Within 90 days of its fiscal year end, each saving association [savings bank] shall, regardless asset size, submit an independent audit of its financial statements and all correspondence reasonably related to the audit [annual written report of its affairs and operations] to the commissioner. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of 12 CFR Part 363, with the exception of any matters specifically addressed by this section, the Act, or its related rules. [The report shall include a complete statement of its financial condition, including a balance sheet as of the last day of its fiscal year, and statements of income and expense, cash flows, and changes in its capital accounts for the 12 months ending on the last business day of its previous fiscal year. The report should be prepared on a comparative basis with the most recently completed prior fiscal year in accordance with generally accepted accounting principles including such notes to the financial statements as are necessary to make such statements not misleading. Every such report shall be signed by the president, and chief financial officer and sworn by them under oath to be complete and correct to the best of their knowledge and belief. Every association shall also make such other reports as the commissioner may from time to time require, which reports shall be in such form and filed on such dates as he may prescribe and shall, if required by him, be signed in the same manner as the annual report.]

§64.6. Charging Off or Setting Up Reserves Against Bad Debts.

The commissioner, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance with Generally Accepted Accounting Principles (GAAP) [set up by transfers from surplus or paid in capital].

§64.7. Capital Requirements.

(a) Definitions.

(1) Unless the context clearly indicates otherwise, when used in this chapter, "Capital" [Net worth, for purposes of these rules shall mean capital as noted herein. Capital] for an [a capital stock] association shall include (as applicable) the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the association's capital under generally accepted accounting principles) plus any retained earnings and additional paid-in capital [paid in surplus] as well as such other items as the commissioner may approve in writing for inclusion as capital.

(2) "Net Worth" for the purpose of this chapter may be used interchangeably with the term "Capital." [Capital for a mutual association shall include its pledged savings liability and expense fund plus any retained earnings and such other items as the commissioner may approve in writing for inclusion as capital.]

[(3) Total liabilities shall mean total savings liability of an association, plus all amounts an association owes or which are payable by it or which it may be obligated to pay for any reason, including unapplied mortgage credits, dealer participation reserves, dealer holdback reserves, all consignment items, and all other liabilities.]

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

§64.9. Examinations.

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

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

§64.10. Consumer Complaint Procedures.

(a) Definitions

(1) "Privacy notice" means any notice which a savings and loan association provides to consumers [gives] regarding the association's privacy practices [a consumer's right to privacy], regardless of whether it is required by a specific state or federal law to provide such notice or provided to consumers [given] voluntarily.

(2) (No change.)

(b) Notice of how to file complaints

(1) In order to let its consumers know how to file complaints, savings and loan associations must use the following notice: The (name of savings and loan association) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the [~~Texas~~] Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of savings and loan association) should contact the [~~Texas~~] Department of Savings and Mortgage Lending through one of the following means: in person or by U.S. Mail at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294; by telephone or fax at the appropriate number provided in the "Contact Us" section of the department's website at www.sml.texas.gov; or via electronic submission provided in the "Consumer Complaints" section of the department's website. [~~as instructed in the Consumer Complaints section of the department's website at www.sml.texas.gov.~~]

(2) A required notice must be included in each privacy notice provided to consumers [~~that a savings and loan association sends out~~].

(3) A savings and loan association must provide consumers with the required notice in compliance with paragraph (1) of this subsection [~~Regardless of~~] whether or not the [~~a~~] savings and loan association is required by any state or federal law to provide [~~give~~] privacy notices to its consumers.[~~, each savings and loan association must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.~~]

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

(A) In each area where a savings and loan association conducts business [~~on a face-to-face basis~~] with consumers in person, the required notice, in the form specified in paragraph (1) of this section [~~subsection~~], must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business at that location or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) At a minimum [~~For customers who are not given privacy notices~~], the savings and loan association must provide [~~give~~] the required notice when the customer relationship is established.

(C) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600780
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 65. LOANS AND INVESTMENTS

7 TAC §§65.1 - 65.20, 65.23

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§65.1 - 65.20, and 65.23 in 7 Texas Administrative Code Chapter 65, concerning Loans and Investments.

In general, the purpose of the proposal regarding these rules for loans and investments is to implement changes resulting from the commission's review of Chapter 65, under Texas Government Code §2001.039.

The proposed amendments include the removal of unnecessary words, clarifications of terms and phrases, edits to promote gender neutrality, and updates to make rules consistent with prevailing guidance and regulations applicable to other depository charters.

Section 65.1 addresses permissible lending and investment products for savings and loan associations. The proposed amendments eliminate unnecessary words in reference to other sections of this title.

Section 65.2 provides an exemption from future rule changes for loans, investments, and letters of credit entered into in compliance with current savings and loan association rules. The proposed amendment corrects one word.

Section 65.3 provides definitions for use in this Chapter. The proposed amendments update and clarify definitions and word choices, and make gender-specific references neutral.

Section 65.4 addresses a general limitation on loans made to One Borrower. The proposed amendment makes the limitation consistent with federal savings and loan associations by referring to the applicable federal statute.

Section 65.5 provides specific criteria applicable to residential real estate loans made by savings and loan associations. The proposed amendments update and clarify language without materially alter existing restrictions.

Section 65.6 provides specific criteria applicable to commercial real estate loans made by savings and loan associations. The proposed amendments update and clarify language without materially altering existing restrictions, and remove unnecessary words in reference to other sections of this title. An addition is proposed to permit home equity loans made in accordance with Chapter 153 without regard for additional restrictions imposed by this section.

Section 65.7 provides specific criteria applicable to unimproved real estate loans made by savings and loan associations. The proposed amendments clarify terms used and remove unnecessary words in reference to other sections of this title.

Section 65.8 provides specific criteria applicable to personal property loans made by savings and loan associations. The proposed amendments clarify terms used and a reference to another title, remove a specific limitation of loans to One Borrower, and remove unnecessary words in reference to another section of this title.

Section 65.9 provides specific criteria applicable to oil and gas loans made by savings and loan associations. The proposed amendments revise existing limitations based on more current information about the industry, clarify terms used, and remove unnecessary words in reference to another section of this title.

Section 65.10 provides specific criteria applicable to wrap-around real estate loans made by savings and loan associations. The proposed amendments revise language for clarity and remove unnecessary words in reference to another section of this title.

Section 65.11 addresses loans and transactions between savings and loan associations and officers, directors, affiliates, and employees. The proposed amendment replaces existing language with the requirements of federal regulations applicable to other depository charters through reference thereto.

Section 65.12 provides specific criteria applicable to unsecured loans made by savings and loan associations. The proposed amendments clarify terms used and remove unnecessary words in reference to another section of this title.

Section 65.13 provides specific criteria applicable to manufactured home loans made by savings and loan associations. The proposed amendments clarify terms and phrases, and replace dated appraisal requirements with those in effect for federally-supervised institutions.

Section 65.14 provides specific criteria applicable to home improvement loans made by savings and loan associations. The proposed amendments clarify terms, phrases, and references, remove unnecessary words in reference to another section of this title, and replace dated appraisal requirements with those in effect for federally-supervised institutions, repealing a then unnecessary paragraph.

Section 65.15 provides specific criteria applicable to acquisition, development, and construction loans made by savings and loan associations. The proposed amendments clarify terms used and remove unnecessary words in reference to another section of this title.

Section 65.16 provides specific criteria applicable to interim construction loans made by savings and loan associations. The proposed amendments clarify terms used and remove unnecessary words in reference to another section of this title.

Section 65.17 addresses loan policies and documentation. The proposed amendments clarify terms and references, remove dated federal agency names, and replace dated appraisal requirements with those in effect for federally-supervised institutions, repealing a then unnecessary paragraph.

Section 65.18 provides specific criteria applicable to letters of credit issued by savings and loan associations. The proposed amendments update references and clarify limitations on loans made to One Borrower.

Section 65.19 addresses investment made by savings and loan associations in real property. The proposed amendments clarify terms used.

Section 65.20 addresses investment made by savings and loan associations in deferred payment obligations. The proposed amendments clarify references to other titles.

Section 65.23 addresses restrictions on loan transactions with third parties. The proposed amendment makes a reference to the Commissioner gender neutral.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also proposed under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the Finance Commission may adopt rules relating to the associations' loans and investments. The amendments are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 61 - 89.

§65.1. Types of Loans, Letters of Credit, and Investments Authorized.

(a) (No change.)

(b) An association may make, commit to make, purchase, or commit to purchase the following types of loans or participations:

(1) residential real estate loans, in accordance with §65.5 of this title [~~(relating to Residential Real Estate Loans)~~];

(2) commercial real estate loans, in accordance with §65.6 of this title [~~(relating to Commercial Real Estate Loans)~~];

(3) unimproved real estate loans, in accordance with §65.7 of this title [~~(relating to Unimproved Real Estate Loans)~~];

(4) personal property loans, in accordance with §65.8 of this title [~~(relating to Personal Property Loans)~~];

(5) oil and gas loans, in accordance with §65.9 of this title [~~(relating to Oil and Gas Loans)~~];

(6) wrap-around real estate loans, in accordance with §65.10 of this title [~~(relating to Wrap-Around Real Estate Loans)~~];

(7) loans to officers, directors, affiliated persons, or employees of the association, in accordance with §65.11 of this title [~~(relating to Loans to Officers, Directors, Affiliated Persons and Employees)~~];

(8) unsecured loans, in accordance with §65.12 of this title [~~(relating to Unsecured Loans)~~];

(9) manufactured home loans, in accordance with §65.13 of this title [~~(relating to Manufactured Home Loans)~~];

(10) home improvement loans, in accordance with §65.14 of this title [~~(relating to Home Improvement Loans)~~];

(11) acquisition, development and construction loans, in accordance with §65.15 of this title [~~(relating to Acquisition, Development, and Construction Loans)~~]; and

(12) interim construction loans, in accordance with §65.16 of this title [~~(relating to Interim Construction Loans)~~];

(13) without regard to any loan limitations or restrictions otherwise imposed by this chapter other than §65.17 of this title [~~(relating to Loan Documentation)~~], any loan, secured or unsecured, which is insured or guaranteed in any manner and in any amount by the United States or any instrumentality thereof;

(14) - (15) (No change.)

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

(g) An association may issue and honor letters of credit in accordance with §65.18 of this title [~~(relating to Letters of Credit)~~].

(h) An association may purchase the following types of investments:

(1) (No change.)

(2) interests in real property, in accordance with §65.19 of this title [~~(relating to Investments in Real Property)~~];

(3) interests in deferred payment obligations, in accordance with §65.20 of this title [~~(relating to Investments in Deferred Payment Obligations)~~]; and

(4) interests in securities, in accordance with §65.21 of this title [~~(relating to Investments in Securities)~~].

(i) (No change.)

§65.2. Loans and Investments Made under Prior Rules and Purchases of Such Loans or Participations Therein.

(a) Any loan, investment, or letter of credit, or legally binding commitment thereof [~~therefor~~], made by an association in compliance with the rules then in effect shall not be affected by any subsequent rule or rule amendment during the original term thereof, nor shall any rule or rule amendment enacted subsequent to the date of any loan made in compliance with the rules then in effect apply to any renewal, extension, or rearrangement of such loan, if:

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

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

§65.3. Definitions.

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

(1) Acquisition, development, and construction loans (ADC loans)--Loans that [~~Either loans to~~] finance the acquisition of unimproved land and its development [~~the development of such land~~] by the installation of utilities, streets, and other similar infrastructure [~~such other amenities~~] necessary for commercial or residential development; [~~so that structures which would qualify the land as commercial or residential real estate may be built thereon~~] or loans to finance not only the acquisition and development of land but also the building of residential or commercial structures thereon. This term does not include any funds advanced in a transaction which is properly classifiable as an investment under generally accepted accounting principles.

(2) Affiliated person--A director, officer, or controlling person of an association; a spouse of a director, officer, or controlling person of an association; a member of the immediate family of a director, officer, or controlling person of such association; any corporation or organization (other than the association or a subsidiary of the association) of which a director, officer, or controlling person of such association is chief executive officer, chief financial officer, or a person performing similar functions, is a general partner, is a limited partner who, directly or indirectly either alone or with their [~~his~~] spouse and the members of their [~~his~~] immediate family, owns an interest of 10% or more in the partnership (based on the value of their [~~his~~] contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such association and their spouses and their immediate family members, owns an interest of 25% or more in the partnership; or directly or indirectly either alone or with their [~~his~~] spouse and the members of their [~~his~~] immediate family, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such association, and their spouses and their immediate family members, 25% or more of any class of equity securities; any trust or other estate in which a director, officer, or controlling person of such association or a member of their [~~his~~] immediate family has such association or a member of their [~~his~~] immediate family has a substantial beneficial interest or as to which such person or their [~~his~~] spouse serves as trustee or in a similar fiduciary capacity; a holding company affiliate; and any officer, director, or controlling person of a holding company affiliate.

(3) Break-even [~~Break even~~] income--Any excess of gross income generated by the security property over operating expenses incurred (including, but not limited to, debt service but excluding depreciation), determined on an accrual basis, in accordance with generally accepted accounting principles, for any six consecutive months after execution of the loan. Debt service shall be calculated on the basis of the interest rate contracted for in the loan, whether paid or accrued, whichever is higher.

(4) Commercial real estate--Land improved by [~~on which~~] structures primarily used for commercial purposes [~~or improvements which do not qualify the property as residential real estate are located~~].

(5) Controlling person--Any person or entity which, either directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote, or holds proxies representing 25% or more of the voting shares or rights of an association; or controls in any manner the election or appointment of a majority of the directors of an association. A director of an insured institution will not deemed to be a controlling person of such institution based upon their [~~his~~] voting, or acting in concert with other directors in voting, proxies obtained in connection with an annual solicitation of proxies or obtained from savings account holders and borrowers if such proxies are voted as directed by a majority vote of the entire board of directors, an association, or of a committee of such directors if such committee's composition and authority are controlled by a majority vote of the entire board and if its authority is revocable by such a majority.

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

(9) Immediate family--The spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home [~~Whether by the full or half blood or by adoption, such person's spouse, father, mother, children, brothers, sisters, and grandchildren; the father, mother, brothers, and sisters of such person's spouse; and the spouse of a child, brother, or sister of such person~~].

(10) Interim construction loans--Loans made to finance the construction or improvement of [~~or the building of~~] residential or commercial structures on developed building sites, and may include the acquisition of such developed building sites. This term does not include home improvement loans allowed under §65.14 of this title [~~(relating to Home Improvement Loans)~~].

(11) Loans--For purposes of limitations on loans to One Borrower [~~one borrower~~], the total amounts of funds advanced under a loan agreement or commitment plus any interest due and unpaid, less repayments. The term also includes credit extended in the form of finance leases; potential liabilities under standby letters of credit, lines of credit, and guarantee or suretyship obligations, except to the extent the

institution has recourse to cash or a segregated deposit account of its customer to indemnify it against such liabilities; undisbursed loan proceeds, unless the loan is subject to an overline purchase commitment of another financial institution; investments in commercial paper and corporate debt obligations; funds which the association is unconditionally committed to advance in the future under any type of commitment; and the amount of funds advanced on a wrap-around loan, plus the unpaid balances of any prior liens the association is allowed to pay under the loan agreement. The term does not include a loan or participation interest the association has sold without recourse, a loan secured by a first lien on real estate subject to an annual contributions contract under former §23 of the United States Housing Act of 1937, a loan on the security of the institution's deposit accounts, or a deposit or a loan of unsecured day(s) funds (i.e., federal funds or similar unsecured loans) with a commercial bank or a savings association.

(12) Manufactured home--A structure, transportable in one or more sections which, when configured for travel, measures[, which in the traveling mode is] eight body feet or more in width or forty body feet or more in length, or when erected on site, measures [is] three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to [the] required utilities, and includes the plumbing, heating, air conditioning, and electrical systems of such structure.

(13) (No change.)

(14) Officer--The president, any vice president (but not an assistant vice president, second vice president, or other vice president having authority similar to an assistant or second vice president) the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any organization, whether incorporated or unincorporated. The term "officer" shall also mean the chairman of the board of directors if the association's certificate of formation [article of incorporation] or bylaws authorize the chairman to participate in the operating management of the association or [if] the chairman actually [in fact] participates in such management.

(15) One Borrower [One-borrower]--Any person or entity that is, or that upon the making of a loan will become, obligor on a loan or guarantor of a loan; nominees of such obligor; all persons, trusts, syndicates, partnerships, and corporations of which such obligor is a nominee, a beneficiary, a member, a general partner, a limited partner owning an interest of 10% or more (based on the value of their [his] contribution), or a record or beneficial stockholder owning 10% or more of the capital stock; and if such obligor is a trust, syndicate, partnership, or corporation, all trusts, syndicates, partnerships, and corporations of which any beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock of such obligor. In the case of a loan that has been assumed by a third party with the consent of the lending institution, the former debtor shall not be deemed an obligor.

(16) Personal property--Tangible and intangible property which is not real property, including the following items as defined in the [Texas] Business and Commerce Code: consumer goods, equipment, farm products, inventory, accounts, instruments, chattel paper, documents, general intangibles, cash proceeds, and non-cash proceeds.

(17) Recourse--For the purposes of §§65.6, 65.7, 65.15, and 65.16 of this title, [(relating to Commercial Real Estate Loans; Unimproved Real Estate Loans; Acquisition, Development, and Construction Loans; and Interim Construction Loans)] a contract by a borrower or guarantor to repay at least 25% of the principal balance outstanding from time to time, together with 100% of all interest accrued on the loan and all expenses and costs incurred in connection with the loan. For all other sections, a contract by a borrower or guarantor to repay 100% of all amounts due and owing under the loan.

(18) Residential real estate--Land improved by [on which] a house, a home, or an apartment house [is located].

(19) Subsidiary--A subsidiary of an association shall have the meaning prescribed in §73.1 of this title [(relating to Subsidiary Corporations)].

(20) (No change.)

(21) Wrap-around real estate loan--A financing arrangement [device] whereby a junior mortgage lien secures a liability consisting of the amount of senior debt, plus any additional funds advanced to the borrower.

§65.4. Limitations on Aggregate Loans to One Borrower.

No association shall make a loan or loans pursuant to this chapter to any One Borrower [one borrower] which is greater than a savings association is permitted under Section 5(u) of the Home Owners' Loan Act (12 U.S.C. 1464(u)).[, in the aggregate, exceed $75,000, or the association's net worth as defined in Chapter 64 of this title (relating to Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth), whichever is greater.] More restrictive limitations on loans to One Borrower [one borrower] may apply to specific types of loans under other sections of this chapter.

§65.5. Residential Real Estate Loans.

(a) An association may make real estate purchase money loans, make other loans [loans or purchase participations in loans] secured by a first [and prior] lien on residential real estate, or participate in loans secured by a first lien on residential real estate, provided that the amount of any such loan (including purchase money loans) or participation does not exceed [in the maximum amount of] 90% of the appraised value of the underlying collateral, or 95% of appraised value if the underlying collateral is the borrowers principal residence. [security property, (unless the security property is designated as the borrower's principal residence, in which case the loan may be in the amount of 95% of the appraised value of the security property) or if the loan is for the purchase of the property, the purchase price plus the cost of any improvements included in the subject loan if less than 90% of the appraised value (or 95% of the appraised value if the security property is designated as the borrower's principal residence), on the terms set out in this section.]

(b) An association may make loans or purchase participations in loans secured by a second lien on residential real estate, in the same amount as if the loan were secured by a first lien, less the unpaid balance of the first lien indebtedness and any authorized future advances thereon, on the terms set out in this section. Unless the association holds the prior lien, the second lien shall not be inferior to any open-ended [open ended] future advances under the first lien agreement to which the security interest in the collateral [security property] is subject, other than disbursements authorized under the Texas Savings and Loan Act, §64.061.

(c) (No change.)

(d) Residential real estate loans may provide for variable interest rates, under the following conditions [so long as the following provisions are met]:

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

(3) the unpaid principal balance of the loan, where all or a portion of the interest component of the periodic payments has been

added to principal during the loan term, shall not exceed 125% of the original appraised value of the collateral [security], except where the commissioner has given specific prior written approval of a particular loan plan under which a larger amount of negative amortization occurs or may occur.

(e) Monthly repayment of principal and interest is not required under the following circumstances:

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

(3) when the loan is on a home and provides for graduated monthly payments during a period not to exceed the first 10 years of the loan, provided the 40 year repayment provision of subsection (c) of this section is met, and provided:

(A) (No change.)

(B) monthly payments for years six through nine [six-nine] of the loan term are in an amount sufficient to pay all items stated in subparagraph (A) of this paragraph for the payment period, together with a principal payment sufficient to amortize the entire principal balance of the loan within a period not to exceed 50 years; and

(C) (No change.)

(f) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title [(relating to Loan Documentation)].

(g) Notwithstanding any provision of this chapter to the contrary, an association may make purchase money loans to facilitate the sale [by it] of real property acquired by the association through foreclosure in the amount of 100% of the purchase price, plus the cost of any improvements included in the subject loan, if made in compliance [which loans shall be secured by the real property sold, shall be in accordance] with all [otherwise] applicable lending rules and regulations, and the transaction is [shall be] documented in accordance with the applicable requirements of this chapter.

§65.6. Commercial Real Estate Loans.

(a) An association may make purchase money loans on commercial property, or may make other loans or participate [purchase participations] in loans secured by a first [and prior] lien on commercial real estate, in an amount not to exceed the lesser [the maximum amount] of 90% of the appraised value of the underlying collateral, or 90% of [security property or if the loan is for the purchase of the property,] the purchase price on a purchase money loan[, if less than 90% of the appraised value, on the terms set out in this section].

(b) An association may make loans or purchase participations in loans secured by a second lien on commercial real estate, in the same amount as if the loan were secured by a first lien, less the unpaid balance of the first lien indebtedness and any authorized future advances thereon, on the terms set out in this section. Unless the association holds the prior lien, the second lien shall not be inferior to any open-ended [open ended] future advances under the first lien agreement to which the security interest in the collateral [property] is subject, other than disbursements authorized under the Texas Savings and Loan Act, §64.061.

(c) All commercial real estate loans shall be repayable in the same manner provided for residential real estate loans in §65.5 of this title [(relating to Residential Real Estate Loans)], except that, provided the repayment period does not exceed 30 years, the loan may provide for graduated monthly payments only during a period not to exceed the first five years of the loan, if the payments are in an amount sufficient to pay all interest due on the loan and all pro-rated taxes, insurance and governmental charges assessable for the payment period; and any payments in excess of such amounts are [shall be] credited to prepaid interest, principal, or escrow for taxes and insurance, at the borrower's option.

(d) A loan made under this section may include amounts to pay interest on the loan, and other fees, if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and included in the loan file explaining the reasons relied upon by the association for including such amounts in the loan. In no event shall a loan include amounts to pay interest or fees, unless the association has recourse and the total amount of the loan, including any amounts to pay interest and fees, does not exceed 90% of the appraised value of the security property. Notwithstanding any recourse requirement, an association may elect to release the borrower or guarantor from liability, if the association determines that the underlying collateral [security property] has generated break-even [break even] income. Any amount of the loan that represents interest shall not be disbursed until such interest is due.

(e) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) [of this title (relating to Loan Documentation)].

(f) An association may make home equity loans in accordance with 7 Texas Administrative Code Chapter 153 without regard for additional restrictions that would otherwise be imposed by this section.

§65.7. Unimproved Real Estate Loans.

(a) An association may make loans or purchase participations in loans secured by a first [and prior] lien on unimproved real estate, in the amount of 90% of the appraised value of the underlying collateral [security property], or if the loan is for the purchase of the property, the purchase price, if less than the appraised value, on the terms set out in this section.

(b) An association may make loans or purchase participations in loans secured by a second lien on unimproved real estate, in the same amount as if the loan were secured by a first lien, less the unpaid balance of the first lien indebtedness and any authorized future advances thereon, on the terms set out in this section. Unless the association holds the first [prior] lien, the second lien shall not be inferior to any open ended future advances under the first lien agreement to which the underlying collateral [security property] is subject, other than disbursements under the Texas Savings and Loan Act, §64.061.

(c) Any such loan must be repayable in the same manner provided for residential real estate loans in §65.5 of this title [(relating to Residential Real Estate Loans)], except §65.5(e)(3).

(d) A loan made under this section may include amounts to pay interest on the loan, and other fees, if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and included in the loan file explaining the reasons relied upon by the association for including such amounts in the loan. In no event shall a loan include amounts to pay interest or fees, unless the association, has recourse and the total amount of the loan, including any amounts to pay interest and fees, does not exceed 90% of the appraised value of the underlying collateral [security property]. Any amount of the loan that represents interest shall not be disbursed until such interest is due.

(e) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title [(relating to Loan Documentation)].

§65.8. Personal Property Loans.

(a) An association may make loans or purchase participations in loans secured by perfected first lien security interests in personal property as provided in the Texas Business and Commerce Code, in

the maximum amount of 95% of the appraised or market value of the underlying collateral [~~security property~~], or if the loan is for the purchase of the property, the purchase price if less than 95% of the appraised or market value. The loan must be on the terms set out in this section.

[~~(b) The aggregate amount of any such loans to one borrower shall not exceed $100,000 or 15% of the association's net worth, whichever is greater.~~]

(b) [~~(c)~~] Any such loan in an amount less than $15,000 must mature and become payable within 60 months from the date the loan is made, and interest must be payable at least semi-annually. Any such loan in an amount of $15,000 to $30,000 must mature and become payable within 120 months from the date the loan is made, and interest must be payable at least semi-annually and principal payable at least annually in an amount sufficient to fully amortize the loan. Any such loan in an amount over $30,000 must mature and become payable within 180 months from the date the loan is made, and interest must be payable at least semi-annually and principal payable at least annually in an amount sufficient to fully amortize the loan.

(c) [~~(d)~~] A loan made under this section may include add-on interest as authorized by the Texas Credit Title [~~Code, Title~~ 4] of the Finance Code.

(d) [~~(e)~~] Except for add-on interest, a loan made under this section may include amounts to pay interest on the loan, and other fees, only if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons and justifications the association relied upon to include such amounts in the loan. However, the loan shall not include amounts to pay interest on the loan, unless the association has full recourse against the borrower for repayment of the loan and the amount of the loan does not exceed 80% of the appraised value of the underlying collateral [~~security property~~]. Any amount of the loan which represents interest shall not be disbursed until earned.

(e) [~~(f)~~] The association shall monitor the security property to insure that the unpaid balance of the loan does not exceed value of the property during the term of the loan.

(f) [~~(g)~~] Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a)(1) - (8),(12), and (13) of this title [~~(relating to Loan Documentation)~~]. If other property (for example, residential or commercial real estate) is provided as additional security for the loan, the loan is not required to meet the requirements of this chapter for loans secured by such property, so long as all requirements of this section are met.

§65.9. Oil and Gas Loans.

(a) An association may make loans or purchase participations in loans secured by a first [~~and prior~~] lien on proven reserves of oil and gas and other minerals in place and before they have been extracted from the ground, in an amount not to exceed 75% [~~90%~~] of the value of the proven reserves which act as security, as reasonably estimated by competent reserve evaluation specialists; or on producing oil and gas properties and an assignment of the proceeds of the sale of the portion of the total production attributable to the interest securing the loan, but no such loan shall exceed three times the annualized net revenue accruing to the interest securing the loan at the time the loan is made.

(b) The aggregate amount of any such loans to One Borrower [~~one borrower~~] shall not exceed [~~$100,000 or~~] 10% of the association's net worth[~~, whichever is greater~~].

(c) (No change.)

(d) A loan made under this section may include amounts to pay interest on the loan, and other fees, if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons and justifications the association relied upon to include such amounts to pay interest on the loan, unless the association has full recourse against the borrower for repayment of the loan and the total amount of the loan including any amounts to pay interest and fees, does not exceed 75% [~~80%~~] of the appraised value of the underlying collateral [~~security property~~]. Any amount of the loan which represents interest shall not be disbursed until earned.

(e) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title [~~(relating to Loan Documentation)~~].

(f) No other provision of this chapter other than §65.1(a) of this title [~~(relating to Types of Loans, Letters of Credit, and Investments Authorized)~~] or §65.12 of this title [~~(relating to Unsecured Loans)~~] shall be utilized to make loans or purchase participations in loans secured by oil and gas and other minerals before they have been extracted from the ground.

§65.10. Wrap-around Real Estate Loans.

An association may make loans or purchase participations in wrap-around real estate loans provided that:

(1) the loan is secured by a lien on real estate which is encumbered by [~~on which there exist~~] prior liens;

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

(4) prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title [~~(relating to Loan Documentation)~~]. Further, the loan file shall contain complete documentation of the date, amount, interest rate, terms, maturity and unpaid balance of all prior liens on the security property together with estoppel letters or certificates from prior lienholders which obligate such prior lienholders to give the wrap-around lender notice of any default on the prior indebtedness and an opportunity to cure any such default. The unpaid balance of all such prior liens shall be included when aggregating loans to One Borrower subject to the [~~computing loan-to-one-borrower~~] limitations of this chapter.

§65.11. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.

All transactions, including loans, involving officers, directors, affiliated persons, controlling persons or employees shall be limited and governed by the provisions of Federal Reserve Board Regulations O and W, which sections are hereby incorporated by reference. Such provisions shall be enforced by the department.

[~~(a) Neither an association nor any subsidiary of an association may make or purchase any loan to any affiliated person, or to any employee of the association or any subsidiary of the association, except as follows:~~]

[~~(1) loans fully secured by the principal residence of the affiliated person or employee;~~]

[~~(2) loans fully secured by savings accounts maintained by the affiliated person or the employee at the association;~~]

[~~(3) home improvement loans for the borrower's principal residence;~~]

[~~(4) loans in connection with overdraft protection and extensions of consumer credit in connection with credit cards as authorized by §67.16 of this title (relating to Overdraft Protection--Credit and Debit Cards); and~~]

[~~(5) personal property loans to finance the purchase of consumer goods.~~]

[~~(b) All loans made or purchased pursuant to subsection (a) of this section must comply with the following terms.~~]

[~~(1) Prior to funding, the loan must be approved by a resolution duly adopted, at a duly constituted meeting, and after full disclosure, by a majority of the entire board of directors of the association, with no director having an interest in the transaction voting. Full disclosure shall include all terms and conditions of the loan and all facts and circumstances reasonably pertinent thereto.~~]

[~~(2) The loan shall be at an interest rate not less than the association's current cost of funds (except that in the case of a loan secured by a savings account, the interest rate shall be at least 1.0% above the rate of return on the savings account), and shall be on terms no more favorable to the borrower than if the borrower were not an affiliated person or employee of the association, and shall not exceed the loan amount which would be available to members of the general public of similar credit status applying for a similar type of loan.~~]

[~~(3) With respect to any loan authorized by this section made to a salaried officer or employee of the association or a subsidiary of the association, the approval requirement of subsection (b)(1) of this section shall be satisfied if the loan conforms with a blanket preapproval resolution of the board of directors specifying the terms on which loans may be made to all officers or employees, or a class of such officers or employees, and the loan documents set forth the association's current cost of funds. An institution may not use a blanket preapproval resolution to make loans authorized by this section to a single officer or employee in excess of $50,000 in the aggregate.~~]

[~~(c) Prior to funding a loan under this section, an association shall comply with the loan documentation requirements of this chapter as applicable to the type of loan in question.~~]

[~~(d) All loans shall fully comply with the applicable provisions of this chapter.~~]

[~~(e) Neither an association nor any subsidiary of an association shall engage in any transaction with any affiliated person involving the purchase, sale, or lease of property or assets, without the prior written approval of the commissioner.~~]

§65.12. Unsecured Loans.

(a) An association may make unsecured loans or participate [~~purchase participations~~] in unsecured loans, provided that the aggregate amount of such unsecured loans to One Borrower [~~one borrower~~] shall not exceed $50,000 or 10% of the association's net worth, whichever is greater.

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

(e) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(b) of this title [~~(relating to Loan Documentation)~~].

(f) (No change.)

§65.13. Manufactured Home Loans.

(a) An association may make or participate [~~purchase participations~~] in loans secured by perfected first lien security interests in manufactured homes, in the maximum amount of 90% of the appraised or market value of the underlying collateral [~~security property~~], or if the loan is for the purchase of the property, the purchase price, if less than 90% of the appraised or market value, on the terms set out in this section.

(b) The aggregate amount of any such loans to One Borrower [~~one borrower~~] shall not exceed $75,000 or 10% of the association's net worth, whichever is greater. This limitation does not apply to manufactured home chattel paper purchased by an association if the association's board of directors designates an officer whose responsibility shall be to certify in writing that the financial condition of each maker of such chattel paper is adequate to service the debt on such paper, and who shall also certify in writing that the association is relying primarily on the responsibility of each maker for payment of such loans and not upon any full or partial recourse, endorsement or guaranty by the person who transfers the paper to the association. Such certification must be part of the permanent loan file. In such a case, the limitation on loans [~~loan~~] to One Borrower [~~one borrower limitation~~] shall apply to each such maker.

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

(e) Prior to funding a loan under this section, an association shall have in its permanent loan file for such loan the following documents and records:

(1) an application for the loan, signed by the borrower, which discloses the purpose for which the loan is sought, the identity of the underlying collateral [~~security property~~], and the source of funds which will be used to repay the loan;

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

(4) a loan approval sheet, indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the plan, any conditions of approval and certifying that the persons approving the loan have confirmed that the limitation on loans to One Borrower is [~~applicable loan-to-one-borrower limitations are~~] met;

(5) - (10) (No change.)

(11) if [~~security for~~] the loan is collateralized by real estate, an appraisal or evaluation completed in accordance with 12 C.F.R. §323.1, et seq. [~~a professional appraisal report by an appraiser or committee of appraisers, who may be employees of the association, who are on a list of appraisers approved by the board of directors, in writing and in a form approved by the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. Other property may be provided as additional security for the loan, without meeting the requirements of this chapter for loans secured by such property, so long as all requirements of this section are met.~~]

§65.14. Home Improvement Loans.

(a) An association may make or purchase participations in home improvement loans secured by a lien on a home, on the terms set out in this section. In no event shall the amount of the loan, when added to the unpaid balance of all prior liens, exceed 95% of the appraised value of the underlying collateral [~~security property~~].

(b) Any such loan must mature and become payable within 240 months from the date the loan is made, and shall be repayable in monthly installments of principal and interest, or may mature and be repayable as allowed in §65.5(e)(1) or (2) of this title [~~(relating to Residential Real Estate Loans)~~].

(c) Prior to funding a loan under this section, an association shall have in its permanent loan file [~~for such loan~~] the following documents and records:

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

(4) a loan approval sheet, indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, and any conditions of approval and certifying that the persons approving the loan have confirmed that

limitation on loans to One Borrower is [~~applicable loan-to-one-borrower limitations are~~] met;

(5) - (9) (No change.)

(10) for all loans covered under this section, an appraisal or evaluation completed in accordance with 12 C.F.R. §323.1, et seq. [~~of $50,000 or more, a written appraisal report by an appraiser or committee of appraisers, who may be employees of the association, who are on a list of appraisers approved by the board of directors and in a form approved by the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Corporation. The appraisal report shall be signed by the appraiser or committee of appraisers~~];

(11) Repealed [~~a written opinion of value, with picture of property, by an appraiser appointed by the board of directors on all home improvement loans under $50,000~~].

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

(f) A loan made under this section may include add-on interest as authorized by the Texas Credit Title [~~Code, Title~~ 4] of the Finance Code.

(g) Except for add-on interest, a loan made under this section may include amounts to pay interest on the loan, and other fees, only if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons and justifications the association relied upon to include such amounts in the loan. However, the loan shall not include amounts to pay interest on the loan, unless the association has full recourse against the borrower for repayment of the loan and the amount of the loan does not exceed 80% of the appraised value of the underlying collateral [~~security property~~]. Any amount of the loan which represents interest shall not be disbursed until earned.

§65.15. Acquisition, Development, and Construction Loans.

(a) An association may make or purchase participations in acquisition, development, and construction loans when the loans are secured by a first [~~and prior~~] lien on the real estate acquired and all structures and improvements to be constructed thereon under the loan agreement.

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

(d) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title [~~(relating to Loan Documentation)~~].

(e) A loan made under this section may include amounts to pay interest on the loan, and other fees, if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons relied upon by the association for including such amounts in the loan. In no event shall a loan include amounts to pay interest or fees, unless the association has recourse and the total amount of the loan, including any amounts to pay interest and fees, does not exceed 90% of the appraised value of the underlying collateral [~~security property~~]. Notwithstanding any recourse requirement, an association may elect to release the borrower or guarantor from liability, if the association determines that the underlying collateral [~~security property~~] has generated break-even [~~break even~~] income. Any amount of the loan that represents interest shall not be disbursed until such interest is due.

(f) (No change.)

§65.16. Interim Construction Loans.

(a) An association may make or participate [~~purchase participations~~] in interim construction loans to finance the construction or improvement of residential or commercial structures when the loans are secured by a first lien [~~and prior liens~~] on the real estate and all structures and improvements to be constructed thereon under the loan agreement.

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

(d) Prior to funding a loan under this section, an association shall comply with the requirements of §65.17(a) of this title [~~(relating to Loan Documentation)~~].

(e) A loan made under this section may include amounts to pay interest on the loan, and other fees, if the loan amount conforms to this section, and provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons relied upon by the association for including such amounts in the loan. In no event shall a loan include amounts to pay interest or fees, unless the association has recourse and the total amount of the loan, including any amounts to pay interest and fees, does not exceed 90% of the Texas appraised value of the underlying collateral [~~security property~~]. Any amount of the loan that represents interest shall not be disbursed until such interest is due.

(f) (No change.)

§65.17. Loan Policies and Documentation.

(a) Each association shall establish written policies approved by its board of directors establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the association's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board of directors; take adequate account of concentration of credit risk; and are appropriate to the size of the association and the scope of its lending activities. Loan documentation standards should be established and maintained to enable the association to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the association may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed by the borrower or his agent, (and if the borrower is a corporation, a board of directors resolution authorizing the loan) which discloses the purpose for which the loan is sought, the identity of the underlying collateral [~~security property~~], and the source of funds which will be used to repay the loan;

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

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, any conditions of approval, and verifying that the

persons approving the loan have confirmed that applicable limitations on loans to One Borrower [~~loan-to-one-borrower limitations~~] are met;

(5) - (10) (No change.)

(11) for real estate loans, an appraisal or evaluation completed in accordance with 12 C.F.R §323.1, et seq. [~~or oil and gas or mineral loans in which the transaction value exceeds $250,000, a professional appraisal report by an appraiser or committee of appraisers, who may be employees of the association is required. An oil and gas or mineral appraisal may be performed by a professional engineer certified as to the mineral in question. Reappraisals may be required by the commissioner on real estate or other property or interests therein securing loans, at the expense of the association, when the commissioner has reason to believe the value of the security is overstated for any reason. The appraisal report shall be in writing and in a form approved by the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or in the case of an appraisal of oil and gas or other minerals, the applicable society of engineers certified as to the mineral in question, and shall be signed by the appraiser or committee of appraisers. In case of renewal of a loan where additional funds are advanced by the association, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this subsection~~];

(12) for personal property loans, a detailed explanation of how the association arrived at the appraised or market value of the underlying collateral [~~security property~~];

(13) (No change.)

(14) any documents required by the Texas Credit Title [~~Code, Title~~ 4] of the Finance Code.

(b) Repealed [~~Smaller loans in an amount less than $50,000 would generally be expected to meet more limited documentation guidelines of subsection (a)(1)-(8) of this section and of §65.14(c)(8), (9), and (11) of this title (relating to Home Improvement Loans). Further, §65.13(e) of this title (relating to Manufactured Home Loans) and §65.14(c) provide additional documentation guidelines for making home improvement or manufactured housing loans~~].

(c) (No change.)

(d) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof[~~, or which is guaranteed in any amount by the Veteran's Administration, Federal Housing Administration, or Farmer's Home Administration~~].

(e) - (h) (No change.)

§65.18. Letters of Credit.

An association may issue letters of credit in accordance with the terms and conditions of the Uniform Commercial Code of the State of Texas and the Uniform Customs and Practice for Documentary Credits, 2007 [~~1983~~] Revision, ICC Publication Number 600 [~~400~~], and in conformity with the following conditions:

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

(6) the amount of each letter of credit shall be included in the aggregation of loans subject to the limitations of this chapter relating to loans to One Borrower [~~computing loan limitations to one borrower~~];

(7) - (8) (No change.)

§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) - (5) (No change.)

(6) If the commissioner finds that an association has abused or is abusing the authority granted in this section, the commissioner [~~he~~] may, by using personal [~~at his~~] discretion, deny such association the right to future exercise thereof until such abuse or abuses have been corrected.

(7) - (10) (No change.)

(11) Real estate acquired in satisfaction or partial satisfaction of debt [~~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) - (15) (No change.)

§65.20. Investments in Deferred Payment Obligations.

Any association may invest its funds in deferred payment obligations, either secured or unsecured, arising out of loans made by others, and in deferred payment obligations arising out of installment sales contracts, provided, in respect to each obligation, that:

(1) (No change.)

(2) as to any obligation arising under the Consumer Credit Title [~~Code, Subtitle B of Title~~ 4] of the Finance Code, and any amendments to or revisions thereof, the investing association is indemnified against any and all claims and defenses the debtor may assert against the association for defects, misrepresentation, breach of warranty, non-delivery, common law fraud, and lack of or failure of consideration;

(3) as to all obligations subject to the Consumer Credit Title [~~Code~~], the requirements of that title [~~the Code~~] have been fully met;

(4) - (6) (No change.)

§65.23. Restrictions on Loan Transactions with Third Person.

(a) (No change.)

(b) The restriction contained in this section may be waived by the commissioner if the commissioner [~~he~~] determines that the terms of the transaction in question are fair to and in the best interest of the association or subsidiary.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600781

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

7 TAC §65.22

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes the repeal of §65.22 in 7 Texas Administrative Code Chapter 65, concerning Loans and Investments.

In general, the purpose of the repeal of the rule regarding loans and investments is to implement changes resulting from the commission's review of Chapter 65, under Texas Government Code §2001.039.

Section 65.22 is an unnecessary restriction on the business of a savings and loan association as this issue is covered in §65.11.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the repealed rule is no longer in effect, there will be no fiscal implications for state government or for local government as a result of repealing the aforementioned rule.

Commissioner Jones also has determined that, for each year of the first five years the repealed rule as proposed is no longer in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals due to the repeal as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The repeal is proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The repeal is also proposed under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the Finance Commission may adopt rules relating to the associations' loans and investments. The repeal is also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 61 - 89.

§65.22. Restriction on Loan Procurement Fees.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600822

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 67. SAVINGS AND DEPOSIT ACCOUNTS

7 TAC §§67.3, 67.6 - 67.8, 67.10 - 67.13, 67.15, 67.17

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§67.3, 67.6 - 67.8, 67.10 - 67.13, 67.15, and 67.17 in 7 Texas Administrative Code Chapter 67, concerning Savings and Deposit Accounts.

In general, the purpose of the proposal regarding these rules for savings and deposit accounts is to implement changes resulting from the commission's review of Chapter 67, under Texas Government Code §2001.039.

The proposed amendments include revisions to improve clarity; corrections of grammar, punctuation, and titles; removal of an approval requirement for deposit forms; and removal of an unnecessary reference to a statute.

Section 67.3 addresses dividend computation for savings and loan associations. The proposed amendments improve clarity and grammar.

Section 67.6 addresses distributions of savings and loan earnings on other than regular accounts. The proposed amendment improves clarity.

Section 67.7 allows a savings and loan association to contract for 90-day advance notice of savings account withdrawal. The proposed amendments provide clarifying language and update terms used.

Section 67.8 describes deposits permissible for savings and loan associations beyond savings accounts. The proposed amendments update terms used and remove an approval requirement for forms.

Section 67.10 permits savings and loan associations to jointly issue capital obligations. The proposed amendment provides clarifying language.

Section 67.11 requires minimum liquidity to be maintained by savings and loan associations operating without Federal Deposit Insurance Corporation insurance. The proposed amendment revises language for enhanced clarity.

Section 67.12 permits savings and loan associations to allow withdrawal from negotiable order of withdrawal accounts. The proposed amendments correct the title of the rule, and correct grammar.

Section 67.13 is proposed to be amended to clarify applicability to all savings and loan associations and remove an unnecessary condition.

Section 67.15 permits the raising of capital for a savings and loan association through noninterest-bearing deposits. The amendments remove unnecessary words and an unnecessary reference to a statute, and correct punctuation.

Section 67.17 addresses user safety at unmanned teller machines. The amendments revise existing language to provide clarity.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also proposed under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the Finance Commission may adopt rules relating to associations' loans and investments. The amendments are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 61 - 89.

§67.3. Method of Computing Dividends.

An association may, by resolution of its board of directors, provide for the following.

(1) The declared dividend or interest rate shall be applied to the funds comprising the account balance for the period of time such funds are credited to the account. For the purpose of computing time credited, any money tendered to the association for addition to an account shall be considered as credited to such account as of the date of actual receipt thereof by the association except that the board of directors of an association may provide by appropriate resolution that money tendered to the association on or before the 20th day of a calendar month (or if such 20th day is a nonbusiness day, the next [~~regular~~] business day) shall for the purpose of computing earnings be considered as credited as of the first day of such calendar month. If such a resolution is adopted, it shall also specify the manner in which money tendered to the association after such 20th day or other designated day shall be credited for the purpose of computing earnings. The board of directors may also, by appropriate resolution, provide that total or partial withdrawals from savings or deposit accounts made during the last three business days of any earning period, be permitted to receive full earnings on such savings or deposit accounts, [~~the same~~] as if such withdrawals had been [~~were~~] made immediately after the closing of such period.

(2) The dividends or interest on amounts withdrawn from regular savings or deposit accounts between (or during) successive dates on which said association regularly distributes earnings may be computed and paid or credited for the period of time beginning on the [~~from~~] date of actual receipt to the date of withdrawal, and in such event shall be at a rate not in excess of the rate at which earnings are distributed on other regular savings or deposit accounts for the earning period.

§67.6. Provisions for Distribution of Earnings on Other Than Regular Accounts.

Subject to the provisions of this section, the board of directors of an association may provide for the distribution or payment of earnings on other than regular accounts, provided the [~~on the following terms. The~~] account is represented by a certificate of savings or certificate of deposit of not more than 10 years in a form approved by the savings and mortgage lending commissioner of Texas.

§67.7. Notice Prior to Withdrawal.

An association may specially contract with the holder of a regular savings or deposit account whereby such holder agrees to give notice for a period of 90 days or more immediately prior to making any withdrawal from such account. Such contract may further provide that such notice will not be required for a withdrawal at the end of an earnings period or within ten days thereafter if said account has been open for no more than [~~intact as much as~~] 90 days, and the association agrees to pay dividends or earnings on said account at a rate higher than the regular savings account [~~passbook~~] rate. An association may adopt procedures [~~procedure~~] providing for waiver of the notice for withdrawal from such account on an emergency basis.

§67.8. Deposit Accounts.

(a) (No change.)

(b) In connection with various types of deposit accounts the form of certificates and/or savings accounts [~~or passbooks~~] to be used shall be submitted to the savings and mortgage lending commissioner for review [~~approval~~].

(c) In the event that an association adopts and becomes a deposit institution as provided for in this section, then [~~in such event~~] it may continue to maintain its [~~theretofore~~] existing accounts as regular savings accounts and certificate of savings accounts until the same are converted to deposit accounts or certificates of deposit by the holders thereof.

§67.10. Joint Issuance of Capital Obligations.

On the same terms and conditions as stated in §67.9 of this title [~~(relating to Provisions for Issuance of Secured or Unsecured Capital Obligations)~~], an association may, by resolution of its board of directors and with prior approval of the savings and mortgage lending commissioner of the State of Texas, join other associations in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations if done in accordance with [~~it meets~~] the terms and conditions of §67.9 of this title.

§67.11. Required Average Daily Balance of Liquid Assets; Failure to Meet Requirement.

State-chartered associations offering [~~operating without insurance of~~] accounts not insured by [~~with~~] the Federal Deposit Insurance Corporation shall maintain an average daily balance of liquid assets in an amount determined by the commissioner. An association failing to meet this requirement shall be restricted to loans on one-to-four family dwellings only[~~,~~] and are subject to [~~within~~] the limitations provided elsewhere in this chapter.

§67.12. NOW [~~Now~~] Accounts.

Any association may, when authorized by its board of directors, permit the withdrawal of funds from savings accounts by means of negotiable

orders of withdrawal payable to third parties, provided that all documentation meets applicable statutory and regulatory requirements.

§67.13. Checking Accounts.

Any [~~deposit type~~] association [~~whose bylaws contain the priority provision authorized by §65.012 of the Texas Savings and Loan Act,~~] may when authorized by its board of directors, permit the withdrawal of funds from deposit accounts (whether interest-bearing or not) by means of checks to the order of third parties drawn by the account holder and payable by the association upon presentation in accordance with the Uniform Commercial Code of this state.

§67.15. Noninterest-Bearing Deposit Accounts.

Any [~~deposit-type~~] association [~~whose bylaws contain the priority provision authorized by §65.012 of the Texas Savings and Loan Act,~~] may when authorized by its board of directors, raise capital in the form of deposit accounts having all of the rights and privileges of its regular deposit accounts except the right to the receipt of interest,[~~;~~] provided the holder of such an account has expressly waived in writing all rights to receive interest.

§67.17. User Safety at Unmanned Teller Machines.

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

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

(d) Safety evaluations.

(1) (No change.)

(2) The safety evaluation shall consider at a minimum [~~the least~~] the factors identified in the Finance Code, §59.308.

(3) (No change.)

(e) - (h) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600782
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

7 TAC §67.4, §67.14

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes the repeal of §67.4 and §67.14 in 7 Texas Administrative Code Chapter 67, concerning Savings and Deposit Accounts.

In general, the purpose of the repeal of the rule(s) regarding savings and deposit accounts is to implement changes resulting from the commission's review of Chapter 67, under Texas Government Code §2001.039.

Section 67.4 is a dated and unnecessary restriction on the business of a savings and loan association in the contemporary marketplace, which reflects increased competition for deposits and more rapid changes in market interest rates. Repeal will put savings and loan associations on a similar competitive level as other depository charters.

Section 67.14 provides a dated and unnecessary application and approval process, which puts savings and loan associations at a competitive disadvantage against other institutions competing for deposit funding and relationships. Repeal of this section will place savings and loan associations on a similar competitive level as other depository charters. Examinations will evaluate deposit account administration and existing Department enforcement authority is sufficient to address any identified deficiencies.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the repealed rules are no longer in effect, there will be no fiscal implications for state government or for local government as a result of repealing the aforementioned rules.

Commissioner Jones also has determined that, for each year of the first five years the repealed rules as proposed are no longer in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals due to the repeals as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The repeals are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The repeals are also proposed under Texas Finance Code §§64.001, 64.002, and 64.083, which provide that the Finance Commission may adopt rules relating to the associations' loans and investments. The repeals are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed repeals are contained in Texas Finance Code, Chapters 61 - 89.

§67.4. Advertisements or Public Representations of Account Earnings.

§67.14. Approval of the Commissioner.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600823
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 69. REORGANIZATION, MERGER, CONSOLIDATION, ACQUISITION, AND CONVERSION

7 TAC §§69.2 - 69.11

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§69.2, 69.3, 69.4, 69.5, 69.6, 69.7, 69.8, 69.9, 69.10 and 69.11 in 7 Texas Administrative Code Chapter 69, concerning Reorganization, Merger, Consolidation, Acquisition, and Conversion.

In general, the purpose of the proposal regarding these rules for reorganization, merger, consolidation, acquisition, and conversion is to implement changes resulting from the commission's review of Chapter 51, under Texas Government Code §2001.039.

The proposed amendments include clarifications and gender neutralization.

Section 69.2 describes the necessary content of a savings and loan association merger application. The proposed amendments clarify that a majority vote of the board is required for each entity involved and provide additional clarifying language.

Section 69.3 requires the Commissioner to provide application forms for a savings and loan merger and allows for an investigation of the application. The proposed amendment revises language for clarity.

Section 69.4 requires a hearing for any savings and loan merger application. The proposed amendments clarify language and make a reference to the Commissioner gender neutral.

Section 69.5 requires a savings and loan association to publish notice of any merger application hearing. The proposed amendments clarify terms used and remove unnecessary words in reference to applicable statutes.

Section 69.6 sets a decision deadline for savings and loan association merger applications. The proposed amendments make a reference to the Commissioner gender neutral, clarify that the deadline is applicable only to applications covered in this chapter, and clarify language.

Section 69.7 addresses denial and appeal processes of savings and loan merger applications. The proposed amendments clarify phrasing.

Section 69.8 provides an exemption from application for supervisory mergers of savings and loan associations. The proposed amendments remove unnecessary words and punctuation, primarily in reference to other sections of this title and applicable statutes.

Section 69.9 addresses the criteria the Commissioner may use to designate a savings and loan association merger to be a supervisory merger. The proposed amendments remove unnecessary words, clarify a reference to applicable statutes, and expand a list of federal regulators to account for changes made under federal legislation.

Section 69.10 addresses savings and loan association acquisitions of associations incorporated outside of Texas. The proposed amendments provide clarifying language and make references to the Commissioner gender neutral.

Section 69.11 addresses a savings and loan association's conversion into another charter. The proposed amendments make references to the Commissioner gender neutral, revise language for clarity, and revise references to applicable statutes.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also proposed under Texas Finance Code §§64.001 - 64.002 and 64.083, which provide that the Finance Commission may adopt rules relating to associations' loans and investments. The amendments are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 61 - 89.

§69.2. Form and Content of Application.

The application for approval of the plan shall be titled "Application to Reorganize, Merge and/or Consolidate" and shall contain: proof that the plan was adopted by the board of directors of each association, federal association, foreign association, state or national bank, or state or federal savings bank involved; documentation showing that the plan has been approved by a majority of each involved entity's voting [~~association by a majority of the total vote the~~] members or shareholders [~~of each are~~] entitled to cast a vote; a statement that the corporate continuity of the resulting institution shall possess the same incidents as that of an entity which has converted in accordance with the Texas Savings and Loan Act; and a statement that the home office of the entity with the largest asset size [~~largest applying association~~] shall be the home office of the resulting entity unless otherwise approved by the commissioner. A true copy of the plan, as adopted, shall be filed as part of the application. All documents and their contents shall be subscribed and sworn to by [~~be~~] an officer of each entity involved under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.

§69.3. Use of Approved Forms.

Upon request, the commissioner shall furnish forms which may be used to file an [~~in making~~] application. After the application has been filed, the commissioner may conduct [~~make or cause to be made~~] an investigation of the application.

§69.4. Notice and Hearing.

Each application will be set to be heard within 90 days of filing. Notice will be sent by mail to those state and federal savings [~~the associations~~

~~involved and those~~] associations with offices in the same counties as any of the offices of the applying association. If, from the evidence adduced at hearing, the commissioner finds that the applicable criteria for approval of the application set forth in the Texas Savings and Loan Act are met, the commissioner [~~he~~] shall enter an order approving the application [~~plan~~].

§69.5. Publication.

The associations involved in an application [~~a plan~~] must publish notice at least 20 days before the date of hearing in a newspaper or newspapers of general circulation in the county or counties where said associations have offices, and file proof of such publication with the commissioner at least 10 days prior to hearing. The form of notice shall be as follows: "Notice is hereby given that application has been made to the savings and mortgage lending commissioner of Texas by (association(s)) for approval to (reorganize, merge, and/or consolidate) pursuant to §62.351 of the Texas Savings and Loan Act[~~, Texas Civil Statutes, Article 852a~~]. A plan of (reorganization, merger, and/or consolidation) and related documents have been filed with the commissioner. Notice is further given that a hearing on this application has been set for (date) at (time) in (place) pursuant to authority and jurisdiction granted by the Texas Savings and Loan Act. [~~Texas Civil Statutes, Article 852a. The particular sections of the statute involved are §§62.011, 62.351, and Chapter 61. The particular rules involved are §69.8 and §69.9. Such rules are on file with the Secretary of State, Texas Register Division, or may be seen at the department's offices, 2601 North Lamar Boulevard, Suite 201, Austin, Texas.~~] The nature and purpose of the hearing is to accumulate a record of pertinent information and data in support of the application and in opposition to the application, from which record the commissioner shall determine whether to grant or deny the application. The applicants assert that the plan of (reorganization, merger, and/or consolidation) meets the criteria for approval set forth in the statutory sections cited in this notice. Any person intending to appear and to participate in the hearing on this application may do so only if written notice of such intention is filed with and received by the Commissioner at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, and by the applicant's agent named above, at least 10 days prior to the date of such hearing. Such notice shall include the docket number of the application. If a protest is filed, the hearing on the application may be continued to a later date at the same location. Issued this (date) at Austin, Travis County, Texas."

§69.6. Time of Decision.

The commissioner shall render a [~~his~~] decision on an application under this chapter within 60 days of [~~after~~] the date the hearing is closed.

§69.7. Denial and Appeal.

(a) The commissioner shall issue an order denying the proposed plan if the commissioner finds that:

(1) the reorganization, merger, or consolidation would substantially lessen competition or be in restraint of trade and would result in a monopoly or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan industry in any part of the state, unless the anticompetitive effects of the proposed reorganization, consolidation, or merger are clearly outweighed by [~~in the~~] public interest, considering the likelihood of meeting the [~~by the probable effect of the reorganization, merger, or consolidation in meeting the convenience and~~] needs of the community to be served;

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

(5) after reorganization, merger, or consolidation the surviving entity would not be solvent, would not be adequately capitalized [~~have adequate capital structure~~], or would otherwise fail to be in compliance with the laws of this state;

(6) the entities proposing the plan have not furnished all of the information pertinent to the application reasonably [~~reasonable~~] requested by the commissioner; or

(7) (No change.)

(b) Any appeal of an order or action of the commissioner shall be made pursuant to the Government Code, Chapters 2001 and 2002, and Chapter 61 and §62.204 of the Texas Savings and Loan Act[~~, Texas Civil Statutes, Article 852a~~].

§69.8. Exemption for Supervisory Merger.

When the commissioner designates a merger to be a "supervisory merger," the provisions of this chapter relating to reorganization, merger, and/or consolidation in[~~,~~] §§69.1 - 69.7 of this title [~~(relating to Filing of Plan; Form and Content of Application; Use of Approved Forms; Notice and Hearing; Publication; Time of Decision; and Denial and Appeal)~~], shall not be applicable, and the merger shall be effected pursuant to the Texas Savings and Loan Act, §62.051[~~, Texas Civil Statutes, Article 852a~~].

§69.9. Designation as Supervisory Merger.

(a) The commissioner may designate a merger to be a "supervisory merger" when:

(1) the commissioner has placed one or more of the associations involved under voluntary supervisory control or under conservatorship pursuant to the Texas Savings and Loan Act, Subchapter I[~~, Article 852a~~]; or

(2) the commissioner has determined that one or more of the associations subject to the Savings and Loan [~~this~~] Act or savings banks subject to the Texas Savings Bank Act is in an unsafe condition; or

(3) the Office of Thrift Supervision, Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or their successor has determined, and certified to the commissioner, that the merger of a federal association or savings bank, or a state or national bank having its home office in the state and an association subject to this Act is necessary to prevent the failure or possible failure of the said institution.

(b) For purposes of this section, unsafe condition shall mean that an [~~the~~] association [~~(or associations)~~] is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that an [~~the~~] association is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its net worth; or that an [~~the~~] association and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the commissioner, or any agreement between the association and the commissioner; or that an [~~the~~] association, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of an [~~the~~] association by the commissioner or other duly authorized personnel of the [~~Texas~~] Department of Savings and Mortgage Lending; or any other condition affecting an [~~the~~] association which the commissioner and the board of directors of the association agree place the association in an unsafe condition.

§69.10. Acquisitions Involving Associations in Other States or Territories.

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, an association may acquire, by merger or purchase of stock, an association incorporated under the laws of another state. Each such application shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order

from the appropriate state regulatory authority of the foreign association approving the merger or acquisition, or other evidence satisfactory to the commissioner that all state regulatory requirements have been satisfied. The hearing and notice requirements and provisions [~~Each such application shall be set for hearing, notice given, hearing held and decision reached in the same manner and within the time provided~~] in this chapter that apply to a [~~for a~~] similar application involving another association in this state apply to an application under this section. The commissioner shall approve [~~such~~] an application under this section if the commissioner finds, [~~he shall have affirmatively found~~] from the data furnished with the application, the evidence adduced at the hearing, and the department records [~~his official~~] records, that all requirements of this chapter applicable to the proposed merger or acquisition have been met, and that all applicable requirements of the laws of the state of the foreign association [~~in question~~] have been met.

§69.11. Conversion into Another Financial Institution Charter.

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

(c) The commissioner may approve a conversion if the commissioner [~~he~~] finds that:

(1) the conversion will not substantially lessen competition or restrain [~~be in restraint of~~] trade and will not result in a monopoly or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or savings bank industry in any part of the state, unless the anticompetitive effects of the proposed conversion are clearly outweighed by [~~in the~~] public interest considering the likelihood of the result meeting [~~by the probable effect of the conversion in meeting the convenience and~~] needs of the community to be served;

(2) (No change.)

(3) the proposed conversion is not contrary to the best interests of the customers [~~savers, depositors~~], creditors, and stockholders of the converting association and of the public in general.

(d) Within ten days after receipt of an application to convert, the commissioner shall either consent to such conversion in writing or call a hearing to consider whether such proposed conversion complies with the conditions set forth in this section. Such hearing shall be held within 25 days after the filing of the conversion application unless a later date is agreed to by the association and the commissioner. Such a hearing shall be conducted by the commissioner, or a hearing officer designated by the commissioner, as a contested case in compliance with the provisions of Chapter 2001 of the Texas Government Code [~~the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a~~], except that no proposal for decision shall be made and a final decision or order must be rendered by the commissioner within 15 days after the close of the hearing. The provisions of Chapter 2001 of the Texas Government Code [~~the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a~~], with respect to motions for rehearing and judicial review, shall be available to the association in the event the commissioner denies the application for conversion [~~should refuse the conversion sought~~].

(e) If the commissioner consents to such conversion, the association, within three months after the date of the commissioner's consent, shall take such action in the manner prescribed and authorized by applicable [~~the~~] laws [~~of this state or the United States~~] to consummate the conversion into another financial institution, and shall file with the commissioner a copy of the charter issued to the new financial institution by the appropriate banking agency or a certificate showing the organization of the new financial institution certified by the secretary or assistant secretary of the appropriate banking agency. However, [~~provided that no~~] failure to file such instrument with the commissioner shall not affect the validity of any such conversion.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600784
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 71. CHANGE OF CONTROL

7 TAC §§71.1 - 71.8

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§71.1, 71.2, 71.3, 71.4, 71.5, 71.6, 71.7, and 71.8 in 7 Texas Administrative Code Chapter 71, concerning Change of Control.

In general, the purpose of the proposal regarding these rules for change of control is to implement changes resulting from the commission's review of Chapter 71, under Texas Government Code §2001.039.

The proposed amendments include correction of department naming and references, neutralization of gender references, updated criteria for presumption of control, clarification of information relating to lawsuits, and enhancement of the availability of a hearings process for change of control applications relating to savings and loan associations.

Section 71.1 is an introduction for this chapter, which addresses changes of control of savings and loan associations. The proposed amendment replaces an incorrect name for the Department with a reference to the Commissioner.

Section 71.2 provides definitions relevant to the change of control of a savings and loan association. The proposed amendments neutralize gender references, clarify that the subject is control of an association in any form, and add a 10% rebuttable presumption of control similar to that in effect for state savings banks and all other federally-insured banks and thrifts. Two comments from state savings bank representatives were received during a pre-comment period. Each comment was primarily concerned with the applicability of the 10% rebuttable presumption of control on state savings banks, with one questioning the need for presumed control when one party controls more than 10%, but less than 25%, of an association and another controls more than 25%. In each case, a Department representative communicated with the commenting party, explained that this section does not apply to state savings banks, and discussed further issues to the satisfaction of the individual. In each case, the comments were withdrawn.

Section 71.3 addresses the acquisition of a savings and loan association. The proposed amendments remove unnecessary words in reference to another section of this title, clarify information needing regarding lawsuits, and correct the name of the Department.

Section 71.4 addresses hearings for change of control applications of savings and loan associations. The proposed amendments provide an option for the Commissioner to require a hearing on a change of control application and extend the deadline for an applicant to file a petition to request a hearing on a denied application.

Section 71.5 addresses retention of control of a savings and loan association. The proposed amendments make reference to the Commissioner gender neutral.

Section 71.6 addresses the application for acquisition of a savings and loan association. The proposed amendment removes extra words in reference to the name of the Department.

Section 71.7 addresses abeyance of other application while a change of control application is in progress for a savings and loan association. The proposed amendment removes unnecessary words in reference to an association.

Section 71.8 addresses transactions which are exempt from the provisions of this chapter. The proposed amendments clarify the applicability of this section and remove unnecessary words in reference to the name of the Department.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also proposed under Texas Finance Code §§64.001 - 64.002 and 64.083, which provide that the Finance Commission may adopt rules relating to associations' loans and investments. The amendments are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 61 - 89.

§71.1. Introduction.

It having been declared and found by the legislature of the State of Texas that this state shall exercise regulatory authority over the savings and loan industry authorized to do business under the laws of the State of Texas, and as it is hereby further declared and found by [~~the Savings and Mortgage Lending Section of the Finance Commission of Texas and~~] the savings and mortgage lending commissioner that the public interest and the interests of account holders are or may be adversely affected when control of an association is sought by persons who would utilize such control adversely to the interests of account holders, it is hereby declared that the policies and purposes of this regulation are to promote the public interest by requiring disclosure of pertinent information relating to approval of changes in control of a savings and loan association. Notwithstanding any other provision of this chapter, the Federal Deposit Insurance Corporation shall not be deemed subject to this chapter.

§71.2. Definitions.

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

(1) (No change.)

(2) Affiliated person--The term "affiliated person" of an association means the following:

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

(D) any corporation or organization (other than the association or a corporation or organization through which the association operates) of which a director, officer, or controlling person of such association:

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

(iii) is a limited partner who, directly or indirectly, either alone or with their [~~his~~] spouse and the members of their [~~his~~] immediate family who are also affiliated persons of the association, owns an interest of 10% or more in the partnership (based on the value of their [~~his~~] contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such association and their spouses and their immediate family members who are also affiliated persons of the association, owns an interest of 25% or more in the partnership; or

(iv) directly or indirectly, either alone or with their [~~his~~] spouse and the members of their [~~his~~] immediate family who are also affiliated persons of the associations, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officer, and controlling persons of such association and their spouses and their immediate family members who are also affiliated persons of the association, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of such association or the spouse of such person has a substantial beneficial interest or as to which such person or their [~~his~~] spouse serves as trustee or in a similar fiduciary capacity.

(3) Association--Shall include all savings and loan associations organized or chartered under the laws of this state. For purposes of this chapter association shall include any other person controlling an association.

(4) Commissioner--The Savings and Mortgage Lending Commissioner.

(5) Control--The term "control" including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an association by direct or indirect means [~~a person, whether through the ownership of voting securities by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person~~]. Control shall be deemed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 25% or more of the voting securities [~~or authority~~] of any association [~~other person~~]. The commissioner may determine, based

upon specific written findings of fact to support such determination and an opportunity for public hearing, that control exists in fact, where a person exercises directly or indirectly, either alone or pursuant to an agreement with one or more other persons, such a controlling influence over the management or policies of an association as to make it necessary or appropriate in the public interest and for the protection of the account holders of an association that the person be deemed to control the association. There shall be a presumption of control if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 10% or more of the voting securities of an association. Such person may, by application to the commissioner, seek to rebut that control presumption.

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

§71.3. Acquisition of an Association.

The following procedures shall be followed when a person desires to acquire control of an association.

(1) General filing requirements. No person other than the issuer shall make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of an association if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such association, unless such person has filed with the commissioner all of the following information on an application form approved by the commissioner and which application form is deemed by the commissioner to be complete, accompanied by the application fee prescribed in §63.11 of this title [~~(relating to Fee for Change of Control)~~], and has received a written order from the commissioner approving such acquisition or change of control.

(A) The background and identity of the applicant, if said applicant and any affiliate is an individual, or all persons who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Said filing shall contain the following information:

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

(v) whether such individual has been or is a party to any federal, state, or municipal court lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulation, and, if so, giving the date, style of the suit, nature of conviction, case number, name and location of the court [~~court location~~], and disposition of the suit;

(vi) whether any such individual has been or is a party to any federal, state, or municipal, court lawsuit, or governmental agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and, if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case, and any other relevant information requested by the commissioner.

(B) - (J) (No change.)

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

(5) Amendments. If any material change occurs in the facts set forth in the application and any documents filed with the [~~Texas~~] Department of Savings and Mortgage Lending, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner within three business days after the person learns of such change.

§71.4. Hearings.

(a) The commissioner may set and hold a hearing on an application for acquisition of control of an association if deemed desirable to accumulate a complete record of pertinent information and data in support of approval or denial of application. If the commissioner issues a written order denying an application for acquisition of control, the disapproved applicant is entitled to a public hearing on such application.

(b) Proceedings for a [~~such~~] hearing on a denied application shall be instituted by the applicant's filing a written petition for hearing before the 31st day [~~within 15 days~~] after the notice of intent to deny is mailed to the proposed transferee. [~~date of the commissioner's order denying the application for acquisition of control or within 30 days after the date upon which the application was filed, whichever date is later.~~]

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

§71.5. Retention of Control.

(a) (No change.)

(b) The commissioner may require the submission of such information as deemed [~~he deems~~] necessary to determine whether any retention of control complies with the law of this state, as a condition of approval of such retention of control.

(c) The commissioner may, when it appears that a change of control may have taken place without prior approval, call a hearing to determine whether there has been in fact a change of control or whether any unauthorized person, or persons, having no apparent ownership interest in the association, acting alone or in concert with others, effectively have indirect controlling or dominating influence over the management or policies of an association. If the commissioner finds that such unauthorized control exists the commissioner [~~he~~] may, after notice and hearing, issue an order requiring immediate divestiture by certain persons of unapproved or indirect control, or the commissioner may issue any other supervisory order deemed [~~which he deems~~] appropriate.

§71.6. Application for Approval of the Acquisition of Control of a Savings and Loan Association.

The application form is available from the department [~~Texas Department of Savings and Mortgage Lending~~], 2601 North Lamar, Suite 201, Austin, Texas 78705.

§71.7. Abeyance of Other Applications.

When an application for approval of acquisition of control of an [~~a savings and loan~~] association has been received by the commissioner and the association also has other applications on file with the commissioner, such applications may, at the commissioner's discretion, be held in abeyance until the change of control application has been disposed of by the commissioner.

§71.8. Exempt Transactions.

The following transactions are exempt from the application requirements of this chapter [~~section~~]:

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

(3) acquisition of additional stock of an association by any person who has held power to vote 25% or more of any class of voting stock in such association continuously for the three-year period preceding [~~proceeding~~] such acquisition, or has maintained control of the association continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600786
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 73. SUBSIDIARY CORPORATIONS

7 TAC §§73.1 - 73.4, 73.6

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§73.1, 73.2, 73.3, 73.4 and 73.6 in 7 Texas Administrative Code Chapter 73, concerning Subsidiary Corporations.

In general, the purpose of the proposal regarding these rules for subsidiary corporations is to implement changes resulting from the commission's review of Chapter 73, under Texas Government Code §2001.039.

The proposed amendments include gender neutralization of references to the Commissioner, removal of unnecessary words, correction of the Department name, and clarifying language.

Section 73.1 addresses subsidiaries of savings and loan associations. The proposed amendments make references to the Commissioner gender neutral and provide clarifying language.

Section 73.2 addresses applications for savings and loan association subsidiaries. The proposed amendments remove unnecessary words, update terms used to agree with other titles, and correct the name of the Department.

Section 73.3 addresses permissible activities for subsidiaries of savings and loan associations. The proposed amendments clarify that indirect ownership is covered and remove and unnecessary word.

Section 73.4 addresses savings and loan association subsidiary operations. The proposed amendments clarify language relating to required fidelity bond coverage and make a reference to the Commissioner gender neutral.

Section 73.6 addresses operating subsidiaries of savings and loan associations. The proposed amendment removes unnecessary words in reference to other sections of this title.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks. The amendments are also proposed under Texas Finance Code §§64.001 - 64.002 and 64.083, which provide that the Finance Commission may adopt rules relating to associations' loans and investments. The amendments are also proposed under Texas Finance Code §66.002, which authorizes the Finance Commission to adopt rules regarding enforcement and regulation.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 61 - 89.

§73.1. Investment in and Divestiture of Subsidiary Corporations.

(a) (No change.)

(b) An association may, only after prior written approval of the commissioner, invest in a corporation in accordance with the terms and conditions set forth in this chapter. The commissioner may approve an investment in a corporation if the commissioner [~~he~~] finds that:

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

(c) If the commissioner finds that an association has abused or is abusing the authority granted in this chapter, the commissioner [~~he~~] may at his or her discretion deny such association the right to future exercise investments in subsidiary and engage in activities thereof until such abuse or abuses have been corrected.

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

§73.2. Application.

(a) In order to obtain such approval, the applying association shall file with the commissioner an application form accompanied by the following [~~information~~]:

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

(3) a certified copy of the [~~articles of incorporation,~~] certificate of formation [~~incorporation~~], and bylaws of the corporation;

(4) - (11) (No change.)

(b) (No change.)

(c) The corporation will keep complete and adequate books and records in accordance with generally accepted accounting principles where there are no specific accounting guidelines set forth by the rules of the [~~Texas~~] Department of Savings and Mortgage Lending or the regulations of the Federal Deposit Insurance Corporation.

§73.3. Authorized Subsidiary Investments.

(a) Activities of a corporation performed directly or indirectly through one or more wholly owned or partially owned corporations or joint ventures, with prior approval of the commissioner, shall consist of one or more of the following:

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

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

(d) The association shall maintain the originals of all documents relating to the activities of its subsidiaries that do not require

prior approval by the commissioner, which [~~documents~~] shall be made available at all times to state and federal supervisory authorities for examination and review.

§73.4. Operations.

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

(d) Each corporation shall maintain fidelity bond coverage with an acceptable bonding company in an amount that [~~to~~] adequately protects the corporation from loss. Coverage as an additional insured entity under a fidelity bond of the parent [~~cover each director, officer, employee, and agent who has access to cash or securities of the corporation. Such bond amount shall be in an amount equivalent to 1.0% of total assets but in no event shall be less than $25,000 nor more than $2 million. In lieu of a separate surety bond for the corporation, the~~] association or its holding company may satisfy this requirement [~~obtain an extension rider to the surety bond coverage of the parent association~~].

(e) All joint ventures and partnership agreements shall be reviewed by the attorney for the corporation who shall render their [~~his~~] opinion to the commissioner stating the obligation and responsibility of the corporation, as well as the parent association.

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

§73.6. Operating Subsidiaries.

A savings and loan association is authorized to invest in operating subsidiaries, the activities of which are exclusively limited to activities which could be conducted directly by the parent savings and loan association. Because an operating subsidiary is limited to activities that could otherwise be conducted directly by the savings and loan association, operating subsidiary investment is not included as part of the percentage of assets or dollar amount restrictions applicable to subsidiary corporations as set forth in §73.5(a) of this title [~~(relating to investment in Debt Limitation)~~]. Notwithstanding this exclusion, all other provisions of this chapter applicable to a subsidiary corporation apply equally to an operating subsidiary.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600787
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 75. APPLICATIONS
SUBCHAPTER A. CHARTER APPLICATIONS

7 TAC §§75.1 - 75.3, 75.5, 75.6, 75.10

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§75.1, 75.2, 75.3, 75.5, 75.6 and 75.10 in 7 Texas Administrative Code Chapter 75, Subchapter A concerning Charter Applications regarding savings banks.

In general, the purpose of the proposal regarding these rules for chapter applications is to implement changes resulting from the commission's review of Chapter 75, under Texas Government Code §2001.039.

The proposed amendments include the gender neutralization of references to the Commissioner, and a streamlining of the charter application process making hearings contingent on receipt of protest to the application.

Section 75.1 addresses applications to organize a state savings bank. The proposed amendments make references to the Commissioner gender neutral and update an accounting term.

Section 75.2 deals with hearings on charter applications for state savings banks. The amendments streamline the application process by requiring a hearing only when protest is received, similar to processes in place for other types of charters. Additional amendments make references to the Commissioner gender neutral.

Section 75.3 addresses the public notice of a state savings bank charter application. The proposed amendments streamline the application process by tying the publication to the application rather than a hearing, which may not be required as proposed in the amendments to §75.2. An additional amendment clarifies that, when this section is applied to other types of applications, publication must occur in the home office area of the state savings bank and in the area of each proposed branch office.

Section 75.5 addresses the proof of publication of a state savings bank charter application as required by §75.3. The proposed amendments again streamline the application process by tying the publication to the application rather than a hearing, which may not be required as proposed in the amendments to §75.2, and remove unnecessary words in reference to another section of this title.

Section 75.6 addresses the deadline for a state savings bank charter application decision. The proposed amendments streamline the application process by tying the decision to the application rather than a hearing, which may not be required as proposed in the amendments to §75.2, and remove unnecessary words in reference to another section of this title.

Section 75.10 addresses the approval process for a state savings bank to change its name. The proposed amendment makes a reference to the Commissioner gender neutral.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt

rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also proposed under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 91 - 98 and 119.

§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. No savings bank with an approved charter shall open or do business as a savings bank until the commissioner certifies that the commissioner [~~he~~] has received satisfactory proof [~~satisfactory to him~~] that the amounts of capital stock and additional paid-in capital [~~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) After the application and its supporting data have been received by the commissioner, the commissioner [~~he~~] shall make or cause to be made an investigation of the application.

§75.2. Hearing on Charter Application.

(a) Within 10 days after receiving any statement of intention to appear in person or by attorney to protest the application and required fee [~~a complete application has been accepted for filing~~], the commissioner shall set a date for a hearing on the application, which date shall not be more than 60 [~~90~~] days after the date the statement and fee are received. When requested by the proposed incorporators, a hearing shall be held on the application even though there are no persons who have indicated a desire to be heard against it. A hearing is not required if the proposed incorporators have not requested a hearing and no party has expressed intent to protest. Should a hearing be required, notice will be provided to interested parties in accordance with applicable laws and regulations. [~~application is accepted for filing. A decision to approve or deny the application will be rendered in accordance with the timetable set out in the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).~~]

(b) The purpose of the hearing shall be to accumulate a record of all pertinent information, testimony, records, reports, and other data in favor of, or opposed to, the application upon which the commissioner shall make a [~~his~~] determination of whether the application should be granted or denied. The commissioner may, using personal [~~in his~~] discretion, make an independent investigation of matters raised in the hearing and, in the event the commissioner [~~he~~] desires to base a [~~his~~] decision on any evidence disclosed by such investigation which is not a part of the official record, the commissioner [~~he~~] shall make the results of such investigation a part of the official record of the hearing and permit all parties to the hearing an opportunity to be heard in respect thereto by reopening the hearing, if necessary. This shall be done within 30 days after the date of the original hearing.

(c) If any material change occurs in the facts set forth in, or if the applicant files any amendment of, the application filed with the commissioner under the provisions of this chapter, the amendment setting forth such change, together with copies of documents or other material relevant to such change shall be filed with the commissioner prior to the publication of the notice of charter application [~~no less than 10 days prior to the date of the hearing~~]. Any amendment filed thereafter [~~fewer than 10 days prior to the date of the hearing~~] shall be accepted only at the discretion of the commissioner. The commissioner may require [~~hearing officer and the hearing officer may, upon motion of any interested party having filed notice of intention to appear at said hearing, postpone or delay the hearing to a later date if it appears that such amendment materially alters the application on file, provided, however, no~~] additional publication of the amendment to the application [~~date of such hearing shall be required~~].

§75.3. Publication of Notice of Charter Application.

Within 15 [~~At least 20~~] days of receipt of the notice issued pursuant to §75.9 of this chapter [~~before the date of the hearing~~], the proposed incorporators shall publish a notice, approved by the Commissioner, in a newspaper printed in the English language, and in general circulation in the county where the proposed savings bank will have its principal office. In cases where this section applies to a reorganization, merger, consolidation, conversion, purchase and assumption, acquisition, or branch application, publication shall occur in the county in which the savings bank has its principal office and in the county in which each proposed branch location will exist.

§75.5. Filing of Proof of Publication.

Within [~~At least~~] 10 days of publication [~~before the hearing date~~], the proposed incorporators shall file proof of publication in the manner provided in §75.3 of this title [~~(relating to Publication of Notice of Charter Application)~~] with the commissioner [~~and if 10 days before the hearing date the commissioner has received no written statements of intention to appear in person or by attorney to protest the application from one or more parties, the hearing may be dispensed with by the commissioner. The commissioner shall notify the proposed incorporators at least five days before the date of the hearing in the event the hearing has been dispensed with. When requested by the proposed incorporators, a hearing shall be held on the application even though there are no persons who have indicated a desire to be heard against it~~].

§75.6. Time of Decision on Charter Application.

The commissioner shall render a [~~his~~] decision within 30 [~~60~~] calendar days after the final ruling is issued [~~date the hearing is finally closed~~] if the hearing was held in accordance with §75.2 of this title [~~(relating to Hearing on Charter Application)~~], or 30 calendar days after the date the application is deemed substantially complete if [~~on which~~] the hearing is dispensed with, as the case may be.

§75.10. Change of Name.

(a) A savings bank may not change its name without the prior approval of the commissioner, and a savings bank may not operate under any name which has not been approved by the commissioner. The commissioner may not approve an application by a savings bank to change its name unless the commissioner finds [~~he shall have found~~] from the data furnished with the application, the evidence adduced at the hearing, and department [~~his official~~] records that the proposed change of name meets the applicable requirements of the Texas Savings Bank Act and this chapter, and does not violate other applicable law.

(b) As provided for new charter applications, notice must be given for change of name application. If protested, the commissioner shall consider the protest and may in the exercise of [~~his sole~~] discretion set the application for hearing to consider the facts or obtain additional information.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600808
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

7 TAC §75.4

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes the repeal of §75.4 in 7 Texas Administrative Code Chapter 75, Subchapter A, concerning Charter Applications.

In general, the purpose of the repeal of the rules regarding charter applications is to implement changes resulting from the commission's review of Chapter 75, under Texas Government Code §2001.039.

Section 75.4 is redundant with the existing and applicable statute, Texas Finance Code §91.004. Repeal removes the possibility of conflicts between the regulation and statute.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the repealed rule is no longer in effect, there will be no fiscal implications for state government or for local government as a result of repealing the aforementioned rule.

Commissioner Jones also has determined that, for each year of the first five years the repealed rule as proposed is no longer in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals due to the repeal as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The repeal is proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The repeal is also proposed under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 91 - 98 and 119.

§75.4. Notice to Other Savings Institutions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600824
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §§75.33, 75.35, 75.36, 75.38, 75.41

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§75.33, 75.35, 75.36, 75.38 and 75.41 in 7 Texas Administrative Code Chapter 75, Subchapter C concerning Additional Offices.

In general, the purpose of the proposal regarding these rules for additional offices is to implement changes resulting from the commission's review of Chapter 75, under Texas Government Code §2001.039.

The proposed amendments include the gender neutralization of references to the Commissioner, an update on one accounting term, and the elimination of duplicative text.

Section 75.33 addresses state savings bank branch applications. The proposed amendment replaces a gender-specific reference to the Commissioner with a reference to the Department.

Section 75.35 addresses applications for state savings bank mobile facilities. The proposed amendments make references to the Commissioner gender neutral.

Section 75.36 addresses the designation of a state savings bank purchase of assets or offices to qualify as a supervisory sale. The proposed amendment updates one accounting term from "net worth" to "capital."

Section 75.38 addresses location changes for state savings bank offices. The proposed amendments make references to the Commissioner gender neutral.

Section 75.41 addresses the application process for a state savings bank to establish an office outside of Texas. The proposed amendments make references to the Commissioner gender neutral and remove the duplication of text.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or

micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also proposed under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 91 - 98 and 119.

§75.33. Branch Office Applications.

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

(c) The commissioner may not approve an application for a branch office unless the commissioner [~~he~~] shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing and department [~~his official~~] records that:

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

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

§75.35. Mobile Facilities.

(a) Each application for permission to establish a mobile facility shall state the proposed location(s) and times at which the facility will operate; the need therefor; the personnel and office facilities to be provided and the estimated expense of such facility. Each application for a mobile facility shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as herein provided for new charter applications and the hearing may be dispensed with under the same conditions. An application for permission to establish a mobile facility may not be approved unless the commissioner shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing, and department [~~his official~~] records, all of the findings necessary for approval of a branch office.

(b) Mobile facilities must be operated consistent with the following requirements:

(1) (No change.)

(2) Each applicant shall show that adequate safeguards exist for the security of such mobile facility and its content. The commissioner may require further safeguards, if in the commissioner's [~~his~~] opinion the proposed safeguards are inadequate.

§75.36. Designation as and Exemption for Supervisory Sale.

(a) Designation as a supervisory sale. The commissioner may designate a purchase of additional offices and/or assets by a savings bank from another financial institution to be a supervisory purchase when:

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

(3) the Federal Deposit Insurance Corporation has determined, and notified the commissioner, that one or more of the grounds specified in the Federal Deposit Insurance Act, for appointment of a conservator or receiver, exist with respect to the selling institution, or the proposed transaction is necessary to prevent the failure or possible failure of the selling institution. For purposes of this section, the term "unsafe condition" shall mean that the selling institution is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound condition to transact business in that there has been a substantial reduction of its capital [~~net worth~~]; or that the institution and its directors and officers have violated any material condition of its charter or bylaws, the terms of any order issued by the commissioner or any agreement between the institution and the commissioner; or that the institution, its directors, or officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs of the institution by the commissioner or other duly authorized personnel of the department; or any other conditions affecting the institution which the commissioner and the board of directors of the institution agree place the institution in an unsafe condition.

(b) (No change.)

§75.38. Change of Home or Branch Office Location.

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

(e) The commissioner may not approve an application to move or relocate any office of a savings bank, unless the commissioner finds [~~he shall have found~~] from the data furnished with the application, the evidence adduced at the hearing, and department [~~his official~~] records, all of the findings necessary for approval of a branch office.

§75.41. Offices in Other States or Territories.

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may establish branch offices and loan production offices in any state or territory of the United States. Each application for permission to establish such a branch office or loan production office shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state or territorial regulatory authority approving the office or unit, or other evidence satisfactory to the commissioner that all state or territorial regulatory requirements have been satisfied. Each such application shall be set for hearing, if applicable, notice given, hearing held, if applicable, and decision reached in the same manner and within the time provided in this chapter for similar applications for offices in this state. The commissioner may not approve such an application unless the commissioner finds [~~he shall have affirmatively found~~] from the data furnished with the application, the evidence adduced at the hearing, if applicable, and department [~~his official~~] records that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met. [~~To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may establish branch offices and loan production offices in any state or territory of the United States. Each application for permission to establish such a branch office or loan production office shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state or territorial regulatory authority approving the office or unit, or other evidence satisfactory to the commissioner that all state or territorial regulatory requirements have been satisfied. Each such application shall be set for hearing, if applicable, notice given, hearing held, if applicable, and decision reached in the same manner and within the time provided in this chapter for similar applications for offices in this state. The commissioner may not approve such an application unless he shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing, if applicable, and his official records that all requirements

~~of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600809
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

SUBCHAPTER D. REORGANIZATION, MERGER, CONSOLIDATION, CONVERSION, PURCHASE, AND ASSUMPTION AND ACQUISITION

7 TAC §§75.83 - 75.88, 75.90, 75.91

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§75.83, 75.84, 75.85, 75.86, 75.87, 75.88, 75.90 and 75.91 in 7 Texas Administrative Code Chapter 75, Subchapter D concerning Reorganization, Merger, Consolidation, Conversion, Purchase and Assumption and Acquisition.

In general, the purpose of the proposal regarding these rules for reorganization, merger, consolidation, conversion, purchase, and assumption and acquisition is to implement changes resulting from the commission's review of Chapter 75, under Texas Government Code §2001.039.

The proposed amendments include the standardization of hearing and application processes across application types, gender neutralization of references to the Commissioner, clarifications in language and titles, and updates in terminology.

Section 75.83 addresses the notice and hearing requirements for merger and similar applications of state savings banks. The proposed amendments standardize hearing and application processes by referring to requirements set forth in other sections of this title.

Section 75.84 addresses the publication requirement for merger and similar applications of state savings banks. The proposed amendments standardize application processes by referring to requirements set forth in other sections of this title, also removing the attached graphic included with the section.

Section 75.85 addresses the decision period for merger and similar applications of state savings banks. The proposed amendments make a reference to the Commissioner gender neutral and standardize application processes by referring to requirement set forth in other sections of this title.

Section 75.86 addresses the appeal process for merger and similar applications of state savings banks. The proposed amendment clarifies a reference to applicable statutes.

Section 75.87 addresses the criteria for qualifying a merger or similar transaction of a state savings bank to be a supervisory merger. The proposed amendment updates an accounting term by replacing "net worth" with "capital."

Section 75.88 addresses state savings bank acquisitions involving financial institutions outside of Texas. The proposed amendments correct the rule title and make references to the Commissioner gender neutral.

Section 75.91 addresses the conversion of a state savings bank from a mutual to stock form of organization. The proposed amendment updates terms used.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also proposed under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 91 - 98 and 119.

§75.83. Notice and Hearing.

Each application for reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition will be set for hearing, notice given, and hearing held in the same manner and within the time as provided in this chapter for new charter applications and the hearing may be dispensed with under the same conditions. [~~to be heard within 90 days of filing. Notice will be sent by mail to the institution involved and those savings and loan associations and savings banks with offices in the same counties as any of the offices of the applying savings bank. If, from the evidence adduced at hearing, the commissioner finds that the applicable criteria for approval of the application set forth in the Texas Savings Bank Act are met, he shall enter an order approving the plan.~~]

§75.84. Publication.

Publication of notice of application for reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition shall be subject to the same requirements as provided in this chapter for new charter applications. [~~The institutions involved in a plan must publish a notice at least 20 days before the date of hearing in a newspaper~~

~~or newspapers of general circulation in each county or counties where said institutions have offices, and file proof of such publication with the commissioner at least 10 days prior to hearing. The form of notice shall be as follows.~~]
[~~Figure: 7 TAC §75.84~~]

§75.85. Time of Decision.

The commissioner shall render a [~~his~~] decision in the same manner and within the time as provided in this chapter for new charter applications. [~~within 60 days after the date the hearing is closed.~~]

§75.86. Appeal.

Any appeal of an order or action of the commissioner shall be made pursuant Chapter 2001 of the Texas Government Code [~~to the Administrative Procedure and Texas Register Act, §16 (Texas Civil Statutes, Article 6252-13a)~~], and the Texas Savings Bank Act, §§91.004 - 91.006.

§75.87. Designation as and Exemption for Supervisory Merger.

(a) (No change.)

(b) For purposes of this section, unsafe condition shall mean that the savings bank (or savings banks) is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that the savings bank is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its capital [~~net worth~~]; or that the savings bank and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the commissioner, or any agreement between the savings bank and the commissioner; or that the savings bank, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of the savings bank by the commissioner or other duly authorized personnel of the department; or any other condition affecting the savings bank which the commissioner and the board of directors of the savings bank agree place the savings bank in an unsafe condition.

(c) (No change.)

§75.88. Acquisitions Involving Financial Institutions [~~Savings Banks~~] in Other States or Territories.

To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state. Each such application shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the commissioner that all state regulatory requirements have been satisfied. Each such application shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time provided in this chapter for a similar application involving another savings bank in this state. The commissioner shall approve such an application if the commissioner finds [~~he shall have affirmatively found~~] from the data furnished with the application, the evidence adduced at the hearing, and department [~~his official~~] records, that all requirements of this chapter applicable to the proposed merger or acquisition have been met, and that all applicable requirements of the laws of the state in question have been met.

§75.90. Conversion into a Savings Bank.

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

(d) An applicant is entitled to a hearing under the Chapter 2001 of the Texas Government Code [~~Administrative Procedure and Texas Register Act~~] if the commissioner denies an application to convert and a written request for a hearing is delivered to the commissioner within 10 days after the date of denial. A hearings officer designated by the commissioner shall hold the hearing. Within 30 days after the date the hearing is completed, the commissioner shall enter a final order either approving or denying the application. An applicant has the right to appeal a final order to a district court of Travis County with the commissioner named as defendant. The commissioner is not required to file an appeal bond in any cause arising under this section. Filing an appeal under this section does not stay an order of the commissioner.

§75.91. Mutual to Stock Conversion.

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

(i) The converting savings bank shall pay interest at not less than the savings account interest [~~passbook~~] rate on all amounts paid in cash or by check or money order to the savings bank to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the savings bank until the conversion is completed or terminated.

(j) - (l) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600810
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

SUBCHAPTER E. CHANGE OF CONTROL

7 TAC §§75.121 - 75.124

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§75.121, 75.122, 75.123 and 75.124 in 7 Texas Administrative Code Chapter 75, Subchapter E concerning Change of Control.

In general, the purpose of the proposal regarding these rules for change of control is to implement changes resulting from the commission's review of Chapter 75, under Texas Government Code §2001.039.

The proposed amendments are limited to gender neutralization.

Section 75.121 provides definitions relating to state savings bank change of control applications. The proposed amendments neutralize gender references.

Section 75.122 addresses the acquisition of a state savings bank. The proposed amendments make references to the Commissioner gender neutral.

Section 75.123 addresses hearings for state savings bank change of control applications. The proposed amendments make references to the Commissioner gender neutral.

Section 75.124 addresses retention of control of a state savings bank. The proposed amendments make references to the Commissioner gender neutral.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also proposed under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 91 - 98 and 119.

§75.121. Definitions.

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

(1) (No change.)

(2) Affiliated person--

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

(D) any corporation or organization (other than the savings bank or a corporation or organization through which the savings bank operates) of which a director, officer, or controlling person of such savings bank:

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

(iii) is a limited partner who, directly or indirectly, either alone or with their [~~his~~] spouse and the members of their [~~his~~] immediate family who are also affiliated persons of the savings bank, owns an interest of 10% or more in the partnership (based on the value of their [~~his~~] contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, owns an interest of 25% or more in the partnership; or

(iv) directly or indirectly, either alone or with their [~~his~~] spouse and the members of their [~~his~~] immediate family who are also affiliated persons of the savings banks, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of such savings bank or the spouse of such person has a substantial beneficial interest or as to which such person or their [~~his~~] spouse serves as trustee or in a similar fiduciary capacity.

(3) - (8) (No change.)

§75.122. Acquisition of a Savings Bank.

The following procedures shall be followed when a person desires to acquire control of a savings bank.

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

(4) The transaction for acquisition of control of a savings bank may not be consummated until the commissioner approves the application for acquisition of control. The commissioner shall render a [~~his~~] decision within 60 days after the application required by paragraph (1) of this section has been filed with and deemed complete by the commissioner. The commissioner shall deny an application for acquisition of control of a savings bank if the commissioner [~~he~~] finds any of the following:

(A) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or the savings bank industry in any part of the state, unless the commissioner [~~he~~] also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;

(B) - (H) (No change.)

(5) If any material change occurs in the facts set forth in the application and any documents filed with the department, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner within three business days after the person learns of such change.

§75.123. Hearings.

(a) The commissioner may, by using personal [~~at his~~] discretion, set and hold a hearing on an application for acquisition of control of a savings bank if the commissioner [~~he~~] deems it desirable to accumulate a complete record of pertinent information and data in support of approval or denial of the application. If the commissioner issues a written order denying an application for acquisition of control, the disapproved applicant is entitled to a public hearing on such application.

(b) - (f) (No change.)

§75.124. Retention of Control.

(a) (No change.)

(b) The commissioner may require the submission of such information as [~~he deems~~] necessary to determine whether any retention of control complies with the law of this state, as a condition of approval of such retention of control.

(c) The commissioner may, when it appears that a change of control may have taken place without prior approval, call a hearing to determine whether there has been in fact a change of control or whether any unauthorized person, or persons, having no apparent ownership interest in the savings bank, acting alone or in concert with others, effectively have indirect controlling or dominating influence over the management or policies of a savings bank. If the commissioner finds that such unauthorized control exists, the commissioner [~~he~~] may, after

notice and hearing, issue an order requiring immediate divestiture by certain persons or unapproved or indirect control, or the commissioner may issue any other supervisory order the commissioner [~~which he~~] deems appropriate.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600812
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 76. MISCELLANEOUS
SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

7 TAC §§76.1, 76.3, 76.4, 76.6, 76.12

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§76.1, 76.3, 76.4, 76.6 and 76.12 in 7 Texas Administrative Code Chapter 76, Subchapter A concerning Books, Records, Accounting Practices, Financial Statements and Reserves.

In general, the purpose of the proposal regarding these rules for books, records, accounting practices, financial statements and reserves is to implement changes resulting from the commission's review of Chapter 76, under Texas Government Code §2001.039.

The proposed amendments include clarification of the permissibility of electronic records, updated requirements for annual financial audits and the treatment of bad debts, and updated statutory references related to the bylaws of state savings banks.

Section 76.1 addresses the proper maintenance of state savings bank books and records. The proposed amendments reflect current, prudent practices by explicitly permitting offsite electronic duplicate records.

Section 76.3 allows the reproduction of destroyed state savings bank records from copies in various permissible forms. The proposed amendment updates those forms to explicitly include electronic records.

Section 76.4 sets requirements for annual financial audits for state savings banks. The proposed amendments clarify the standards for those audits and related correspondence.

Section 76.6 describes appropriate accounting for charge-offs of, and reserves for, bad debts. The proposed amendment replaces specific guidance with a reference to the requirements of Generally Accepted Accounting Principles (GAAP).

Section 76.12 addresses bylaws of state savings banks. The proposed amendment updates references to applicable statutes and removes unnecessary words.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also proposed under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 91 - 98 and 119.

§76.1. Location of Books and Records.

Unless otherwise authorized by the commissioner, a savings bank shall keep at its home office correct and complete books of account and minutes of the meeting of members and directors. Complete records of all business transacted at the home office shall be maintained at the home office. Records of business transacted at any branch or agency office may be kept at such branch or agency office; provided, that control records of all business transacted at any branch or agency office shall be kept at the home office. A savings bank may keep duplicate electronic records offsite as a part of its business continuity planning if done in a manner meets applicable regulatory requirements, including those provided by the Federal Deposit Insurance Corporation and the Federal Financial Institution Examination Council.

§76.3. Reproduction and Destruction of Records.

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

§76.4. Financial Statements; Annual Reports; Audits.

[~~(a)~~] For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank, regardless of asset size, is required to submit [~~have~~] an independent audit of its financial statements and all

correspondence reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of 12 CFR [~~Code of Federal Regulations Part 363 Federal Deposit Insurance Corporation Regulations regarding annual independent audits and reporting requirements are incorporated herein~~], with the exception of any matters specifically addressed by this section, the Act, or its related rules.

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

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

The commissioner, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance with Generally Accepted Accounting Principles (GAAP) [~~set up by transfers from surplus or paid in capital~~].

§76.12. Bylaws.

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

(b) A state savings bank is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as contained in the Texas Business Organizations Code [~~Miscellaneous Corporation Laws Act, Article 1302-7.06~~] to the same extent permitted under state law for banks and savings and loan associations. Such bylaw provision is optional and within the discretion of the state savings bank.

(c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600813
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

SUBCHAPTER B. CAPITAL AND CAPITAL OBLIGATIONS

7 TAC §76.21, §76.22

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §76.21 and §76.22 in 7 Texas Administrative Code Chapter 76, Subchapter B concerning Capital and Capital Obligations.

In general, the purpose of the proposal regarding these rules for capital and capital obligations is to implement changes resulting from the commission's review of Chapter 76, under Texas Government Code §2001.039.

The proposed amendments include updates of capital definitions consistent with prevailing accounting guidance and replacement of terms to clarify the applicability of this subchapter to state savings banks.

Section 76.21 describes minimum capital requirements for state savings banks. Proposed amendments update capital definitions for consistency with accounting principles and clarify the applicability to state savings banks.

Section 76.22 permits the Commissioner to increase or decrease minimum capital requirements for state savings banks. The proposed amendments clarify the applicability of this section to state savings banks, update one accounting term by replacing "net worth" with "capital," and remove unnecessary words in reference to another section of this title.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also proposed under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 91 - 98 and 119

§76.21. Capital Requirements.

(a) Unless the context clearly indicates otherwise, when used in this chapter, "Capital" [~~Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.~~]

[~~(1)~~] [~~Capital~~] for a [~~capital stock~~] savings bank includes (as applicable)[~~--Shall include~~] the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the savings bank's capital under Generally Accepted Accounting Principles) plus any retained earnings and

additional paid-in capital [~~paid in surplus~~] as well as such other items as the commissioner may approve in writing for inclusion as capital.

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

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

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

§76.22. Increase or Decrease of Minimum Capital Requirements.

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

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

(2) the savings bank [~~association~~] is well managed. In determining whether the applying savings bank [~~association~~] is well managed, the commissioner may consider:

(A) management's record of operating the savings bank [~~association~~];

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

(D) management's ability to operate the savings bank [~~association~~] in changing economic conditions; and

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

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

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600814
Ernest C. Garcia
General Counsel
Department of Saving and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

SUBCHAPTER E. HEARINGS

7 TAC §76.71

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §76.71 in 7 Texas Administrative Code Chapter 76, Subchapter E concerning Hearings.

In general, the purpose of the proposal regarding these rules for hearings is to implement changes resulting from the commission's review of Chapter 76, under Texas Government Code §2001.039.

Section 76.71 addresses the use of a hearings officer for state savings bank matters. The proposed amendments eliminate unnecessary words in reference to applicable statutes and correct agency names.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also proposed under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 91 - 98 and 119.

§76.71. Hearings Officer.

The Texas Banking Act, §1.011(b), House Bill 1543, Acts, 74th Legislature, provides that the Finance Commission may employ a hearings officer, who for purposes of [~~Texas Civil Statutes,~~] Government Code, §2003.21, is an employee of the [~~Texas~~] Department of Savings and Mortgage Lending, Texas Department of Banking and the Office of the Consumer Credit Commissioner. The Finance Commission hearings officer shall conduct hearings under provisions of the Act.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600815
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

SUBCHAPTER F. FEES AND CHARGES

7 TAC §§76.95, 76.98, 76.99, 76.108

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§76.95, 76.98, 76.99 and 76.108 in 7 Texas Administrative Code Chapter 76, Subchapter F concerning Fees and Charges.

In general, the purpose of the proposal regarding these rules for fees and charges is to implement changes resulting from the commission's review of Chapter 76, under Texas Government Code §2001.039.

The proposed amendments include clarifying language and a replacement of public information fees with reference to those set by the Texas Attorney General.

Section 76.95 sets the fee for special examinations or audits of state savings banks. The proposed amendments provide clarifying language.

Section 76.98 describes the annual assessment fee required for a state savings bank to do business in Texas. The proposed amendments provide clarifying language.

Section 76.99 sets the fees for a state savings bank to reorganize, merge, and/or consolidate. The proposed amendments provide clarifying language and remove unnecessary words in reference to other sections of this title.

Section 76.108 sets fees for public information requests relating to Department records of state savings banks. The proposed amendments replace specific fees with reference to the fees adopted by rules of the Texas Attorney General.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also proposed under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 91 - 98 and 119.

§76.95. Fee for Special Examination or Audit.

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

§76.98. Annual Fee To Do Business.

All savings banks chartered under the laws of the state and all foreign savings banks organized under the laws of another state of the United States holding a certificate of authority to do business in this state shall pay to the department [~~commissioner~~] such annual fee or assessment and examination fees as are set by the Finance Commission of Texas. Annual fees and assessments shall be established based upon the total assets of the savings bank [~~association~~] at the close of the calendar quarter immediately preceding the effective date of the fee or assessment.

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

(a) Any savings bank [~~association~~] seeking to reorganize, merge, and/or consolidate, pursuant to the Texas Savings Bank Act,

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

(b) (No change.)

§76.108. Fees for Public Information [~~Open Records~~] Requests.

(a) The fees for copies of records of the department which are subject to public examination pursuant to Chapter 552 of the Texas Government Code [~~the Texas Open Records Act~~] shall in accordance with Texas Government Code §552.262, be those adopted by rules of the attorney general. [~~as follows:~~]

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

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

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

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

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

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

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

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

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

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

(b) All requests will be treated equally. Charges may be waived at the commissioner's discretion. [~~The commissioner may waive charges at his discretion.~~]

(c) (No change.)

(d) Confidential documents will not be made available for examination or copying except under court order or as otherwise permitted or required by a rule adopted under this title or other applicable law [~~other directive~~].

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600816
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

SUBCHAPTER H. CONSUMER COMPLAINT PROCEDURES

7 TAC §76.122

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §76.122 in 7 Texas Administrative Code Chapter 76, Subchapter H concerning Consumer Complaint Procedures.

In general, the purpose of the proposal regarding these rules for consumer complaint procedures is to implement changes resulting from the commission's review of Chapter 76, under Texas Government Code §2001.039.

Section 76.122 addresses consumer complaint procedures relating to state savings banks. The proposed amendments correct the name of the Department and replace specific contact information with reference to the Department's website.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also proposed under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 91 - 98 and 119.

§76.122. Consumer Complaint Procedures.

(a) (No change.)

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the [~~Texas~~] Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the [~~Texas~~] Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, by telephone or fax at the appropriate number provided at the department's website at www.sml.texas.gov [~~Telephone No.: (877) 276-5550, Fax No.: (512) 475-1505~~], or via electronic submission on the department's [~~Department's~~] website at http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html.

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600817
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §§77.2, 77.4, 77.5, 77.8, 77.11, 77.31, 77.33, 77.35, 77.51, 77.71, 77.91, 77.94

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §§77.2, 77.4, 77.5, 77.8, 77.11, 77.31, 77.33, 77.35, 77.51, 77.71, 77.91 and 77.94 in 7 Texas Administrative Code Chapter 77, Subchapter A concerning Authorized Loans and Investments.

In general, the purpose of the proposal regarding these rules for authorized loans and investments is to implement changes resulting from the commission's review of Chapter 77, under Texas Government Code §2001.039.

The proposed amendments include clarified language, enhanced consistency with federal regulations, updated federal agency references, and the neutralization of gender references.

Section 77.2 addresses limitations on loans to One Borrower from a state savings bank. The proposed amendment capitalizes "One Borrower" to clarify the use of a defined term.

Section 77.4 addresses requirements for home improvement loans made by state savings banks. The proposed amendments replace dated appraisal requirements with those in effect for federally-supervised institutions and clarify a statutory reference.

Section 77.5 addresses requirements for manufactured home loans made by state savings banks. The proposed amendments replace dated appraisal requirements with those in effect for federally-supervised institutions.

Section 77.8 addresses requirements for personal property loans made by state savings banks. The proposed amendment clarifies a statutory reference.

Section 77.11 addresses requirements for unsecured loans made by state savings banks. The proposed amendment corrects a reference to another rule.

Section 77.31 addresses general loan policies and documentation for state savings banks. The proposed amendments provide clarifying terms, language, and capitalization; make gender references neutral; replace dated appraisal requirements with those in effect for federally-supervised institutions; and remove dated federal agency references.

Section 77.33 addresses loans made by state savings banks to insiders and affiliates. The proposed amendment enhances consistency with federal regulations.

Section 77.35 establishes definitions for use in this chapter. The proposed amendments make gender references neutral and re-style one term for clarity.

Section 77.51 addresses letters of credit issued by state savings banks. The proposed amendment clarifies the applicability of limits on loans to One Borrower.

Section 77.71 addresses state savings bank security investments. The proposed amendments update federal agency references.

Section 77.91 addresses state savings bank subsidiary investments. The proposed amendments make references to the Commissioner gender neutral.

Section 77.94 addresses operations of state savings bank subsidiaries. The proposed amendments provide clarifying language and that which may be conflicting.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also proposed under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 91 - 98 and 119.

§77.2. Limitations on Aggregate Loans to One Borrower.

A savings bank may not make loans to any One Borrower [~~one borrower~~] to a greater extent than a savings association is permitted under the Home Owners' Loan Act, §5(u) (12 United States Code 1464(u)).

§77.4. Home Improvement Loans.

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

(c) Prior to funding a loan under this section, a savings bank shall comply with the requirements set forth in §77.31(a)(1), (3), (4), (6), (7), and (10) of this title (relating to Loan Documentation) and shall additionally have the following documents and records in its permanent loan file for such loan:

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

(4) For all loans under this section, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq. [~~of $50,000 or more, a written appraisal report by an appraiser or committee of appraisers, who may be employees of the savings bank, and in a form approved by the Appraisal Institute, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Corporation. The appraisal report shall be signed by the appraiser or committee of appraisers. For all loans under $50,000, a written opinion of value, with picture of property, by an appraiser or a real estate broker, who may be an employee of the savings bank, shall be required.~~]

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

(f) A loan made under this section may include add-on interest as authorized by the Texas Credit Title [~~Code, Title~~ 4] of the Finance Code.

(g) (No change.)

§77.5. Manufactured Home Loans.

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

(d) Prior to funding a loan under this section, a savings bank shall comply with the requirements set forth in §77.31(a)(1), (3), (4), (5), (6), and (7) of this title (relating to Loan Documentation) and shall additionally have the following documents and records in its permanent loan file for such loan:

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

(4) if security for the loan is real estate, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq. [~~a professional appraisal report by an appraiser or committee of appraisers, who may be employees of the savings bank, in writing and in a form approved by the Appraisal Institute, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. Other property may be provided as additional security for the loan, without meeting the requirements of this chapter for loans secured by such property, so long as all requirements of this section are met.~~]

§77.8. Personal Property Loans.

(a) (No change.)

(b) Loans made under this section may include add-on interest as authorized by the Texas Credit Title [~~Code, Title~~ 4] of the Finance Code.

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

§77.11. Unsecured Loans.

(a) A savings bank may make unsecured loans or purchase participations in unsecured loans, on the terms and in amounts consistent with the savings bank's lending policies, subject to the limitations of this section.

(b) Real estate, personal property, or interests in oil and gas leases may be provided as security for such loans without meeting the requirements of this chapter for real estate or personal property loans, so long as all requirements of this section are met.

(c) Prior to funding a loan under this section, a savings bank shall comply with the requirements of §77.31[~~(c)~~] of this title (relating to Loan Documentation).

§77.31. Loan Policies and Documentation.

(a) Each savings bank shall establish written policies approved by its board of directors establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the savings bank's [~~association's~~] capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board of directors; take adequate account of concentration of credit risk; and are appropriate to the size of the savings bank and the scope of its lending activities. Loan documentation standards should be established and maintained to enable the savings bank to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the savings bank may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed and dated by the borrower or their [~~his~~] agent (and if the borrower is a corporation, a board of directors' resolution authorizing the loan), which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or their [~~his~~] agent, or a copy of the executed contract, disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing the purchase of the security for the loan;

(3) (No change.)

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date

of loan approval, by whom approved, the signatures of the persons approving the loan, any conditions of approval, and verifying that the persons approving the loan have confirmed applicable limitations on loans to One Borrower [~~loan-to-one-borrower limitations~~] are met;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon their [~~his~~] completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) - (10) (No change.)

(11) for real estate loans, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq. [~~for real estate loans in which the transaction value exceeds $250,000, a professional appraisal report by an appraiser or committee of appraisers, who may be employees of the savings bank, is required. Reappraisals may be required by the commissioner on real estate or other property or interests therein securing loans, at the expense of the savings bank, when the commissioner has reason to believe the value of the security is overstated for any reason. The appraisal report shall be in writing and in a form approved by the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the Federal Home Loan Mortgage corporation, the Federal National Mortgage Corporation and shall be signed by the appraiser or committee of appraisers. In case of renewal of a loan where additional funds are advanced by the savings bank, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this subsection~~];

(12) - (13) (No change.)

(14) any documents required by the Texas Credit Title [~~Code, Title~~ 4] of the Finance Code.

~~[(b) Smaller loans in an amount less than $50,000 would generally be expected to meet more limited documentation guidelines of subsection (a)(1) - (8) of this section. Further, §77.4(c) and §77.5(d) of this title (relating to Home Improvement Loans and Manufactured Home Loans) provide additional documentation guidelines for making home improvement or manufactured housing loans.]~~

(b) [~~(c)~~] Documentation guidelines for unsecured loans under this chapter would generally include the documents in subsection (a)(1) and (3) - (7) of this section.

(c) [~~(d)~~] Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof[~~, or which is guaranteed in any amount by the Veteran's Administration, Federal Housing Administration, or Farmer's Home Administration~~].

(d) [~~(e)~~] A savings bank may designate as escrow agent an attorney or a title company, either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents shall be forwarded to the savings bank within five business days after closing, or immediately after recording, for those documents which require filing of record.

(e) [~~(f)~~] Permanent Loan File Requirements.

(1) Loan documentation shall be in the possession of the savings bank or an escrow agent designated by the savings bank before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records shall be placed in one permanent loan file immediately upon receipt by the savings bank.

(2) The permanent loan file required by this section shall be located at an office of the savings bank. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings bank's discretion. Files for loans which are fully secured by accounts at the savings bank may be maintained at the office where the loan was originated.

(3) The permanent loan file shall contain evidence that the savings bank obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings bank's interest therein. This requirement shall not apply to loan participations purchased by the savings bank.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw shall be part of the permanent file.

(5) When a savings bank purchases whole loans or participations in loans, it shall cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement shall be a part of the permanent file. The savings bank shall obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(f) [~~(g)~~] The records of the savings bank shall reflect that the board of directors has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the savings bank and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings bank. Loans originating in branch offices, loan offices, or agencies shall be approved in the same manner as loans originating in the principal office.

(g) [~~(h)~~] A savings bank shall maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

§77.33. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.

All transactions, including loans, involving officers, directors, affiliated persons, controlling persons or employees shall be limited and governed by the provisions of Federal Reserve Board Regulations [~~Regulation~~] O and W [~~the Federal Reserve Act, §23A and §23B~~], which sections [~~and regulations~~] are hereby incorporated by reference. Such provisions shall be enforced by the department.

§77.35. Definitions.

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

(1) Affiliated person--A director, officer, or controlling person of a savings bank; a spouse of a director, officer, or controlling person of such savings bank; a member of the immediate family of a director, officer, or controlling person of such savings bank; any corporation or organization (other than the savings bank or a subsidiary of the savings bank) of which a director, officer, or controlling person of such savings bank is chief executive officer, chief financial officer, or a person performing similar functions, is a general partner, is a limited partner who directly or indirectly, either alone or with their [~~his~~] spouse and the members of their [~~his~~] immediate family, owns an interest of 10% or more in the partnership (based on the value of their [~~his~~]

contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members, owns an interest of 25% or more in the partnership; or directly or indirectly either alone or with their [~~his~~] spouse and the members of their [~~his~~] immediate family, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members, 25% or more of any class of equity securities; any trust or other estate in which a director, officer, or controlling person of such savings bank or a member of their [~~his~~] immediate family has a substantial beneficial interest or as to which such person or their [~~his~~] spouse serves as trustee or in a similar fiduciary capacity; a holding company affiliate; and any officer, director, or controlling person of a holding company affiliate.

(2) (No change.)

(3) Controlling person--Any person or entity which, either directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote, or holds proxies representing 25% or more of the voting shares or rights of a savings bank; or controls in any manner the election or appointment of a majority of the directors of a savings bank. A director of an insured institution will not deemed to be a controlling person of such institution based upon their [~~his~~] voting, or acting in concert with other directors in voting, proxies obtained in connection with an annual solicitation of proxies or obtained from savings account holders and borrowers if such proxies are voted as directed by a majority vote of the entire board of directors of a savings bank, or of a committee of such directors if such committee's composition and authority are controlled by a majority vote of the entire board and if its authority is revocable by such a majority.

(4) - (10) (No change.)

(11) One Borrower [~~One-borrower~~]--Any person or entity that is, or that upon the making of a loan will become, obligor on a loan or guarantor of a loan; nominees of such obligor; all persons, trusts, syndicates, partnerships, and corporations of which such obligor is a nominee, a beneficiary, a member, a general partner, a limited partner owning an interest of 10% or more (based on the value of their [~~his~~] contribution), or a record or beneficial stockholder owning 10% or more of the capital stock; and if such obligor is a trust, syndicate, partnership, or corporation, all trusts, syndicates, partnerships, and corporations of which any beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of 10% of more, or record or beneficial stockholder owning 10% or more of the capital stock of such obligor. In the case of a loan that has been assumed by a third party with the consent of the lending institution, the former debtor shall not be deemed an obligor.

(12) - (16) (No change.)

§77.51. Letters of Credit.

A savings bank may issue letters of credit in accordance with the terms and conditions of the Uniform Commercial Code of the State of Texas and the Uniform Customs and Practice for Documentary Credits, subject to the following requirements.

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

(6) The amount of each letter of credit shall be included in the aggregation of loans subject to the limitations of this chapter relating to the loans to One Borrower [~~computing loan limitations to one borrower~~].

(7) - (8) (No change.)

§77.71. Investment in Securities.

(a) A savings bank shall have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of [~~the Federal Savings and Loan Insurance Corporation (FSLIC) or~~] the Federal Deposit Insurance Corporation (FDIC); in stock or obligations of a national mortgage association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the Federal Deposit Insurance Corporation; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the savings bank's purposes or power; in demand, time, or savings deposits of any financial institution the deposits of which are insured by the FDIC; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state; and in such other securities or obligations approved by the commissioner.

(b) A savings bank investing in securities under this section shall insure that the securities are delivered to the savings bank, or for the savings bank's account to a custodial agent or trustee designated by the savings bank, within three business days after paying for or becoming obligated to pay for the securities. The savings bank may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the Federal Deposit Insurance Corporation, any savings and loan association legally exercising trust powers and the accounts of which are insured by the Federal Deposit Insurance Corporation [~~Federal Savings and Loan Insurance Corporation~~], or such other trust company approved in advance by the commissioner. When employing any of the foregoing entities as trustee or custodial agent to accept delivery of the securities, the savings bank shall insure that it receives a custodial or trust receipt for the securities within three business days of the delivery of the securities.

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

§77.91. Investment in and Divestiture of Subsidiary Corporations.

(a) (No change.)

(b) A savings bank may, only after prior written approval of the commissioner, invest in a corporation in accordance with the terms and conditions set forth in this chapter. The commissioner may approve an investment in a corporation if the commissioner [~~he~~] finds that:

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

(c) If the commissioner finds that a savings bank has abused or is abusing the authority granted in this chapter, the commissioner may exercise discretion in denying [~~he may at his discretion deny~~] such savings bank the right to future exercise thereof until such abuse or abuses have been corrected.

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

§77.94. Subsidiary Operations.

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

(d) Each corporation shall maintain fidelity bond coverage with an acceptable bonding company in an amount that [~~to~~] adequately protects the corporation from such loss. Coverage as an additional insured entity under a fidelity bond of the parent [~~cover each director, officer, employee, and agent who has access to cash or securities of the corporation. Such bond amount shall be in an amount equivalent to 1.0% of total assets but in no event shall be less than $25,000 nor more~~

~~than $2 million. In lieu of a separate surety bond for the corporation, the~~] savings bank or its holding company may satisfy this requirement [~~obtain an extension rider to the surety bond coverage of the parent savings bank~~].

(e) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600818
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

SUBCHAPTER B. SAVINGS AND DEPOSITS

7 TAC §77.116

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §77.116 in 7 Texas Administrative Code Chapter 77, Subchapter B concerning Savings and Deposits.

In general, the purpose of the proposal regarding these rules for savings and deposits is to implement changes resulting from the commission's review of Chapter 77, under Texas Government Code §2001.039.

Section 77.116 address the pledging of state savings bank assets to secure deposits. The proposed amendments make state savings bank powers consistent with those of other types of charters.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

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

The amendments are proposed under Texas Finance Code §11.302, which authorizes the Finance Commission to adopt rules applicable to state savings associations or to savings banks and §96.002, which authorizes the Finance Commission to adopt rules necessary to supervise and regulate savings banks. The amendments are also proposed under Texas Finance Code §94.253 which provides that the Finance Commission may adopt rules regarding investments in equity securities and §97.001, which provides that the Finance Commission may adopt rules regarding holding companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 91 - 98 and 119.

§77.116. Pledging of Assets to Secure Deposits of Certain Public Purpose Entities.

A savings bank may pledge its assets to secure the deposits of [~~an entity that serves a public purpose. For purpose of this section, an entity serves a public purpose if it is~~]:

(1) the United States government or any instrumentality thereof [~~an electrical cooperative organized under Chapter 161 of the *Utilities Code*~~];

(2) any State or political subdivision, agency, or instrumentally thereof [~~a telephone cooperative organized under Chapter 162 of the *Utilities Code*~~];

(3) any local municipality, agency, or instrumentally thereof [~~a nonprofit water supply or sewer service corporation organized under Chapter 67 of the *Water Code*~~];

(4) any federally-recognized Indian tribe [~~a not for profit business development corporation organized under Chapter 23, Subchapter B of the *Business Organizations Code*~~]; or

(5) any other entity, as required by state or federal law, or court order [~~any other member owned cooperative or not for profit corporation organized under a special statute to provide utility service or economic development assistance or whose purpose the commissioner determines is similar to those entities listed in paragraphs (1) - (4) of this section~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600819
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) proposes amendments, new rules, and repeals in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales. The commission proposes amendments to §§84.102, 84.201, 84.203, 84.601, 84.602, 84.605, 84.607, 84.610, 84.611, 84.708, 84.709, 84.804, 84.808, and 84.809; the repeal of §§84.205, 84.604, 84.613, and 84.614; and new §§84.205, 84.309, 84.604, and 84.613. The proposed changes affect rules contained in

Subchapter A, concerning General Provisions; Subchapter B, concerning Retail Installment Contract; Subchapter C, concerning Insurance and Debt Cancellation Agreements; Subchapter F, concerning Licensing; Subchapter G, concerning Examinations; and Subchapter H, concerning Retail Installment Sales Contract Provisions.

In general, the purpose of the amendments to 7 TAC Chapter 84 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 84 was published in the January 15, 2016, issue of the *Texas Register* (41 TexReg 637). The commission received no comments in response to that notice.

The proposed rule changes relate to the following issues: deferment charges and time price differential, documentary fees, debt cancellation agreements, licensing processes and annual renewal statement, and technical corrections. Additionally, certain sections are being proposed for repeal in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received two informal written precomments. Certain concepts recommended by the precommenters have been incorporated into this proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the amendments, new rules, and repeals are provided in the following paragraphs.

I. Deferment charges and time price differential

A proposed amendment to §84.102 clarifies the definition of "deferment charge" to remove the phrase "The payment of an additional."

Proposed amendments throughout §84.201 provide updated internal references and citations. Additionally, in Figure §84.201(d)(2)(B)(iii), a proposed amendment will correct a typographical error. For 61 months and $15.00 add-on rates per $100, the figure's current rate of 26.6341% will be replaced by the correct rate of 24.6341%.

The proposal includes several amendments to §84.203, which relates to deferment charges. In general, the purpose of these amendments is to clarify the requirements for calculating and charging deferment charges, which are authorized under Texas Finance Code, §348.114. In particular, the amendments clarify the requirements for transactions using the true daily earnings method.

An amendment to subsection (a) of §84.203 clarifies the definition of "deferment charge" to remove the phrase "the payment of an additional." The proposal removes a sentence from subsection (a) to conform to amendments to subsection (d)(3).

In the proposed amendments to subsection (b), the rule's current requirement to provide a deferment notice to the buyer is replaced with a requirement to provide the buyer with a copy of the written deferment agreement. Paragraph (1) describes the elements that must be included in the deferment agreement. These requirements are based on Texas Finance Code, §348.116, which provides that an amendment to a retail installment contract must be confirmed in a writing signed by the buyer, and that the holder must deliver a copy of the confirmation to the buyer. Regarding the requirement to have a signed deferment agreement, one precommenter asked whether the agency would continue to follow a policy that the commission articulated in the 2008 preamble to the original adoption of §84.203. In that preamble, the commission stated: "There are certain fact situations where a signature would not be required. For example, if the holder does not change the payment amount and does not impose a charge for the deferment." 33 TexReg 8915 (2008). The agency will continue to follow this policy if the proposed amendments are adopted.

The proposal deletes current subsection (c), which deals with the content of the deferment notice, because the proposal replaces this provision with a requirement to provide a deferment agreement containing similar information in subsection (b). Subsection (d) of the proposal amends the guidelines for computing the deferment charge in order to provide additional clarity. For example, amendments to paragraphs (1)(A)(i)(II) and (2)(A)(i)(II) specify that the holder may charge a deferment charge that is lower than the maximum. Also, amendments to paragraphs (1)(D) and (2)(D) describe requirements for the application of payments. Proposed new paragraph (3) describes how the deferment charge should be calculated for a transaction using the true daily earnings method. This provision explains that all time price differential that will accrue on the deferred installments during the deferment period must be included in the base deferment charge.

The proposal deletes current subsections (f) and (g), dealing with accrual of time price differential and accounting of payments, because the proposal replaces these provisions with amended provisions in subsection (d). The proposal adds a new subsection (f) explaining that a holder may not make a false, misleading, or deceptive representation relating to a deferment charge. For example, a holder may not make an offer to the retail buyer such as "Payment Holiday--Pay Only $25" if the total deferment charge exceeds $25.

II. Documentary fees

Section 84.205, which relates to documentary fees, is proposed for repeal and replacement with a new rule. Currently, Section 84.205 describes the requirements for filing a written notification of an increased documentary fee under Texas Finance Code, §348.006, and describes the criteria that the Office of Consumer Credit Commissioner (OCCC) uses to determine whether a documentary fee is reasonable. The proposed new rule largely maintains the current rule's requirements, but it includes new provisions relating mainly to three issues. First, it raises the documentary fee amount that does not require a cost analysis from $125 to $150. Second, it codifies several concepts that the OCCC has used in accepting notifications of documentary fees and in reviewing cost analyses. Third, it specifies the format of the cost analysis, in order to help streamline the OCCC's process of reviewing documentary fees.

Subsection (a) describes the purpose of the new section, including a reference to the documentary fee provisions of Texas Finance Code, §348.006. Subsection (b) describes the rule's general requirements, explaining that: (1) for a documentary fee of $50 or less, no notification or cost analysis is required; (2) for a documentary fee over $50, up to $150, a notification is required, but a cost analysis is not required; and (3) for a documentary fee over $150, both a notification and a cost analysis are required. The current documentary fee rule at §84.205(e)(3) allows a seller to file a documentary fee up to $125 without providing a cost analysis. The commission adopted the original rule with the $125 amount in 2010. The agency believes that this is

an appropriate time to revisit the $125 amount and increase it to $150, primarily for two reasons. First, the agency's ongoing review of documentary fee cost analyses has indicated that a large portion of sellers can support a fee of $150 as being reasonable. Second, since 2010, several document-related costs for Texas motor vehicle dealerships have increased, including costs to comply with recent electronic titling requirements of the Texas Department of Motor Vehicles (TxDMV). Based on these factors, as well as a comparison of maximum documentary fee amounts in other states, the OCCC believes that $150 is an appropriate amount that sellers can file without providing a supporting cost analysis.

Subsection (c) describes the requirements for the written notification that sellers must provide to the OCCC before charging a documentary fee greater than $50. Paragraph (2) explains that a seller must provide a notification for each licensed location or registered office at which motor vehicles are sold. Paragraph (3) explains that the notification must be provided on a form prescribed by the OCCC. One precommenter expressed concern that a separate submission would be required for each licensed location or registered office. The current procedure for submitting documentary fee notifications already allows sellers to submit a single spreadsheet listing multiple locations. As the OCCC develops an updated from for providing the notification, the agency will be mindful of this concern. One precommenter asked whether a seller would comply with the notification requirement if it sent a written notification in a format other than the form prescribed by the OCCC (e.g., a letter sent to the OCCC by certified mail). The OCCC believes that a standardized form is appropriate and necessary to ensure that filings are correctly processed, and to enable the agency to comply with its statutory responsibility under Texas Finance Code, §348.006 to accept documentary fee notifications. However, if a seller sent a written notification to the OCCC on an improper form and made a bona fide effort to communicate its documentary fee amount to the OCCC, the OCCC could exercise its discretion and determine whether the attempted communication constituted the equivalent of a filing.

Paragraph (4) describes the requirements for filing a documentary fee notice upon a transfer of ownership between businesses. The proposed rule requires the transferee to file a documentary fee notification no later than the 30th calendar day following the transfer of ownership if it intends to charge a documentary fee greater than $50. Regarding this requirement, one precommenter stated: "[W]e have seen a number of sophisticated dealership operators simply forget about the documentary fee notice when applying for a transfer or new MVSF because they believed that the ALECS application system was comprehensive. . . . We would recommend including in 84.205(c)(4) a requirement that the OCCC include in the application for a MVSF license a section to provide notice of a documentary fee increase." As the OCCC amends its internal processes and the content of its online license applications, the agency will ensure that the Chapter 348 license application includes a reminder to file a documentary fee notification if the applicant intends to charge a documentary fee over $50. The agency believes that this reminder in the license application will address the precommenter's concern, and that additional language on this issue in proposed paragraph (4) is unnecessary.

Paragraphs (6) and (7) describe the OCCC's authority to order restitution or order the seller to lower its documentary fee if the seller fails to provide a written notification. In particular, paragraph (6)(B) explains that the OCCC may order the seller to lower its documentary fee prospectively. One precommenter asked for the phrase "for a specified period of time" to be added to the end of this provision. While a specified period might be appropriate in some situations, it might not be appropriate in others. For example, if a seller filed a $100 documentary fee and charged $150, then the OCCC might order the seller to cease charging a documentary fee greater than $100. Depending on the circumstances of the violation, it might not be feasible for the order to state a specified period of time (e.g., six months). For this reason, the proposal does not include this suggested phrase.

One precommenter asked whether the OCCC would continue entering agreed orders for administrative penalties as an alternative to restitution for failure to provide a documentary fee notification. Along the same lines, one precommenter stated: "We would also recommend that the OCCC be limited to an administrative penalty upon the finding that a dealer increased the documentary fee to the safe harbor amount without providing notice to the agency and limiting the restitution amount to the difference between the fee charged in excess of safe harbor amount of $150. Requiring dealerships to make restitution of up to $100 per customer for simply failing to send a single email to the OCCC is an unnecessarily harsh and punitive measure for a mere administrative violation. For many dealerships, such a restitution order could result in layoffs or the closure of the dealership for nothing more than inadvertence." In certain cases where sellers failed to provide a documentary fee notification, the OCCC has entered agreed orders in which the OCCC and the seller agreed that the seller would pay an administrative penalty as an alternative to restitution. Typically, these have been cases where the seller charged a documentary fee of $125 or less, and providing restitution down to $50 would have imposed a substantial financial hardship on the seller. Under Texas Finance Code, §14.252(c), in determining the amount of an administrative penalty, the OCCC can consider the seriousness and nature of the violation, the extent of harm to third parties, and the amount necessary to deter future violations, among other factors. The proposed rule text would not affect the agency's ability to enter agreed orders for administrative penalties within the agency's discretion. Because agreed orders are voluntarily agreed to by both sides, the agency believes that it is not necessary for the proposed rule to describe the agreed order process. Regarding the second precommenter's argument that the OCCC should be limited to an administrative penalty in this situation, the proposed rule's restitution provisions are consistent with the OCCC's authority to order restitution under Texas Finance Code, §14.251(b). The agency believes that the rule should specify this authority for cases where restitution is appropriate.

Subsection (d) describes the requirements for the cost analysis that sellers must provide to the OCCC before charging a documentary fee greater than $150. Paragraph (1) explains that the seller has the burden of showing that the documentary fee is reasonable, and that all included costs are reasonable, specified, and supported by documentation. This is similar to §84.205(e)(3) of the current rule, which states: "A retail seller has the burden of showing that all included costs are specified and supported by adequate documentation." One precommenter stated: "The new regulation should place the burden on the OCCC to demonstrate by specific cost elements how the agency determined that the requested documentary fee was too high." The agency disagrees with this statement. It is appropriate for the rule to place the burden on the seller, because the seller is in the best position to support the reasonableness of

its documentary fee through specific documentation of its costs and processes. Placing the burden on the seller is also appropriate because Texas Finance Code, §348.006 prohibits sellers from charging an unreasonable documentary fee, and requires sellers to initiate the review process by providing a notification to the OCCC.

Paragraph (2) summarizes the five main reasonableness requirements for costs to be included in the documentary fee: (1) costs must be directly related to the preparation and processing of documents; (2) costs must relate to activities required to comply with local, state, or federal law concerning motor vehicle sales; (3) costs must comply with the prudent-business-person standard; (4) costs must comply with timing requirements, and must be incurred concurrently with or after the seller's preparation of a sales contract, and before title is transferred; and (5) the documentary fee may not include any finance charge, and any costs included in the documentary fee must be incurred uniformly in cash and credit transactions.

One precommenter disagreed with both parts of the timing requirement. Regarding the requirement that costs be incurred with or after the preparation of a sales contract, the precommenter stated: "[M]ost dealerships will collect a customer's personal information and identification before a test drive and begin working on verifying personal information for Red Flags/OFACs compliance." It is true that sellers incur a small amount of document-related costs before the negotiation or preparation of any sales contract. However, the agency believes that this concern is adequately addressed by paragraphs (2)(D)(i) and (3)(B)(ii)(V), which would allow the seller to include the cost of printing a copy of the buyer's driver's license to verify the buyer's identity, notwithstanding the timing requirement. The precommenter also stated: "Limiting costs to be incurred at the *earlier* of the time when title is actually transferred or legally required to be transferred is inconsistent with the Texas Department of [Motor] Vehicle's regulations allowing a dealership to transfer title after the deadline when there is good cause for a delay (i.e. out of state title issues, lien holder delays, etc.)." The agency disagrees with the contention that the timing requirement is inconsistent with TxDMV's rules. The general deadlines for transferring motor vehicle titles are provided in Texas Transportation Code, §501.0234, and TxDMV's rule at 10 TAC §215.144. As provided by Section 501.0234(f), a seller does not violate a titling deadline "during the time the seller is making a good faith effort to comply." For purposes of the proposed documentary fee rule at paragraph (2)(D)(ii), the seller could include costs incurred while the seller is making a good-faith effort to comply with the deadline, as provided by Section 501.0234(f). In other words, the proposed documentary fee rule is entirely consistent with the good-faith provision in Section 501.0234(f). In any case, the agency anticipates that this good-faith provision would have little effect on a final documentary fee cost analysis, because sellers generally transfer titles before the deadlines described in TxDMV's rule. For this reason, the agency believes that the proposed timing requirement is appropriate.

Paragraph (6)(F) describes several prohibited categories of costs that may not be included in the documentary fee, including advertising costs, floor planning costs, a salesperson's commission, and costs for the disbursement of money. Regarding the provision on disbursement of money, one precommenter noted that sellers might incur costs to send a required payment to a governmental entity. In response to this precomment, paragraph (6)(F)(v) specifies that it refers to the disbursement of money to a financial institution. This would, for example, prohibit sellers from including the cost of sending a certified check to pay off a trade-in vehicle in the documentary fee.

Paragraph (3) describes the form of the cost analysis for a documentary fee over $150. The cost analysis includes a summary of documentary fee costs and supporting exhibits. The summary consists of an itemization of costs in the following six categories: (1) personnel; (2) forms and printing; (3) postage; (4) software; (5) facilities costs; and (6) other costs.

Paragraph (3)(B)(i) describes the supporting exhibit for personnel, which must include job descriptions on a task level, salaries, and a complete description of how compensation is calculated for each included position. The rule explains that commission paid to a salesperson for the sale of a motor vehicle must be excluded. This is substantially similar to the requirement that appears in the current rule at §84.205(d)(4). Several precommenters expressed concern about this requirement, arguing that it could be read to totally prohibit a salesperson's compensation from being included in the documentary fee. In order to clarify this requirement, the following sentence has been added to paragraph (3)(B)(i)(II): "If the seller includes a portion of the base salary paid to a salesperson, then the seller must explain how the salary has been prorated to exclude impermissible costs."

Paragraph (3)(B)(ii) describes the supporting exhibit for forms and printing. The paragraph includes a list of specific documents for which the seller may include costs, including the written contract for the sale of the motor vehicle, the application for certificate of title, the privacy notice, the Texas Lemon Law disclosure, the buyer's temporary tag, the window sticker (for new vehicles), and the used car buyers guide (for used vehicles). Paragraph (3)(B)(iii) describes the supporting exhibit for postage. Paragraph (3)(B)(iv) describes the supporting exhibit for software.

Paragraph (3)(B)(v) describes the supporting exhibit for facilities costs. The supporting exhibit for facilities must identify all included facilities costs (e.g., rent, property taxes, insurance), and any facilities costs must be adjusted to include only direct fixed costs that comply with the reasonableness requirements. The exhibit must describe an appropriate methodology for ensuring that the documentary fee includes only the portion of facilities costs corresponding to the percentage of time and space used for activities that may be included in the documentary fee. As an example, if a dealership is open 10 hours per day, 6 days a week, then one appropriate method to calculated includable facilities costs would be: (1) determining hourly fixed costs, which are the total fixed costs for one year divided by the total number of hours in a year (365 days/year × 24 hours/day = 8,760 total hours/year); (2) multiplying the result of (1) by 3,120 hours, which is the dealership's number of business hours in a year (52 weeks/year × 6 days/week × 10 business hours/day); (3) multiplying the result of (2) by the percentage of space used for includable activities (calculated on a square-footage basis); and (4) multiplying the result of (3) by the percentage of business time spent on includable activities in each space. This amount might vary among spaces, requiring the seller to calculate separate includable costs for each space. For example, if the title clerks spend 75% of their time on includable activities, and if the title clerks' office space is occupied during 90% of business hours, then the percentage of business time spent on includable activities in the title clerks' office space would be 67.5% (75% × 90%).

One commenter expressed concern about this methodology, arguing that it would not enable sellers to recoup costs that arise during hours while the dealership is closed. The precommenter

argued that, for example, if a section of the facilities is used entirely for document processing and is used throughout standard business hours, then 100% of the costs of that section of the facilities should be includable in the documentary fee. Similarly, one precommenter stated: "If a clerk's office is empty for an hour at the beginning of the day and an hour during lunch, the dealership does not reduce its cost by that much." While the agency understands the argument as it may apply to determining general overhead allocation, the agency disagrees with the argument as it applies to allocating *direct* costs to the documentary fee. As a general matter, the documentary fee should only include costs that are directly related to processing documents. Conversely, overhead costs, generally considered indirect costs, that are not directly related to processing documents should be included elsewhere, either in the cash price (for general costs) or the time price differential (for costs specific to credit transactions). The agency has allowed a portion of facilities costs to be included in the documentary fee, to recognize the fact that some facilities are necessary to process documents. The alternative would be to prohibit facilities costs altogether. The portion of facilities costs directly related to document processing is, by its nature, very narrow. It is true that a dealership incurs costs, for example, to keep electricity running during non-business hours, or to pay rent on space while employees are on break. However, these are indirect overhead expenses that are not directly related to processing documents. This type of cost should be included in the dealer's cost of goods sold, and covered by the cash price or the time price differential, rather than the separate and additional consideration of the documentary fee.

Paragraph (3)(B)(v) also explains that the documentary fee may not include any depreciation of facilities costs. One precommenter asked about the purpose of this requirement. Depreciation is a non-cash expense with an income tax benefit, and it is used as a tool for orderly accounting. Depreciation is an indirect expense, rather than a cost actually paid by a seller to process documents. For this reason, the agency believes that it is appropriate for the rule to exclude depreciation of facilities costs.

Regarding facilities costs, one precommenter stated: "Dealerships should also be allowed to include a percentage of the common areas, bathrooms and break rooms. Dealerships are required by law to have bathrooms and break rooms for employees and customers." The agency disagrees with the argument regarding bathrooms and break rooms. The cost of maintaining bathrooms and break rooms is another indirect overhead expense that does not directly relate to the processing of documents. It should be included in the cash price of the motor vehicle.

Paragraph (3)(B)(vi) describes the supporting exhibit for other costs. Paragraph (4) describes the requirements for a cost analysis covering multiple locations, and allows sellers to submit a single cost analysis covering more than one licensed location or registered office if the cost structures of all locations are substantially similar. Paragraph (5) explains that the OCCC will review each cost analysis to determine whether it is reasonable.

Paragraph (6) describes the OCCC's authority to order restitution if the seller charges a documentary fee over $150 or if the documentary fee includes costs that are not reasonable. One precommenter stated: "[W]e believe that the new regulations should *not* allow a dealer to raise the documentary fee above the safe harbor or the current fee if the fee is above the safe harbor until the OCCC has approved the increase. The restitution order can be crippling for a dealership and may not even result in a refund to customers if the dealership goes out of business. Setting aside a reserve to cover a restitution order is too disruptive to dealership business." The agency disagrees with this precomment for three reasons. First, this prohibition would be inconsistent with Texas Finance Code, §348.006(g)(2), which provides: "This section does not . . . require that the commissioner approve a specific documentary fee amount before a retail seller charges the fee." Second, the OCCC believes that setting up a reserve account for the portion of all documentary fees above $150 is a prudent practice, and several sellers have set up this type of account for documentary fees over $125. Third, if a reserve account is impractical for a seller, the seller could simply refrain from charging a documentary fee over $150 until it receives a statement from the OCCC that its documentary fee has been determined reasonable.

III. Debt cancellation agreements

The proposal includes new §84.309, relating to debt cancellation agreements that require the buyer to maintain insurance. These agreements must be submitted for approval to the OCCC, and the OCCC has 45 days to approve or deny an agreement as provided by Texas Finance Code, §348.604. The denial of a debt cancellation agreement may be appealed to the commission, as provided by Texas Finance Code, §348.604(e). In general, the purpose of the amendments is to describe the process for submitting the agreements and the procedure for appealing a denial of an agreement.

Subsection (a) describes the purpose and scope of the rule. Subsection (b) explains that an agreement must be submitted in accordance with the OCCC's instructions.

Subsection (c) provides a general $250 fee for submitting a debt cancellation agreement. Since the Finance Code's debt cancellation agreement submission requirements went into effect in 2011, each submitted agreement has been reviewed by an OCCC attorney and an OCCC review examiner. The employees review each agreement to make sure that it includes all elements required by Texas Finance Code, §348.602 and §348.603, and that the agreement does not contain inconsistent or misleading provisions. If the agreement cannot be approved as submitted, the employees will draft a letter that explains how the agreement must be amended and provides the submitter an opportunity to amend the form before it is denied. While it would be within the OCCC's authority to deny an agreement without sending a follow-up letter, the agency believes that these letters are an important tool to help companies submit an approvable version of the agreement before the 45-day deadline, conserving resources that would be spent on a denial and subsequent resubmission. The $250 amount is based on the average time spent by OCCC employees to process the submission, review the agreement, and draft follow-up correspondence. The proposed fee is authorized under Texas Finance Code, §14.107(a), which authorizes the commission to "establish reasonable and necessary fees for carrying out the commissioner's powers and duties" under Chapter 348.

One precommenter expressed concern about the $250 fee combined with the manner in which the OCCC has sent follow-up letters on debt cancellation agreements. The precommenter stated: "In theory, we do not oppose a fair fee. We certainly understand that a fee might be appropriate for new submissions due to the intensive work involved. . . . Our specific concerns involve the way the proposed rules, coupled with the internal policies and practices of OCCC, will impact the efficiency and fairness of the process." The OCCC will review its internal poli-

cies for processing debt cancellation agreements to ensure that companies have a reasonable amount of time to respond to initial follow-up correspondence.

Subsection (d) explains that the OCCC will send a notice of approval or denial within 45 days of receiving a debt cancellation agreement submission. Subsection (e) explains that the person who submitted the form can appeal a denial by serving a notice of appeal on the OCCC no later than the 30th calendar day after the date of denial. Subsection (f) explains that the appeal is a contested case under the Administrative Procedure Act (Texas Government Code, Chapter 2001). Subsection (g) explains that the administrative law judge in the contested case will issue a proposal for decision to the commission. Subsection (h) explains that the commission will issue a final order. Subsection (i) explains that the order may be appealed to a Travis County district court. These provisions are intended to provide due process and fair procedures for appealing the denial of a debt cancellation agreement.

IV. Licensing and annual renewal statement

A proposed amendment to §84.601(7)(A) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §84.602(1)(A)(v)(I) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party (e.g., where the business is actually a partnership between the spouses rather than a sole proprietorship), the OCCC would be able to request additional information about the spouse under current §84.602(1)(C).

Section 84.604 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, §84.604 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The proposed new rule largely maintains the requirements under the current rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(5) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity.

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §348.512 and §353.512. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing motor vehicle sales finance license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application.

Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application.

Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where the transferor and transferee share joint and several responsibility.

In §84.605, concerning Change in Form or Proportionate Ownership, conforming changes are proposed corresponding to proposed new §84.604. Throughout subsections (b) and (c), references have been added to the second path a transferee may take, i.e., a new license application on transfer of ownership.

Proposed amendments to §84.607 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 14 days applies before a license application is approved. Proposed new §84.607(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. Proposed new §84.607(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

Proposed amendments to §84.610 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address).

A proposed amendment to §84.611(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program.

Also in §84.611, the proposal amends subsection (e) by adding new paragraph (3), which requires licensees to file an annual renewal statement in connection with each renewal. These statements would include the dollar volume and number of retail installment contracts originated, acquired, or serviced during the preceding calendar year. The proposal specifies that this information is confidential because it is collected under the OCCC's examination authority. The proposal also includes conforming changes to paragraph (1)(C) of subsection (e).

These amendments have two main purposes. First, they would help the OCCC schedule examinations by providing information about the size of licensees, as well as scope and risk factors. Second, they would help the OCCC evaluate whether larger-volume licensees should pay a greater portion of the fees assessed to the Chapter 348 licensee population, in light of the increased examination resources that these licensees require. The current rule at §84.611(e)(1)(C) allows the OCCC to collect a volume-based fee as part of a licensee's annual assessment. This rule was originally adopted under Texas Finance Code, §14.107(b), which authorizes the commission to adopt rules "provid[ing] that the amount of a fee charged to a license holder is based on the volume of the license holder's regulated business and other key factors." However, the OCCC currently has no way to determine the dollar volume of retail installment contracts that a licensee originated, acquired, or serviced during a previous year. The amendments would enable the agency to collect this information.

At the stakeholder meeting, one precommenter stated that sellers do not currently maintain information about the dollar amount of contracts that they originate. The precommenter suggested that the rule allow sellers to submit only the number of contracts, rather than the dollar volume. However, it is the OCCC's understanding that dealer software programs generally allow sellers to generate reports showing annual dollar volumes. It is also the agency's understanding that sellers need this information to correctly calculate their revenues for income-tax purposes. The agency invites official comments on the types of financial information that Chapter 348 licensees currently maintain, and any procedures that would be necessary to correctly calculate the dollar volume and number of contracts originated, acquired, or serviced. Currently, the agency anticipates that the dollar volume would be based on the amount financed of each contract originated, acquired, or serviced during the previous calendar year. The agency invites official comments on whether this is an appropriate measure of dollar volume.

Proposed new §84.613 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a motor vehicle sales finance license. This section would replace the current §84.613 and §84.614, which are proposed for repeal. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of a motor vehicle sales finance licensee. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a motor vehicle sales finance licensee, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §348.504(a) and §353.504(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

V. Other technical corrections

Proposed amendments to §84.708 and §84.709 regarding recordkeeping provide updated citations to a TxDMV regulation concerning the discharge or release of a lien. The parallel amendments are proposed in §84.708(e)(2)(P) and §84.709(e)(2)(H).

The proposal includes clarifying changes to §84.804, which relates to provisions required in a retail installment sales contract. A clarifying change in the first sentence of the section explains that a retail installment sales contract must include all provisions required by Texas Finance Code, Chapter 348, and other law. An amendment to paragraph (4) explains that the itemized charges may include other charges authorized under Chapter 348. The rule adds a new provision at paragraph (4)(Q) explaining that the itemized charges may include a charge for an automobile club membership. This is based on a 2013 amendment to Texas Finance Code, §348.005(4), authorizing a seller to include a charge for an automobile club in the itemized charges of a retail installment sales contract.

The proposal includes clarifying changes to §84.804 relating to model plain-language contract clauses for Chapter 348 transactions. In paragraph (16)(C)(i)(II), text has been added to clarify that a model clause should be used for scheduled installment earnings transactions where the seller discloses the annual percentage rate using a method other than a 365/365 basis. In paragraph (20), an amendment specifies that a model clause refers to contracts using either the sum of the periodic balances method or the scheduled installment earnings method. In paragraph (20)(B)(ii), the model refunding clause for contracts using the scheduled installment earnings method is amended for clarity, and the rule text is amended to specify that this clause should be used if sales tax is advanced. In addition, new paragraph (20)(B)(iii) provides a new model clause for scheduled installment earnings contracts with deferred sales tax. Conforming changes are proposed in the model retail installment sales contract for Chapter 348 transactions at figure 7 TAC §84.809(b).

VI. Fiscal implications, public benefits, & costs

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

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. In particular, the rules being repealed and replaced with new, reorganized rules will provide more guidance and clarity to motor vehicle sales finance licensees.

Additional economic costs may be incurred by a person required to comply with this proposal. The agency anticipates that any costs resulting from the proposal would involve complying with the proposed changes contained in new §84.205 regarding documentary fees (repeal and replace), new §84.309 concerning debt cancellation agreements, and new subsection (e) of §84.611 relating to the annual renewal statement.

Regarding §84.205, Documentary Fees, it is important to note that a licensee is not required to increase its documentary fee. Licensees may charge a $50 documentary fee without filing any notice or incurring any costs. Further, numerous licensees have filed for a documentary fee increase under the current rule and would also not be compelled by the statute or the rule to file for an additional increase.

For those licensees who elect to file for a documentary fee increase under the procedures outlined in the proposed rule, there may be additional economic costs incurred. To properly consider the potential costs of this rule, a review of the purposes of the revised rule is beneficial. The proposal would repeal the current rule and replace it with a new rule. The purposes of the proposed new rule are three-fold: (1) to raise the documentary fee amount that is presumed reasonable from $125 to $150; (2) to codify several existing policies used by the agency in accepting notifications and in reviewing cost analyses; and (3) to specify the format of the cost analysis for documentary fee filings over $150.

For licensees unfamiliar with the existing policies being codified in the rule, the anticipated costs would include expenses related to employee training to review the documentary fee filing procedure, to prepare and submit the notification, and to prepare and submit a cost analysis, if applicable. These costs will vary widely among licensees depending on the number of employees who must be trained, as well as the labor costs associated with supervisors or other personnel assigned to file notice of an increased documentary fee. Any labor costs incurred would be minimal for licensees filing at or below the proposed amount that is presumed reasonable, which would not require a cost analysis. Moreover, the OCCC is streamlining its online documentary fee filing procedures, providing a standard form, and proposing guidance in the rule for the cost analysis, all of which will increase efficiency and further reduce time and expense for licensees.

Licensees will have the ability to offset the anticipated costs of these proposed rule changes due to an increased documentary fee. As noted earlier, the proposed new rule would increase the documentary fee amount that is presumed reasonable from $125 to $150. Should this new amount become effective, any licensees that fulfill the streamlined process to file for $150 would experience a cost benefit in the amount of increase over their current filing.

Concerning the proposed annual renewal statement in §84.611(e), there may be additional economic costs incurred by a person required to comply with this provision. The potential costs of this rule amendment should be considered in conjunction with its purposes. First, the annual renewal statement would help the OCCC schedule examinations by providing information about the size of licensees, as well as scope and risk factors. Second, it would help the OCCC evaluate whether larger-volume licensees should pay a greater portion of the fees assessed to the Chapter 348 licensee population, in light of the increased examination resources that these licensees require.

All licensees would be required to file the annual renewal statement under proposed §84.611(e) should it become effective. The anticipated costs would include expenses related to employee training to prepare the necessary data and to complete the annual statement, as well as any software programming that may be required to provide the requested information. The labor costs will vary widely among licensees depending on the number of employees who must be trained, as well as the labor costs associated with supervisors or other personnel assigned to submit the annual renewal statement.

It is anticipated that any labor costs incurred would be minimal, as the annual renewal statement is expected to be a simple, online form requesting less than 10 pieces of information.

Some licensees who use or lease specialized computer software programs for their business may experience some additional costs. These costs are impossible to predict. However, it is the agency's understanding that the vast majority of licensee software programs have the ability to run a report that will produce the information for the proposed annual renewal statement. It is also the agency's understanding that licensees need this information to correctly calculate their revenues for income-tax purposes.

In reference to §84.309, Debt Cancellation Agreements Requiring Insurance, it is important to note that debt cancellation agreements are an optional product. Licensees have the option of not offering debt cancellation agreements, in which case there will be no costs incurred for those licensees.

In part, the purpose of proposed new §84.309 is to require form submitters to pay a $250 submission fee. The $250 amount is based on the average time spent by OCCC employees to process the submission, review the agreement, and draft follow-up correspondence. The OCCC believes that this fee is necessary and prudent to recover the cost of the agency's resources to review these agreements within the 45-day statutory deadline.

For licensees who opt to provide debt cancellation agreements in connection with their motor vehicle retail installment sales contracts, there would be initial economic costs incurred consisting of the proposed $250 submission fee in §84.309(c). However, the fees commonly charged in conjunction with debt cancellation agreements are anticipated to cover the submission fee proposed in the rule. Hence, the fees that licensees may charge customers for a debt cancellation agreement are anticipated to offset the submission fee costs as proposed, resulting in a neutral cost to persons who are required to comply with the new debt cancellation rule.

Regarding the proposed rule changes contained in §84.102 and §84.203 relating to deferment charges and time price differential, any costs are imposed by statutory requirements and not the proposed rules. If some licensees are inappropriately charging deferment charges, those unauthorized charges are impermissible under Texas Finance Code, §348.114. If some licensees are not properly sending written agreements to document deferments, those agreements are required by Texas Finance Code, §348.116. This proposal serves to clarify the existing statutes. Therefore, for any licensees that may need to alter their practices to comply with the statutory requirements, any resulting costs are imposed by the statutes and not these proposed rule changes.

For the remaining proposed rule changes contained in §§84.601, 84.602, 84.604, 84.605, 84.607, 84.610, 84.611(c) and (f), 84.613, and 84.614 (licensing processes); and §§84.201, 84.708, 84.709, 84.804, 84.808, and 84.809 (technical correc-

tions), there is no anticipated cost to persons who are required to comply with the changes to these rules as proposed.

Overall, the agency anticipates that any costs involved to comply with the proposal will be minimal for most licensees. Aside from the previously outlined costs to comply with the clarified documentary fee procedures, the new annual renewal statement, and the optional debt cancellation submission fees, there will be no other effects on individuals required to comply with the rule changes as proposed.

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

VII. Comments & statutory authority

Comments on the proposal 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.texas.gov.* To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register.* At the conclusion of business on the 31st day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

The rule changes in §84.205 concerning documentary fees are proposed under Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce §348.006. Within §84.205, the restitution provisions are proposed under Texas Finance Code, §14.251(b), which authorizes the commissioner to order restitution to an identifiable person injured by a violation of Title 4.

The proposed fee in §84.309(c) and the proposed amendments to §84.611(e) are authorized under Texas Finance Code, §14.107, which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under Chapter 348.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §84.102

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

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

§84.102. Definitions.

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

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

(8) Deferment charge--A [~~The payment of an additional~~] charge to defer the payment date of a scheduled payment on a contract.

(9) - (23) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600797
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §§84.201, 84.203, 84.205

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

The rule changes in §84.205 concerning documentary fees are proposed under Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce §348.006. Within §84.205, the restitution provisions are proposed under Texas Finance Code, §14.251(b), which authorizes the commissioner to order restitution to an identifiable person injured by a violation of Title 4.

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

§84.201. Time Price Differential.

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

(d) Method of calculation.

(1) Regular payment contract using sum of the periodic balances method. The time price differential charge is computed using the add-on rates authorized by Texas Finance Code, §348.104 or the alternative time price differential rate authorized by Texas Finance Code, §348.105 converted to an equivalent add-on rate per $100 per annum.

(A) Base time price differential charge. The base time price differential charge is determined by multiplying the principal balance subject to a finance charge, as defined by §84.102(14) [~~§84.102(13)~~] of this title (regarding Definitions), by the applicable add-on rate per $100 per year for the corresponding term of the contract. If the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than $100, the amount of the time price differential charge is decreased or increased proportionately.

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

(2) Scheduled installment earnings method. The scheduled installment earnings method can be used for both regular and irregular payment contracts.

(A) Maximum time price differential. The maximum time price differential charge is computed by applying the applicable maximum daily rate to the unpaid principal balance subject to a finance charge, as defined by §84.102(14) [~~§84.102(13)~~] of this title, as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal subject to a finance charge. The computation of the time price differential must comply with the U.S. Rule as defined by §84.102(22) [~~§84.102(21)~~] of this title.

(B) Maximum annualized daily rate.

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

(iii) Effective rate. The maximum annualized daily rate cannot exceed the effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) for the equivalent monthly period and appropriate add-on rate per $100 determined by the model year designated by the manufacturer of the vehicle. The effective rates contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) are the current maximum annualized daily rate authorized by Texas Finance Code, §348.104 or the alternative simple time price differential rate authorized by Texas Finance Code, §348.105. The alternative simple time price differential rate authorized by Texas Finance Code, §348.105 displayed as an example in Figure: 7 TAC §84.201(d)(2)(B)(iii) is 18% per annum. If the alternative simple time price differential rate is adjusted according to Texas Finance Code, Chapter 303 and is greater than effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii), the published rate will be highest effective rate.
Figure: 7 TAC §84.201(d)(2)(B)(iii)

(iv) (No change.)

(C) - (D) (No change.)

(3) True daily earnings method. The true daily earnings method can be used for both regular and irregular payment contracts.

(A) Maximum time price differential. The maximum time price differential charge is computed by applying the applicable daily rate to the unpaid principal balance subject to a finance charge, as defined by §84.102(14) [~~§84.102(13)~~] of this title. The computation of the time price differential must comply with the U.S. Rule as defined by §84.102(22) [~~§84.102(21)~~] of this title. The earned time price differential charge is computed as follows:

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

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

§84.203. Deferment Charge.

(a) Definition. A "deferment charge" means a [~~the payment of an additional~~] charge to defer the payment date of a scheduled payment or partial payment on a contract. A deferment charge prescribed by this section may occur in a retail installment transaction that employs the precomputed add-on method for regular payment contracts using the sum of the periodic balances, the scheduled installment earnings method, or the true daily earnings method. This section applies only to an amendment relating to the deferment of all or a part of one or more installments, and does not apply to amendments relating to renewing, restating, or rescheduling the unpaid balance under a retail installment sales contract. [~~The term "deferment charge" does not include the continuing accrual of finance charge at the contract rate already agreed upon in a retail installment sales contract employing the true daily earnings method.~~] The parties to a retail installment sales contract may agree to modify the terms of the transaction as long as the amendment conforms to the requirements of Texas Finance Code, Chapter 348, Subchapter B.

(b) Written deferment agreement. [~~Bilateral or mutual deferment.~~]

(1) General requirements. A retail buyer and a holder may mutually agree to defer all or a part of one or more scheduled installments. A deferment agreement must be in writing and must be noted in the account record at the time the deferment is made. The written deferment agreement must include all of the following: [~~Bilateral or mutual deferments must be agreed upon in writing as required by Texas Finance Code, §348.116.~~]

(A) the name of the holder;

(B) the name of the retail buyer;

(C) the account number of the retail buyer;

(D) the date of the deferment;

(E) the installment or installments being deferred;

(F) the deferment period;

(G) the total amount of any deferment charge and any authorized additional deferment cost;

(H) the date and amount of the next installment due; and

(I) any other conditions of deferment.

(2) Signature and delivery. A deferment agreement is an amendment to the retail installment sales contract that must be confirmed in a writing signed by the retail buyer and delivered to the retail buyer, as provided by Texas Finance Code, §348.116. The retail buyer's written agreement to the bilateral or mutual deferment may be confirmed by an email signature, an electronic signature, a facsimile signature, a written notation made by the retail buyer on a signed check, or some other writing signed by the retail buyer.

(3) [~~(2)~~] Disaster exception. A holder must deliver the deferment agreement to the retail buyer, but is not required to obtain the retail buyer's signature, if the following conditions are met:

(A) The retail buyer resides in an area designated as a state of disaster under Texas Government Code, §418.014; and

(B) The deferment occurs before the state of disaster has been terminated:

(i) by executive order; or

(ii) by expiration as described in Texas Government Code, §418.014(c).

[~~(c) Deferment notice. Each deferment must be noted on the account record at the time the deferment is made. A written notice containing the conditions of the deferment must be furnished to the retail buyer as required by Texas Finance Code, §348.116. A deferment notice must include the name of the holder, the name of the retail buyer, the account number of the retail buyer, the date of the deferment, the installment or installments being deferred, the deferment period, the total amount of any deferment charge and any authorized additional deferment cost, and the date and amount of the next installment due.~~]

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

(d) [~~(e)~~] Computation of deferment charge. A holder of a retail installment sales contract under Texas Finance Code, Chapter 348 may calculate the deferment charge by any method of calculation as long as

the deferment charge does not exceed the maximum amount permitted by Texas Finance Code, §348.114 and this section.

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

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

(i) Multiplying the amount of the installment or installments being deferred by either:

(I) the maximum effective rate authorized for a regular payment contract for the monthly term [~~the contract~~]; or

(II) a lower rate agreed to by the parties;

(ii) dividing the results of clause (i) of this subparagraph by 12; and

(iii) multiplying the results of clause (ii) of this subparagraph by the number of months the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph [~~section~~] is $1.00.

(D) Application of payments. For a regular payment contract employing the add-on method and the refunding method of the sum of the periodic balances, if a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract.

(2) Scheduled installment earnings method [~~or true daily earnings method~~].

(A) Base deferment charge. For a regular or an irregular payment contract employing the scheduled installment earnings method [~~or true daily earnings method~~], a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by either of the following rates computed on a daily basis using a 365-day calendar year:

(I) the maximum annualized daily rate authorized for the contract, as described by Figure: 7 TAC §84.201(d)(2)(B)(iii); or [~~and~~]

(II) a lower rate agreed to by the parties, which may be the contract rate; and

(ii) multiplying the results of clause (i) of this subparagraph by the actual number of days the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph [~~section~~] is $1.00.

(D) Application of payments. For a contract using the scheduled installment earnings method, if a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract. However, any difference that exceeds $3.00 must be returned to the retail buyer if the retail buyer requests the refund within 30 days of the payment.

(3) True daily earnings method.

(A) Base deferment charge. For a regular or an irregular payment contract employing the true daily earnings method, a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by either of the following rates computed on a daily basis using a 365-day calendar year:

(I) the maximum annualized daily rate authorized for the contract, as described by Figure: 7 TAC §84.201(d)(2)(B)(iii); or

(II) a lower rate agreed to by the parties, which may be the contract rate; and

(ii) multiplying the results of clause (i) of this subparagraph by the actual number of days the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this paragraph is $1.00.

(D) Accrual of time price differential. For a contract using the true daily earnings method, all time price differential that will accrue on the deferred installments during the deferment period must be included in the base deferment charge. If the holder agrees to a base deferment charge that is less than the amount of time price differential that would otherwise have accrued on the deferred installments during the deferment period, then it must waive the accrued time price differential on the deferred installments for the deferment period in excess of the base deferment charge the holder agreed to. The deferment charge does not include time price differential that accrues on amounts other than the deferred installments, nor does it include time price differential that accrues outside of the deferment period.

[~~(f) Negative accrual of time price differential. In a retail installment sales contract employing the true daily earnings method, the payments scheduled for the period following the deferral (including the deferred payments) must be sufficient to:~~]

[~~(1) pay the time price differential remaining on the deferred payment or payments and the amount currently accruing after the period of deferral; or~~]

[~~(2) be applied in another manner that is more favorable to the retail buyer than the method provided in paragraph (1) of this subsection.~~]

[~~(g) Accounting of payment. If a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract. However, in a precomputed retail installment sales contract employing the scheduled installment earnings method, any difference that exceeds $3.00 must be returned to the retail buyer if the retail buyer requests the refund within 30 days of the payment.~~]

(e) [~~(h)~~] Noncompliance. Deferment fees not assessed or collected in accordance with the requirements of this section are subject to refund to the retail buyer. In the event deferment fees are refunded to the retail buyer, no rescheduling of the retail installment sales contract is permitted.

(f) False, misleading, or deceptive representation. A holder may not make a false, misleading, or deceptive representation relating to a deferment charge. For example, in a contract using the true daily earnings method, a holder may not make an offer to the retail buyer such as "Payment Holiday--Pay Only $25" if the total deferment charge, including all time price differential that the holder will charge on the deferred installment for the deferment period, exceeds $25. If a holder makes a false, misleading, or deceptive representation regarding a deferment charge, then the deferment charge is subject to refunding under subsection (e).

§84.205. Documentary Fee.

(a) Purpose. Under Texas Finance Code, §348.006(e), before a retail seller charges a documentary fee greater than $50, the seller must provide the OCCC with a written notification of the maximum amount of the documentary fee the seller intends to charge. The OCCC may review the amount of the documentary fee for reasonableness. This section describes the requirements for the notification and cost analysis.

(b) General requirements.

(1) $50 or less. A seller is not required to provide a notification or cost analysis to the OCCC before charging a documentary fee of $50 or less.

(2) Over $50, up to $150. Before charging a documentary fee greater than $50, but less than or equal to $150, a seller must provide a notification to the OCCC. A seller is not required to provide a cost analysis before charging a documentary fee in this range. The OCCC will presume a documentary fee of $150 or less to be reasonable.

(3) Over $150. Before charging a documentary fee greater than $150, a seller must provide a notification and a cost analysis to the OCCC.

(c) Notification.

(1) Generally. Before charging a documentary fee greater than $50, a seller must provide a written notification to the OCCC, stating the amount of the maximum documentary fee that the seller intends to charge.

(2) Notification for each location. A seller must provide a notification for each licensed location or registered office at which motor vehicles are sold. If a seller has more than one license or registered office in the same physical space, then it must provide a notification for each license or registered office under which it sells vehicles. For example, if a seller has two registered offices at the same location and does business under the names of both registered offices, then it must provide a notification for each of the two registered offices.

(3) Form. The notification must be provided on a form prescribed by the OCCC for receiving notifications of documentary fee amounts. A notification is not effective until the OCCC receives a complete form.

(4) Transfer of ownership. In the event of a transfer of ownership described by §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership), if the transferee intends to charge a documentary fee greater than $50, then the transferee must provide a documentary fee notification for each licensed location or registered office that the transferee will operate. The transferee must provide the notification no later than the 30th calendar day following the transfer of ownership. If the transferee has not filed a notification on or before the 30th calendar day following the transfer of ownership, then it must cease charging a documentary fee greater than $50. The transferee may not charge a greater amount than the amount described in the transferor's previous notification until the transferee has provided a complete notification listing the amount that the transferee intends to charge. If the transferor did not previously provide a documentary fee notification, then the transferee may not charge a documentary fee greater than $50 until it has provided a complete notification listing the amount it intends to charge.

(5) Failure to provide notification. A seller violates this subsection if the seller:

(A) charges a documentary fee greater than $50 without first providing a complete notification to the OCCC; or

(B) provides a notification to the OCCC and charges a documentary fee greater than the amount described in the notification.

(6) Restitution and order to lower documentary fee. If a seller violates this subsection, then the OCCC may take an action, including ordering the seller to do one or more of the following:

(A) provide restitution to affected buyers;

(B) lower its documentary fee prospectively;

(C) provide a complete, accurate notification to the OCCC;

(D) cease charging a documentary fee greater than $50 for a specified period of time.

(7) Restitution amount. If a seller does not provide a complete notification to the OCCC, then the amount of restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus $50 (for each buyer). If the seller provides a notification but charges a documentary fee greater than the amount described in the notification, then the restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received minus the amount of its filing (for each buyer).

(d) Cost analysis.

(1) Generally. Before charging a documentary fee greater than $150, a seller must submit a cost analysis showing that the documentary fee is reasonable. The seller has the burden of showing that the documentary fee is reasonable, and that all included costs are reasonable, specified, and supported by adequate documentation. This subsection does not require the OCCC's approval of a documentary fee before a seller charges it. However, the OCCC may order restitution under subsection (d)(6) if a seller charges a documentary fee over $150 that is not supported by a complete cost analysis, or if the documentary fee includes costs that are not reasonable.

(2) Reasonableness requirements. In order to be reasonable, a documentary fee must reflect costs actually incurred by the seller

in preparing and processing documents for a motor vehicle sale. All included costs must comply with the following reasonableness requirements.

(A) Directly related and allocable. Costs must directly relate to the seller's preparation and processing of documents for a motor vehicle sale. Costs must be allocable (i.e., chargeable or assignable) to the objective of preparing and processing documents. Costs must be incurred by the seller. A seller may not increase any authorized charge imposed by a third party.

(B) Allowable. Costs must relate to activities required to comply with local, state, or federal law concerning motor vehicle sales. Costs related to ancillary or optional products may not be included. Costs must be determined in accordance with generally accepted accounting principles.

(C) Prudent business person. Costs must comply with the prudent-business-person standard. This means that costs are limited to what a prudent business person would pay in a competitive marketplace. For example, hiring a limousine to deliver documents does not comply with the prudent-business-person standard. In determining whether a given cost is prudent, consideration will be given to the following:

(i) whether the cost is of a type generally recognized as ordinary, customary, and necessary for preparing and processing documents for a motor vehicle sale;

(ii) the restraints or requirements imposed by sound business practices, arm's-length bargaining, and applicable laws and regulations;

(iii) market prices for comparable goods or services; and

(iv) the necessity of the cost.

(D) Timing.

(i) Costs must be incurred either concurrently with or after the seller's preparation of at least one of the following: a buyer's order, bill of sale, purchase agreement, or retail installment sales contract. Any costs incurred before the preparation of the earliest of these documents may not be included. This clause does not apply to the costs of purchasing or printing forms described in subsection (d)(3)(B)(ii).

(ii) Costs must be incurred before the title of the purchased motor vehicle is actually transferred, or when title is legally required to have been transferred, whichever is earlier.

(iii) Costs relating to a trade-in motor vehicle must be incurred before the title of the trade-in motor vehicle is actually transferred, or when the title is legally required to have been transferred, whichever is earlier.

(E) No finance charge. The documentary fee may not include any amount that would be considered a finance charge under the Truth in Lending Act, 15 U.S.C. §§1601-1667f. All included costs must be incurred uniformly in cash and credit transactions.

(i) The documentary fee may not include any cost associated with the negotiation or assignment of the retail installment sales contract to another financial institution or a related finance company.

(ii) The documentary fee may not include any cost associated with the evaluation of the buyer's creditworthiness. A seller may include the cost of obtaining a credit report, if the seller incurs this cost in a substantial number of transactions where credit is not extended, and the cost complies with the other requirements described in this subsection (e.g., the cost of obtaining a credit report to ensure compliance with the USA PATRIOT Act, 31 U.S.C. §5318(l)(2)(C)).

(iii) The documentary fee may not include the cost of preparing any disclosure or contractual provision that is used only in credit transactions. In particular, the documentary fee may not include the cost of preparing a Truth in Lending disclosure statement.

(F) Other prohibitions. The documentary fee may not include costs associated with any of the following:

(i) advertising;

(ii) floor planning (i.e., the seller's credit arrangements for the purchase of its inventory);

(iii) manufacturer or distributor's rebates;

(iv) the price of any report on the condition or history of the motor vehicle to be purchased or traded in;

(v) the disbursement of money to a financial institution (e.g., the cost of issuing a certified check);

(vi) a salesperson's commission for the sale of the motor vehicle (but commissions for an employee other than a salesperson may be included if they comply with subsection (d)(3)(B)(i)).

(3) Form of cost analysis. The cost analysis must include a summary of documentary fee costs and supporting exhibits.

(A) Summary of documentary fee costs. The summary of documentary fee costs must be provided on a form prescribed by the OCCC.

(i) The summary must include an itemization of the amount of costs for each of the following categories:

(I) personnel;

(II) forms and printing;

(III) postage;

(IV) software;

(V) facilities costs;

(VI) other costs.

(ii) The summary must include the number of sales completed during the period used to determine the costs described in clause (i).

(B) Supporting exhibits. A seller must provide a supporting exhibit for each category of costs included in the documentary fee. A seller must prorate costs to ensure that costs that are impermissible under this subsection are excluded. If a category is associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included. The OCCC may prescribe a form for the supporting exhibits. A seller is not required to provide an exhibit for any category that does not include any costs.

(i) Personnel. The supporting exhibit for personnel must describe how all employee salaries included in the documentary fee comply with the reasonableness requirements described in this subsection.

(I) The supporting exhibit for personnel must include a job description for each position. Job descriptions must be specific enough to illustrate which functions are unique to each listed position, on a task level. The job description must identify which specific tasks are included as a cost component of the documentary fee, and which are excluded.

(II) The supporting exhibit for personnel must include each salary and a complete description of how compensation is calculated for each position (e.g., a pay plan). Commission paid to a salesperson for the sale of a motor vehicle must be excluded. If the seller includes a portion of the base salary paid to a salesperson, then the seller must explain how the salary has been prorated to exclude impermissible costs. If the seller includes any commission paid to a person other than a salesperson, then the seller must explain how the commission has been prorated to exclude any impermissible costs (e.g., commission for ancillary products, or commission that arises only in credit transactions).

(III) If costs of training employees are included, then the supporting exhibit must include an agenda for the training and an explanation of the subject matter of the training. The seller must explain how training costs have been prorated to exclude impermissible costs (e.g., costs of training employees on responsibilities that arise only in credit transactions, or that arise before preparation of a purchase agreement).

(ii) Forms and printing. The supporting exhibit for forms and printing must describe all included costs and explain which forms are purchased or printed. All included forms must be used uniformly in cash and credit motor vehicle sales. If a seller uses a form only in certain transactions, then the seller must prorate costs by the fraction of the seller's sales in which the form is used. For example, if a form is used only for used motor vehicle sales, then a seller must prorate the cost of the form by the fraction of the seller's sales that are used motor vehicles. If a seller includes forms not listed in this clause, then the supporting exhibit must include an explanation of how the forms comply with the reasonableness requirements described in this subsection, with a citation to the law that requires the form. A seller may include the costs of the following forms:

(I) a written contract for the sale of the motor vehicle, as required by Texas Business and Commerce Code §2.201, which may be in the form of a purchase agreement, buyer's order, bill of sale, or retail installment sales contract (if a seller includes the cost of a retail installment sales contract, then the cost must be prorated to exclude the Truth in Lending disclosure statement and any provisions that are used only in credit transactions);

(II) an application for certificate of title, form 130-U, as required by Texas Transportation Code, §501.023;

(III) a statement of the county of title issuance, form VTR-136, as required by Texas Transportation Code, §501.023;

(IV) a privacy notice, as required by the Gramm-Leach-Bliley Act, 15 U.S.C. §6803;

(V) a copy of the buyer's driver's license, in order to verify the buyer's identity and ensure compliance with the USA PATRIOT Act, 31 U.S.C. §5318(l)(2)(C);

(VI) a report of a cash payment over $10,000, form 8300, as required by the USA PATRIOT Act, 31 U.S.C. §5331;

(VII) a Texas Lemon Law disclosure, as required by Texas Occupations Code, §2301.610;

(VIII) the buyer's temporary tag, as required by Texas Transportation Code, §503.063, and 43 Texas Administrative Code §245.155;

(IX) the buyer's temporary tag receipt, as required by 43 Texas Administrative Code §245.156;

(X) a window sticker for new vehicles, as required by 15 U.S.C. §1232; and

(XI) a used car buyers guide, as required by the Federal Trade Commission's Used Motor Vehicle Rule, 16 C.F.R. §455.2.

(iii) Postage. The supporting exhibit for postage must identify the postage carrier, the types of documents that are sent by postage, and each specific postage cost. All postage costs must comply with the reasonableness requirements described in this subsection, including the prudent-business-person standard. The OCCC will presume that a prudent business person would use certified mail from the United States Postal Service or a similarly priced service. The exhibit must explain how costs that do not comply with this subsection (e.g., costs of sending documents to other financial institutions) have been excluded.

(iv) Software. The supporting exhibit for software must identify the cost of each included piece of software. The exhibit must state the type of software used and the specific functions of the software. The exhibit must identify which specific software functions are included as a cost component of the documentary fee, and which are excluded. If the software is associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included.

(v) Facilities costs. The supporting exhibit for facilities must identify all included facilities costs (e.g., rent, property taxes, insurance). Any facilities costs must be adjusted to include only direct fixed costs that comply with the reasonableness requirements described in this subsection. The documentary fee may not include any depreciation of facilities costs. The exhibit must describe an appropriate methodology ensuring that the documentary fee includes only the portion of the facilities costs that corresponds to the percentage of time and space used for activities that may be included in the documentary fee.

(vi) Other costs. The supporting exhibit for other costs must identify all other costs included in the documentary fee. The exhibit must state the amount of each cost and the nature of the associated activities. If the activities are associated with both permissible and impermissible costs, then a seller must include only the permissible portion and explain the percentage of the category that is being included.

(4) Cost analysis covering multiple locations. A seller may submit a cost analysis that covers more than one licensed location or registered office if:

(A) the cost structures of all covered locations are substantially similar (e.g., due to centralized processing among a group of locations); and

(B) in the supporting exhibits, the seller explains which costs are similar among the locations and explains the differences in costs among the locations.

(5) OCCC review. The OCCC will review each cost analysis in order to determine whether the documentary fee is reasonable for the seller that provided the analysis. If the cost analysis does not support the seller's documentary fee, or if the OCCC determines that any included costs are not reasonable, then the OCCC may require the seller to provide additional information, or the OCCC may determine that the amount is unreasonable. The review may result in a determination of the maximum amount of the documentary fee that a specific seller may charge.

(6) Restitution and order to lower documentary fee. If a seller violates this subsection by charging a documentary fee over $150 that is not supported by a complete cost analysis or that includes costs that are not reasonable, then the OCCC may order the seller to provide

restitution to affected buyers and lower its documentary fee prospectively. The restitution for violating this subsection will not exceed the amount of the documentary fee the seller charged or received, minus $150, minus other restitution paid under subsection (c)(6)-(7) of this section. In addition, the OCCC may order a seller to cease charging a documentary fee greater than $50 for a specified period of time if the seller violates this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600798
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

7 TAC §84.205

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

The repeal of §84.205 concerning documentary fees is proposed under Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce §348.006.

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

§84.205. Documentary Fee Reasonableness Standards.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600806
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS

7 TAC §84.309

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

The proposed fee in §84.309(c) is authorized under Texas Finance Code, §14.107, which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under Chapter 348.

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

§84.309. Debt Cancellation Agreements Requiring Insurance.

(a) Purpose and scope. This section applies to a debt cancellation agreement that includes insurance coverage as part of the retail buyer's responsibility to the holder, as provided by Texas Finance Code, §348.601(a). Debt cancellation agreements must be submitted to the OCCC for approval, as provided by Texas Finance Code, §348.604(a). The denial of a debt cancellation agreement may be appealed to the Finance Commission of Texas, as provided by Texas Finance Code, §348.604(e). This section describes the requirements for submitting a debt cancellation agreement to the OCCC and the requirements for appealing the denial of a debt cancellation agreement to the commission.

(b) Submission. A debt cancellation agreement must be submitted in accordance with the OCCC's instructions. A submission is not effective until the agreement is submitted in accordance with the OCCC's instructions, including the fee required under subsection (c).

(c) Fee. The person submitting a debt cancellation agreement must pay a $250 nonrefundable fee to the OCCC for each submitted agreement.

(d) OCCC's notice of approval or denial. No later than the 45th day after the OCCC receives a debt cancellation agreement submission, the OCCC will send a notice of approval or a notice of denial to the person who submitted the agreement, as provided by Texas Finance Code, §348.604(b). The date of approval or denial is the date on which the OCCC sends the notice of approval or denial. The OCCC may deny approval of a debt cancellation agreement if the agreement excludes language required by Texas Finance Code, §348.602 and §348.603, or if it contains any inconsistent or misleading provisions.

(e) Appellant's notice of appeal. A person who submits a debt cancellation agreement and receives a notice of denial from the OCCC may appeal the denial by serving a notice of appeal on the OCCC. The appellant must serve the notice of appeal no later than the 30th calendar day after the date of denial. If a notice of appeal is not served in accordance with this subsection, then the denial becomes final and cannot be appealed.

(f) Contested case. If a person appeals the denial of a debt cancellation agreement under subsection (e), then the appeal will be a contested case under the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions). The burden of proof is on the appellant to show that the agreement should have been approved under Texas Finance Code, §348.604.

(g) Proposal for decision. In connection with a contested case under this section, the administrative law judge will issue a proposal for decision to the commission. The proposal for decision will include a recommendation regarding whether the OCCC's denial of the agreement should be affirmed or reversed. The proposal for decision may include a recommendation that costs be assigned to a party, to the extent authorized by law.

(h) Commission's final order. The commission will issue a final order after review of the administrative law judge's proposal for decision. The final order will include a statement of whether the OCCC's

denial of the agreement is affirmed or reversed. The final order may include an assignment of costs to a party, to the extent authorized by law.

(i) Judicial review of commission's final order. A final order of the commission under subsection (h) may be appealed to a Travis County district court, as provided by Texas Government Code, §2001.176.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600801
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER F. LICENSING

7 TAC §§84.601, 84.602, 84.604, 84.605, 84.607, 84.610, 84.611, 84.613

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

The proposed amendments to §84.611(e) are authorized under Texas Finance Code, §14.107, which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under Chapter 348.

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

§84.601. Definitions.

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

(1) - (6) (No change.)

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

(A) a proprietor holding a 100% ownership interest [~~proprietors, to include spouses with community property interest~~];

(B) - (J) (No change.)

(8) - (10) (No change.)

§84.602. Filing of New Application.

An application for issuance of a new motor vehicle sales finance license issued under Texas Finance Code, Chapter 348 or 353 must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

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

(v) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of the individual holding a 100% ownership interest in the business and the name of any individual [~~who owns and who is~~] responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals. [~~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) - (IX) (No change.)

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

(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:

(i) If the applicant is a proprietor, the [~~each~~] owner must sign.

(ii) If the applicant is a partnership, one [~~each~~] general partner must sign.

(iii) - (v) (No change.)

(F) (No change.)

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

§84.604. Transfer of License; New License Application on Transfer of Ownership.

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) Grandparent entity--A direct owner of a parent entity.

(2) License transfer--A sale, assignment, or transfer of a license under Texas Finance Code, Chapter 348 or 353.

(3) Parent entity--A direct owner of a licensee or applicant.

(4) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(5) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §84.605 of this title (relating to Change in Form or Proportionate Ownership). The term does not include a change in ownership above the level of the grandparent entity. Transfer of ownership includes the following:

(A) 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;

(B) 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;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent entity or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

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

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

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

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(6) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(7) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §348.512 and §353.512. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a license at the time of the application, then the application must include the information required for new license applications under §84.602 of this title (relating to Filing of New Application). The instructions in §84.602 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §84.602 of this title. The instructions in §84.602 of this title apply 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 §84.602 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept joint and several responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business under Texas Finance Code, Chapter 348 or 353, as applicable. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §84.608(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the OCCC's final approval of an application described by subsection (e), the transferor is responsible to any consumer and to the OCCC for all motor vehicle sales finance activity performed under the license.

(2) Responsibility of transferee. After a transferee begins performing motor vehicle sales finance activity under a license, the transferee is responsible to any consumer and to the OCCC for all motor vehicle sales finance activity performed under the license. In addition, a transferee is responsible for any transactions that it purchases from the transferor.

(3) Joint and several responsibility. If a transferee begins performing motor vehicle sales finance activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing motor vehicle sales finance activity and before the OCCC's final approval of the license transfer.

§84.605. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a license transfer application or a new license application on transfer of ownership pursuant to §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership). If the merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 14 calendar days after the change, by filing a license amendment and paying the required fees as provided in §84.611. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days. Failure to meet the application filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 14 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §84.611 of this title. This subsection does not apply to a legal entity that has filed with the OCCC the most recent Form 10-K or 10-Q filing of the licensee or of the parent entity, although a license transfer application or a new license application on transfer of ownership may be required under §84.604 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a license transfer application or a new license application on transfer of ownership under §84.604 of this title.

(3) (No change.)

§84.607. Updating Application and Contact Information [~~Reportable Actions After Application~~].

(a) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [~~Any action, fact, or~~] information that would require a materially different answer than that given in the original license application and that relates to the qualifications for license[~~, must be reported~~] within 14 calendar days after the person has knowledge of the [~~action, fact or~~] information.

(b) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

(1) the names of principal parties;

(2) criminal history;

(3) actions by regulatory agencies; or

(4) court judgments.

(c) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§84.610. License Status.

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

(d) Expiration. A license will expire the later of July 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued. For purposes of this subsection, notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(e) (No change.)

§84.611. Fees.

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

(c) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable. [~~A nonrefundable fee as prescribed by the commissioner will be charged to recover the costs of investigating each principal party's fingerprint record. This fee must be paid for each fingerprint record filed with an application for a new license or a license transfer.~~]

(d) (No change.)

(e) Annual renewal and assessment fees.

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

(A) a licensed location fee not to exceed $460;

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

(C) if necessary, a variable fee based upon the annual dollar volume of retail installment sales contracts originated, [~~or~~] acquired, or serviced during the preceding calendar year, as stated in the annual renewal statement described by paragraph (3).

(2) The maximum annual assessment for each active license will be no more than $1,200 excluding the registered office fees.

(3) A licensee must file an annual renewal statement in connection with the license renewal. The licensee must provide the statement in a format prescribed by the OCCC and in accordance with the OCCC's instructions. The licensee must provide the statement at the time of filing the renewal. The statement must include the annual dollar volume and number of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, calculated in accordance with the OCCC's instructions, and any other information required under the OCCC's instructions. The annual renewal statement is collected under the OCCC's examination authority, as provided by Texas Finance Code, §348.415. A licensee's annual renewal statement relates to the examination process and is confidential under Texas Finance Code, §14.2015(a) and §348.514(d). However, the OCCC may publish aggregated reports based on the annual renewal statements that it collects.

(f) Licensed location or registered office duplicate certificates sent by mail. The fee for a duplicate certificate sent by mail is $10.

(g) (No change.)

§84.613. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §84.611 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 348 or 353, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Obtaining or originating retail installment sales contracts under Texas Finance Code, Chapter 348 or 353, involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, and collecting due amounts in a legal manner. Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §348.504(a) and §353.504(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3) - (4);

(3) errors or incomplete information in the license application;

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §348.508(3) and §353.508(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §§348.504(a), 348.508, 353.504(a), and 353.508.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600803
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

7 TAC §84.604

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

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

§84.604. Transfer of License.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600807
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

7 TAC §84.613, §84.614

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

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

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

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600811
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER G. EXAMINATIONS

7 TAC §84.708, §84.709

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

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

§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).

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

(e) Records required.

(1) (No change.)

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

(A) - (O) (No change.)

(P) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.106 (relating to Discharge of Lien) [~~§217.3 (relating to Motor Vehicle Certificates of Title)~~].

(Q) (No change.)

(3) - (9) (No change.)

(f) (No change.)

§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).

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

(e) Records required.

(1) (No change.)

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

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

(H) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.106 (relating to Discharge of Lien) [~~§217.3 (relating to Motor Vehicle Certificates of Title)~~].

(I) (No change.)

(3) - (9) (No change.)

(f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600804
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

SUBCHAPTER H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§84.804, 84.808, 84.809

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

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

§84.804. Disclosures and Contract Provisions Required by Texas Finance Code.

A retail installment sales contract must include all provisions required by Texas Finance Code, Chapter 348, and other law. The contract must include [~~shall have~~] the following disclosures and provisions, as applicable:

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

(4) The amounts of any itemized [~~Itemized~~] charges not included in the cash price, as required by Texas Finance Code, §348.102(a)(7). Itemized charges may include[~~, but are not limited to,~~] the following charges as applicable and any other charges that are authorized to be included in the itemized charges under Texas Finance Code, Chapter 348:

(A) - (N) (No change.)

(O) Warranty contract; [~~or~~]

(P) Identity recovery service contract;[~~.~~]

(Q) Automobile club membership.

(5) - (8) (No change.)

§84.808. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

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

(16) Finance charge earnings methods:

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

(C) Scheduled installment earnings method.

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

(I) (No change.)

(II) If sales tax is advanced, and the [~~a~~] retail seller either discloses the annual percentage rate using a method other than a 365/365 basis or requires a retail buyer to purchase credit life or credit accident and health insurance, then [~~and the sales tax is not deferred,~~] the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges."

(17) - (19) (No change.)

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

(A) (No change.)

(B) Contracts using the scheduled installment earnings method.

(i) Name of method. The model clause to identify the method of refunding finance charge reads: "You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule."

(ii) Optional description of method for sales tax advance. If sales tax is advanced, then the [~~The~~] creditor may include the following additional description of the method: "You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of $25 (or $150 for a heavy commercial vehicle) to the earned finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than $1.00."

(iii) Optional description of method for deferred sales tax. If sales tax is deferred, then the creditor may include the following additional description of the method: "You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance subject to a finance charge as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the contract rate shown on the contract. You will also add the acquisition cost of $25 (or $150 for a heavy commercial vehicle) to the earned finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than $1.00."

(C) (No change.)

(21) - (45) (No change.)

§84.809. Permissible Changes.

(a) (No change.)

(b) A sample model motor vehicle retail installment sales contract is presented in the following example.

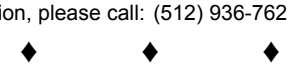
Figure: 7 TAC §84.809(b)

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600805
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 936-7621



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.5

The State Board of Education (SBOE) proposes an amendment to §74.5, concerning the curriculum requirements. The section clarifies requirements relating to the academic achievement record and high school diploma. The proposed amendment would update the rule to align with recent legislative changes.

The 83rd Texas Legislature, Regular Session, 2013, passed House Bill (HB) 5, amending the Texas Education Code (TEC), §28.025, to change the high school graduation programs from the minimum, recommended, and advanced high school programs to one foundation high school program with endorsements to increase flexibility in graduation requirements for students. In April 2014, the SBOE gave final approval for proposed revisions to 19 TAC Chapter 74, Subchapter A, to align with the requirements of HB 5, including changes to the required content for the academic achievement records/transcripts and diplomas.

The 84th Texas Legislature, Regular Session, 2015, passed HB 181, amending the TEC, §28.025(c-1), (c-5), and (e-1), to remove the requirement that school districts and charter schools identify endorsements and performance acknowledgments on high school diplomas. Districts must still include this information on high school academic achievement records/transcripts.

The proposed amendment to 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum, §74.5, Academic Achievement Record (Transcript) and High School Diploma, would align the rule for the academic achievement records with the requirements of HB 181. The proposed amendment includes a change to the section title to remove reference to the high school diploma.

The SBOE approved the proposed amendment to 19 TAC §74.5 for first reading and filing authorization at its January 29, 2016 meeting.

The proposed amendment would have no new procedural and reporting requirements. The proposed amendment would have no new locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed amendment is in effect there would be no additional costs for state and local government as a result of enforcing or administering the proposed amendment. School districts and charter schools may experience cost savings related to printing costs for the high school diploma. Since decisions related to the production and printing of the diploma are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amendment will include cost savings and added flexibility for school districts and charter schools in determining the content of the high school diploma. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.texas.gov* or faxed to (512) 463-5337. A request for a public hearing on the proposed new section 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.*

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements, and the TEC, §28.025(e-1), as amended by HB 181, 84th Texas Legislature, Regular Session, 2015, which requires the SBOE to adopt rules as necessary to administer the requirement that a school district clearly indicate a distinguished level of achievement, an endorsement, and a performance acknowledgment on the transcript of a student who satisfies the applicable requirements.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §7.102(c)(4) and §28.025, as amended by HB 181, 84th Texas Legislature, Regular Session, 2015.

§74.5. Academic Achievement Record (Transcript) [~~and High School Diploma~~].

(a) The commissioner of education shall develop and distribute to each school district and institution of higher education [~~in~~] the state guidelines for a common academic achievement record and coding system for courses and instructions for recording information on the academic achievement record. Each school district must use the coding system provided by the commissioner.

(b) Following guidelines developed by the commissioner, each school district must use an academic achievement record (transcript) form that includes the following:

(1) student demographics;

(2) school data;

(3) student data; and

(4) the record of courses and credits earned.

(c) The academic achievement record shall serve as the academic record for each student and must be maintained permanently by the district. Each district must ensure that copies of the record are made available for a student transferring from one district to another. To ensure appropriate placement of a transfer student, a district must respond promptly to each request for student records from a receiving school district.

(d) Any credit earned by a student must be recorded on the academic achievement record, regardless of when the credit was earned.

(e) A student who completes high school graduation requirements shall have attached to the academic achievement record a seal approved by the SBOE.

(f) A student who completes the requirements for an endorsement shall have the endorsement clearly indicated on the academic achievement record [~~and on the diploma~~].

(g) A student who earns a performance acknowledgment shall have the performance acknowledgment clearly indicated on the academic achievement record [~~and on the diploma~~].

(h) A student who earns the distinguished level of achievement shall have the distinguished level of achievement clearly indicated on the academic achievement record [~~and on the diploma~~].

(i) A student who completes all graduation requirements except for required end-of-course assessment instruments may be issued a certificate of coursework completion. The academic achievement record will include a notation of the date such a certificate was issued to the student.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2016.

TRD-201600715
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS

SUBCHAPTER D. OTHER TECHNOLOGY APPLICATIONS COURSES

19 TAC §126.65

The State Board of Education (SBOE) proposes new §126.65, concerning Texas essential knowledge and skills (TEKS) for technology applications. The proposed rule action would add a new Advanced Placement (AP) computer science course as an option for a student to use to earn credit toward high school graduation requirements. The proposed effective date of the new section is August 22, 2016.

A member of the SBOE requested consideration of this rule action in anticipation of the launch of the new AP Computer Science Principles course in the 2016-2017 school year.

The text of proposed new 19 TAC §126.65 aligns with the SBOE's authority to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under §28.002 and is modeled after other rules adopted for AP courses.

The SBOE approved proposed new 19 TAC §126.65 for first reading and filing authorization at its January 29, 2016 meeting.

The proposed new section would have no new procedural and reporting requirements. The proposed new section would have no new locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed new section is in effect there would be no additional costs for state and local government as a result of enforcing or administering the proposed new section.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the new section will include added flexibility in course options for students to meet high school graduation requirements. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.texas.gov* or faxed to (512) 463-5337. A request for a public hearing on the proposed new section 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.*

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025, which requires the SBOE by rule to determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§126.65. Advanced Placement (AP) Computer Science Principles (One Credit), Adopted 2016.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Recommended prerequisite: Algebra I.

(b) Content requirements. Content requirements for Advanced Placement (AP) Computer Science Principles are prescribed in the College Board Publication Advanced Placement® Curriculum Framework: AP Computer Science Principles, published by The College Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2016.

TRD-201600716
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT

SUBCHAPTER B. HIGH SCHOOL

19 TAC §127.16

The State Board of Education (SBOE) proposes new §127.16, concerning Texas essential knowledge and skills (TEKS) for career development. The proposal would add TEKS for a new career preparation course to allow students to earn up to a total of three credits each in Career Preparation I and Career Preparation II. The proposed effective date of the new section is August 28, 2017.

In April 2015, the SBOE requested that staff prepare TEKS for a new, second-level practicum course for each proposed practicum in 19 TAC Chapter 130. The one-credit extended practicum courses may be combined with the associated practicum course in order to allow a student to master additional knowledge and skills and earn up to three credits.

The extended practicum courses were given final approval at the September 2015 SBOE meeting. During the public comment period, a comment was received expressing concern that the two career preparation courses in 19 TAC Chapter 127 did not have a similar third-credit option. As a result, the SBOE requested that staff prepare TEKS for an extended Career Preparation course for action at a future meeting. This extended career preparation course will provide districts with added flexibility to offer a capstone course in career development that will best prepare students for postsecondary success.

The SBOE approved proposed new 19 TAC §127.16 for first reading and filing authorization at its January 29, 2016 meeting.

The proposed new section would have no procedural and reporting requirements. The proposed new section would have no locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed new section is in effect there may be fiscal implications for state and local government as a result of enforcing or administering the proposed new section.

There may be fiscal implications for the Texas Education Agency (TEA) to create professional development to help teachers and administrators understand the revisions to the TEKS. For fiscal years 2014 and 2015, the estimated cost to the TEA for reviewing and revising this set of TEKS was accounted for as part of the initial review and revision of all of the CTE TEKS and there is no additional fiscal impact.

There may be anticipated fiscal implications for school districts and charter schools to implement the new course, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the new section will include added flexibility for districts when offering capstone courses in career development and the ability for students to master additional knowledge and skills that will best prepare students for postsecondary success. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.texas.gov* or faxed to (512) 463-5337. A request for a public hearing on the proposed new section 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.*

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025, which requires the SBOE by rule to determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102, 28.002, and 28.025.

§127.16. Extended Career Preparation (One Credit), Adopted 2016.

(a) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisite: Successful completion of one or more advanced career and technical education courses that are part of a coherent sequence of courses in a career cluster related to the field in which the student will be employed. Corequisite: Career Preparation I or Career Preparation II. This course must be taken concurrently with Career Preparation I or Career Preparation II and may not be taken as a stand-alone course. Students shall be awarded one credit for successful completion of this course. A student may repeat this course once for credit provided that the student is experiencing different aspects of the industry and demonstrating proficiency in additional and more advanced knowledge and skills.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) Career development is a lifelong pursuit of answers to the questions: Who am I? Why am I here? What am I meant to do with my life? It is vital that students have a clear sense of direction for their career choice. Career planning is a critical step and is essential to success.

(3) Extended Career Preparation provides opportunities for students to participate in a work-based learning experience that combines classroom instruction with business and industry employment experiences. The goal is to prepare students with a variety of skills for a changing workplace. Career preparation is relevant and rigorous, supports student attainment of academic standards, and effectively prepares students for college and career success.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) participate in a paid work-based application of previously studied knowledge and skills related to career and technical education;

(B) participate in training, education, or preparation for licensure, certification, or other relevant credentials to prepare for employment;

(C) demonstrate professional standards and personal qualities needed to be employable such as punctuality, initiative, and cooperation with increased fluency;

(D) complete tasks with high standards to ensure delivery of quality products and services;

(E) employ teamwork and conflict-management skills with increased fluency to achieve collective goals; and

(F) employ planning and time-management skills with increased fluency to enhance results and complete work tasks.

(2) The student implements advanced professional communications strategies. The student is expected to:

(A) apply appropriate content knowledge, technical concepts, and vocabulary with increased fluency when analyzing information and following directions;

(B) demonstrate verbal and non-verbal communication consistently in a clear, concise, and effective manner;

(C) analyze, interpret, and effectively communicate information, data, and observations;

(D) observe and interpret verbal and nonverbal cues and behaviors to enhance communication;

(E) apply active listening skills to obtain and clarify information; and

(F) employ effective internal and external communications to support work activities.

(3) The student applies concepts of critical thinking and problem solving. The student is expected to:

(A) employ critical-thinking skills with increased fluency both independently and in groups to solve problems and make decisions;

(B) analyze elements of a problem to develop creative and innovative solutions; and

(C) demonstrate the use of content, technical concepts, and vocabulary when analyzing information and following directions.

(4) The student understands and applies proper safety techniques in the workplace. The student is expected to:

(A) demonstrate an understanding of and consistently follow workplace safety rules and regulations;

(B) demonstrate safe operation of tools and equipment used in the industry;

(C) describe and perform hazard analysis; and

(D) demonstrate knowledge of procedures for reporting and handling accidents and safety incidents.

(5) The student understands the professional, ethical, and legal responsibilities as they relate to employment and the workplace. The student is expected to:

(A) demonstrate a positive, productive work ethic by performing assigned tasks as directed;

(B) apply ethical reasoning to a variety of situations in order to make ethical decisions; and

(C) comply with all applicable rules, laws, and regulations in a consistent manner.

(6) The student participates in a paid career preparation experience. The student is expected to:

(A) conduct, document, and evaluate learning activities in a supervised employment experience;

(B) develop advanced technical knowledge and skills related to the student's occupational objective;

(C) demonstrate growth of technical skill competencies;

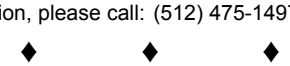
(D) evaluate strengths and weaknesses in technical skill proficiency; and

(E) collect representative work samples.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 16, 2016.

TRD-201600717
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1497



CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL

SUBCHAPTER BB. ADMINISTRATOR APPRAISAL

The Texas Education Agency (TEA) proposes the repeal of §150.1021 and §150.1022 and new §§150.1021-150.1028, concerning administrator appraisal. Sections 150.1021 and

150.1022 reflect the state-recommended appraisal system for administrators. The proposed new sections would reflect the new state-recommended principal appraisal system, the Texas Principal Evaluation and Support System (T-PESS), which will be effective July 1, 2016, for implementation during the 2016-2017 school year.

The rules in 19 TAC Chapter 150, Subchapter BB, capture the commissioner's current state-recommended appraisal process for administrators, which has been in place since 1997.

With the 2011 legislative session, the Texas Education Code (TEC), §21.3541, tasked the commissioner with creating a state-recommended appraisal system for principals. Since the spring of 2012, the TEA has worked with stakeholders, including principals, district administrators, higher education representatives, and regional education service centers, to build and refine a new state-recommended principal appraisal system that can be utilized effectively for principal development and growth. The new system, the T-PESS, was piloted in approximately 55 districts during the 2014-2015 school year and refined throughout the year based on educator feedback. During the 2015-2016 school year, the T-PESS is being piloted in 214 districts that have adopted the system as a locally developed appraisal option.

The T-PESS will replace the 1997 commissioner's recommended appraisal process beginning July 1, 2016. The proposed rule actions would repeal the rules for the 1997 appraisal process and replace them with the rules for the T-PESS. Besides describing and detailing the process for the T-PESS, the proposed new sections would acknowledge a district's ability to develop a local system for appraising principals and the need for districts to annually appraise school administrators other than principals.

The proposed rule actions would have no new procedural or reporting implications. The proposed rule actions would have no new locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed repeal and new sections are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed repeal and new sections.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for each year of the first five years the proposed repeal and new sections are in effect the public benefit anticipated as a result of enforcing the repeal and new sections would be to allow public school districts to access an appraisal process that can improve campus leadership and student performance. There is no anticipated economic cost to persons who are required to comply with the proposed repeal and new sections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins March 4, 2016, and ends April 4, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.texas.gov* or faxed to (512) 463-5337. 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 March 4, 2016.

19 TAC §150.1021, §150.1022

STATUTORY AUTHORITY. The repeal is proposed under the Texas Education Code (TEC), §21.3541, which requires the commissioner of education to adopt a state-recommended appraisal process for principals and details the local role for school districts as it relates to adopting a locally developed principal appraisal process, and the TEC, §21.354, which requires the commissioner of education to adopt a state-recommended appraisal process for school administrators other than principals and details the local role for school districts as it relates to adopting a locally developed appraisal process for school administrators other than principals.

CROSS REFERENCE TO STATUTE. The repeal implements the TEC, §21.3541 and §21.354.

§150.1021. Commissioner-Recommended Administrator Appraisal Process: Performance Domains and Descriptors.

§150.1022. Commissioner-Recommended Administrator Appraisal Process: Procedures.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600838
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1497

♦ ♦ ♦

19 TAC §§150.1021 - 150.1028

STATUTORY AUTHORITY. The new sections are proposed under the Texas Education Code (TEC), Texas Education Code (TEC), §21.3541, which requires the commissioner of education to adopt a state-recommended appraisal process for principals and details the local role for school districts as it relates to adopting a locally developed principal appraisal process, and the TEC, §21.354, which requires the commissioner of education to adopt a state-recommended appraisal process for school administrators other than principals and details the local role for school districts as it relates to adopting a locally developed appraisal process for school administrators other than principals.

CROSS REFERENCE TO STATUTE. The repeal implements the TEC, §21.3541 and §21.354.

§150.1021. General Provisions for Principal Appraisal.

(a) All school districts have two choices in selecting a method to appraise principals: a principal appraisal system recommended by the commissioner of education or a local principal appraisal system.

(b) The commissioner's recommended principal appraisal system, the Texas Principal Evaluation and Support System (T-PESS), was developed in accordance with the Texas Education Code (TEC), §21.3541.

(c) The superintendent of each school district, with the approval of the school district board of trustees, may select the T-PESS. Each school district wanting to select or develop an alternative principal appraisal system must follow the TEC, §21.3541, and §150.1026 of this title (relating to Alternatives to the Commissioner's Recommended Principal Appraisal System).

(d) The commissioner may designate a regional education service center to serve as the T-PESS certification provider for the state. The designated regional education service center may collect appropriate fees under the TEC, §8.053, from school districts and open-enrollment charter schools for training and certification.

(e) Sections 150.1022 through 150.1025 of this title apply only to the T-PESS and not to local principal appraisal systems.

§150.1022. Assessment of Principal Performance.

(a) Each principal shall be appraised on the following standards and indicators of the Texas Principal Evaluation and Support System (T-PESS) rubric that is aligned to the Texas Administrator Standards in Chapter 149 of this title (relating to Commissioner's Rules Concerning Educator Standards).

(1) Standard I. Instructional Leadership, which includes four indicators;

(2) Standard II. Human Capital, which includes four indicators;

(3) Standard III. Executive Leadership, which includes four indicators;

(4) Standard IV. School Culture, which includes five indicators; and

(5) Standard V. Strategic Operations, which includes four indicators.

(b) The evaluation of each of the standards and indicators identified in subsection (a) of this section shall consider all data generated in the appraisal process.

(c) Each principal shall be evaluated on the attainment and progress toward at least one goal, as referenced in §150.1023 of this title (relating to Appraisals, Data Sources, and Conferences). At least one goal shall be focused on the improvement of the principal's practice, as captured in the T-PESS rubric indicators and descriptors.

(d) If calculating a single overall summative appraisal score for principals, the rating for the attainment of goals, as referenced in subsection (c) of this section, shall count for:

(1) at least 20% of a principal's summative score for a principal who has served at least one year in his or her role on the same campus; or

(2) at least 30% of a principal's summative score for a principal who is in his or her first year as principal on a particular campus.

(e) Each principal shall be evaluated on each of the 21 indicators in Standards I-V identified in subsection (a) of this section and on the attainment of each goal, as referenced in subsection (c) of this section, using the following categories:

(1) distinguished;

(2) accomplished;

(3) proficient;

(4) developing; and

(5) improvement needed.

(f) Beginning with the 2017-2018 school year, each principal appraisal shall include the campus-level academic growth or progress of the students enrolled at the principal's campus.

(g) If calculating a single overall summative appraisal score for principals, the measure of student growth or progress, as referenced in subsection (f) of this section, shall count for:

(1) at least 20% of a principal's summative score for a principal who has served two or more years in his or her role on the same campus;

(2) at least 10% of a principal's summative score for a principal who has served one year in his or her role on the same campus; or

(3) may not be included in calculating a single overall summative appraisal score for a principal who is in his or her first year as principal on a particular campus.

(h) Each principal shall be evaluated on student growth or progress using one of the terms from the following categories:

(1) distinguished;

(2) accomplished;

(3) proficient;

(4) developing; or

(5) improvement needed.

§150.1023. Appraisals, Data Sources, and Conferences.

(a) Each principal must be appraised annually.

(b) The annual principal appraisal shall include:

(1) at least one appraiser-approved goal that shall be:

(A) initially drafted in conjunction with the principal's end-of-year conference from the previous year, as applicable, revised as needed based on changes to the context of the principal's assignment at the beginning of the current school year, and submitted to the principal's appraiser; and

(B) maintained throughout the course of the school year by the principal to track progress in the attainment of goals and the actions taken to achieve the goals;

(C) shared with the principal's appraiser prior to the end-of-year conference; and

(D) used after the end-of-year conference in the determination of ratings for the attainment of goals;

(2) a pre-evaluation conference prior to the principal submitting his or her goals to the principal's appraiser;

(3) a mid-year conference to determine and discuss progress toward the attainment of goals;

(4) an end-of-year conference that:

(A) reviews data collected throughout the current school year and previous school years, if available;

(B) examines and discusses the artifacts and evidence related to the principal's performance on the 21 indicators of Texas Principal Evaluation and Support System rubric and the attainment of goals, as described in §150.1022 of this title (relating to Assessment of Principal Performance);

(C) examines and discusses evidence related to student growth or progress measures, as described in §150.1022(f)-(h) of this title, when available; and

(D) identifies potential goals and professional development activities for the principal for the next school year; and

(5) a written summative annual appraisal report to be provided to the principal after the conclusion of the end-of-year conference.

(c) Each school district shall establish a calendar for the appraisal of principals and provide that calendar to principals prior to the pre-evaluation conference.

(d) The written summative annual appraisal report shall be placed in the principal's personnel file by the end of the appraisal period.

(e) Any documentation collected after the end-of-year conference but before the end of the contract term during one school year may be considered as part of the appraisal of a principal. If the documentation affects the principal's evaluation in any indicator, the attainment of goals, or a measure of student growth or progress, another summative report shall be developed to inform the principal of the change(s) prior to the end of the contract term.

§150.1024. Appraiser Qualifications.

(a) The principal appraisal process requires at least one certified appraiser.

(b) Before conducting an appraisal, an appraiser must be certified by having satisfactorily completed the state-approved Texas Principal Evaluation and Support System. Periodic recertification and training may be required.

§150.1025. Principal Orientation.

(a) A school district shall ensure that a principal is provided with an orientation of the Texas Principal Evaluation and Support System (T-PESS) either prior to or in conjunction with the pre-evaluation conference, as referenced in §150.1023(b)(2) of this title (relating to Appraisals, Data Sources, and Conferences) when:

(1) the principal is new to the district;

(2) the principal has never been appraised under the T-PESS; or

(3) district policy regarding principal appraisal has changed since the last time the principal was provided with an orientation to the T-PESS.

(b) The principal orientation shall include all state and local appraisal policies and the local appraisal calendar.

§150.1026. Alternatives to the Commissioner's Recommended Principal Appraisal System.

A school district that does not choose to use the commissioner's recommended Texas Principal Evaluation and Support System must develop its own principal appraisal system supported by locally adopted policy and procedures and by the processes outlined in the Texas Education Code (TEC), §21.3541.

§150.1027. District Submissions to Regional Education Service Center.

(a) The superintendent shall notify the executive director of its regional education service center in writing of the school district's choice of appraisal system when using an alternative to the commissioner's recommended appraisal system and detail the components of that system by the first day of instruction for the school year in which the alternative system is used.

(b) Each school district shall submit annually to its regional education service center a summary of the evaluation scores from the Texas Principal Evaluation and Support System or the district's locally adopted appraisal system, in a manner prescribed by the commissioner of education.

§150.1028. Appraisal of Administrators other than Principals.

(a) Each school district shall evaluate administrators other than principals annually.

(b) A school district may use the Texas Principal Evaluation and Support System (T-PESS) to appraise administrators other than principals provided the school district makes appropriate modifications to ensure that the T-PESS rubric and components fit the job descriptions of the administrators other than principals evaluated with the T-PESS.

(c) Each school district wanting to select or develop a local appraisal system for administrators other than principals must follow the TEC, §21.354(c)(2).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600839
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 78. RULES OF PRACTICE

22 TAC §78.6

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 78, §78.6, concerning Required Fees and Charges. The proposed amended rule is necessary in order to remove an obsolete reference and update the rule concerning application of monetary funds to outstanding balances.

Patricia Gilbert, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the proposed amendment of the rule.

Ms. Gilbert has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders and enhanced compliance with existing law and rules.

Ms. Gilbert has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or

individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This amended rule was proposed upon a recommendation by the Rules Committee to the Board and approved by the Board for publication. Although not officially published for comment, unofficial comments were received during the course of discussion of the February 18, 2016, Board and Rules Committee meetings.

In general, commenters were supportive of the Board's effort to enhance the compliance process and ensure that licensees were in good standing at all times.

Comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705 or *rules@tbce.state.tx.us* no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

This amended rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

§78.6. Required Fees and Charges.

(a) Current fees required by the board are as follows:
Figure: 22 TAC §78.6(a) (No change.)

(b) Application of Monetary Funds to Outstanding Balances. When a person pays monetary funds to the Board to renew a license or facility registration, the monetary funds paid shall first be applied to any outstanding unpaid fees, assessed costs owed by that person from a final Board order, as authorized under §79.10 of this title (relating to Decision of the Board), or administrative penalties owed from a final Board order, as authorized under §78.10 of this title (relating to Schedule of Sanctions). [~~The board is required to increase its fees for annual renewal, an examination, and re-examination by $200 pursuant to the Occupations Code §201.153(b). That increase is reflected in subsection (a) of this section under the column entitled "Professional Fee (78th Leg)." The total amount of each of these fees must be paid before the board will process an application subject to such fee.~~]

(c) Any remittance submitted to the board in payment of a required fee for application, initial license, registration, or renewal, must be in the form of a cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable.

(d) Fees for license verification or certification, license replacement, and continuing education applications may submit the required fee in the form of a personal or company check, cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable. Persons who have submitted a check which has been returned, and who have not made good on that check and paid the returned check fee provided in subsection (a) of this section, within 10 days from notice from the board of the returned check, for whatever reason, shall submit all future fees in the form of a cashier's or certified check or money order.

(e) Copies of public information, not excepted from disclosure by the Texas Open Records Act, Chapter 552, Government Code, including the information listed in paragraphs (1) - (6) of this subsection may be obtained upon written request to the board, at the rates established by the Office of the Attorney General for copies of public information, 1 TAC Part 3, Chapter 70, §§70.1 - 70.10 (relating to Cost of Copies of Public Information).

(1) List of New Licensees

(2) Lists of Licensees

(3) Licensee Labels

(4) Demographic Profile

(5) Facilities List

(6) Facilities Labels

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600825
Bryan Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 305-6715

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER B. IMMUNIZATION REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

25 TAC §§97.61 - 97.72

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§97.61 - 97.72, concerning immunization requirements in Texas elementary and secondary schools and institutions of higher education.

BACKGROUND AND PURPOSE

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 97.61 - 97.72 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are required by statute and provide guidance for the ongoing program. However, revisions to the rules are necessary as outlined in this preamble.

The purpose of the amendments is to clarify and optimize procedures, update language and contact information, simplify the immunization requirements by clarifying the requirement schedules, and remove outdated requirement information. The

proposed language concerning vaccination requirements is consistent with the national vaccine schedule recommendations, per the Centers for Disease Control and Prevention current Advisory Council on Immunization Practices (ACIP) recommendations (see http://www.cdc.gov/vaccines/schedules/). The amendments are necessary to comply with Health and Safety Code, Chapters 81 and 161; Education Code, Chapters 38 and 51; and Human Resources Code, Chapter 42, which require the department to set immunization requirements.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.61 reflects the change in the department name from the Texas Youth Commission to the Texas Juvenile Justice Department.

The proposed amendments to §97.62 clarify, update, and improve readability of the rule. The proposed amendments to §97.62(1) clarify that the medical exemption documents must be dated and signed and be presented to the school or child-care facility. Additionally, language used to describe providers able to write medical exemptions is changed from "the child's physician" to "a physician" who has examined the child or student. The antiquated phrase "duly registered and licensed to practice medicine in the United States" is updated to read "properly licensed and in good standing in any state in the United States." The word "student" is added to the section not only to expand this exclusion method to students 18 years of age or older, but also to clarify that the method is available to child-care participants as well as school-age children.

The proposed amendments to §97.62(2) clarify how to obtain an exclusion for reasons of conscience. The changes specify that an affidavit must be signed and notarized; allow students 18 years of age or older the right to sign the affidavit on their own behalf; and clarify that a completed affidavit is valid for a two-year period from the date of notarization. The amendment also revises the language from the title "commissioner of public health" to "commissioner of the department."

The proposed amendment to §97.62(2)(A) clarifies the method in which a person can request and obtain an exemption affidavit: via online, fax, mail, or hand-delivery to the department. The proposed amendment adds the text "or student," to include students 18 years of age or older to be consistent with this rule. The changes also contain what information is required in a request for an exemption affidavit to include the full name of the child or student; the child's or student's date of birth (month/day/year); complete mailing address, including telephone number; and number of requested forms (not to exceed five forms per child or student).

The proposed amendment to §97.62(2)(B) updates the methods in which requests for affidavit forms can be submitted to the department by including accurate fax number information as well as the corrected Immunization Branch website URL: www.ImmunizeTexas.com.

The proposed amendment to §97.62(2)(C) rearranges the language for improved readability; adds the text "or student" to include students 18 years of age or older to be consistent with this rule; and specifies that the requests will be mailed to the address provided. The proposed amendment to §97.62(2)(D) clarifies the sentence for improved readability.

The proposed amendment to §97.63(2)(B)(i)(I), revises the Poliomyelitis (Polio) vaccine requirements from kindergarten entry to kindergarten through 12th grade to clarify that students must show proof of polio vaccination upon entry to grades kindergarten through 12.

The proposed amendment to §97.63(2)(B)(ii)(I) expands the Diphtheria/Tetanus/Pertussis vaccine requirement from kindergarten entry to kindergarten through 6th grade in order to clarify that students must show proof of the vaccination upon entry to grades kindergarten through 6.

The amendment to §97.63(2)(B)(ii)(III) for Tdap removes the existing verbiage "Beginning SY 2009 - 2010" in items (-a-) and (-b-) to streamline the rules for improved readability.

The proposed amendment to §97.63(2)(B)(iii) removes the Measles/Mumps/Rubella (MMR) vaccination schedule organized by individual school years and grades and creates a blanket MMR requirement for students in grades kindergarten through 12, with considerations to grandfather in students meeting previous requirements. Students enrolling in grades kindergarten through 12 will be required to have two doses of MMR vaccine or two doses of measles and one dose each of mumps and rubella if vaccinated prior to 2009. Removing the schedules for the specific school years and grades prevents the requirements from expiring in the years to come.

The proposed amendment to §97.63(2)(B)(iv)(I) specifies that the Hepatitis B vaccine requirement applies to all students enrolling in grades kindergarten through 12 and removes the redundant phrase "no later than entry into kindergarten."

The proposed amendment to §97.63(2)(B)(v) deletes the schedules for outdated school years and specific grades for the Varicella requirements and establishes a two-dose varicella requirement for students enrolling in grades kindergarten through 12 beginning with the 2016 - 2017 school year. The proposed amendment is necessary to ensure the existence of a varicella vaccine requirement after the 2015 - 2016 school year. In addition, the proposed amendment streamlines the rule and reflects ACIP varicella recommendations.

The proposed amendment to §97.63(2)(B)(vi), which establishes the Hepatitis A vaccine requirements, simplifies the rule language by removing the schedules for the previous school years and grades.

The proposed amendment to the meningococcal vaccine requirements in §97.63(2)(B)(vii) clarifies that one dose of quadrivalent meningococcal conjugate vaccine (MCV4) is required on or after the student's 11th birthday to be effective for the 2016 - 2017 school year. The amendment also deletes the schedules for the previous school years and grades.

The proposed amendment to §97.64(b) identifies vaccinations required prior to engaging in health-related course activities, simplifies the language, and identifies additional doses for mumps and varicella vaccines as outlined and recommended by the ACIP. The requirement for the mumps vaccine in §97.64(b)(2)(B) is changed from "one dose" to "two doses," as recommended by the ACIP.

The proposed amendment to the hepatitis B vaccine requirements in §97.64(b)(3) deletes language referring to serologic confirmation of immunity to hepatitis B virus to clarify the section and allow §97.64(c)(3) to be a stand-alone authority on serologic confirmation of immunity.

The proposed amendment to §97.64(b)(4) changes the varicella vaccine age requirement schedule from "one dose on or after the first birthday, or if the first dose was administered on or after

the student's thirteenth birthday' to "two doses are required," as recommended by the ACIP.

The proposed amendment to §97.64(c)(1) deletes all the listed regulatory agencies except the ACIP in order to clarify vaccination requirements and prevent differing vaccination schedule recommendations. In addition the amendment updates language to require students to complete their missing doses as rapid as medically feasible instead of "on schedule." These changes reduce confusion and ensure that students become completely immunized as quickly as possible.

The proposed amendment to §97.64(c)(3) adds language allowing students to show proof of immunity through laboratory confirmation of immunity or disease and removes the limitation of serologic confirmation to better reflect current immunology technologies and tests.

The proposed amendment to §97.64(d) addresses changes in rabies immunity technology and adds §97.64(d)(3), which requires veterinary students to have had one dose of a tetanus-diphtheria toxoid (Td) within the last ten years. This added requirement will better protect veterinary students from tetanus infection in the field.

The proposed amendment to §97.65(b) adds the word "student's" to the phrase "...attesting to a child's/student's positive history of varicella disease (chickenpox)" to provide consistency throughout the subchapter.

In accordance with the federal McKinney-Vento Act, which affords homeless students a 30-day provisional enrollment period and a referral to public health programs for the appropriate vaccinations, the proposed amendment to §97.66(b) removes the phrase "public health programs" and replaces it with "health provider" to allow schools to refer homeless students directly to an appropriate provider since not all public health programs are Texas Vaccines for Children providers.

The proposed amendment to §97.67 adds the manner in which immunization records may be maintained by school and child-care facilities (i.e. in paper and/or electronic form), and legitimizes electronic record systems that are already in use throughout Texas. Similarly, the proposed amendment to §97.68 adds electronic health record immunization records as acceptable documented evidence of vaccination if it contains clinic contact information and the physician's signature/stamp.

The proposed amendment to §97.69 removes gendered pronouns and replaces "he/she" with "the student" to reflect proper rule-writing guidelines.

The proposed amendment to §97.70 adds language to clarify that the department and local health authorities may advise or assist schools in meeting the requirements in Subchapter B.

The proposed amendment to §97.71 removes the word "schools" and replaces it with the phrase "all public school districts and accredited private schools" to ensure equitable compliance standards for differing educational facilities.

The proposed amendment to §97.72 adds language to clarify the purpose of control measures under Texas Health and Safety Code, Chapter 81, Subchapter E, to prevent the spread of disease.

FISCAL NOTE

Imelda Garcia, Director, Infectious Disease Prevention Section, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Garcia has also determined that there will be no adverse impact 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. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

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.

PUBLIC BENEFIT

In addition, Ms. Garcia has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be an improvement the health and wellbeing of Texas children and students as they will be more fully protected against vaccine-preventable diseases. Vaccinations are a major part of Texas public health efforts to prevent and control communicable diseases.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the 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 Margaret Horton, Department of State Health Services, Infectious Disease Prevention Section, Immunization Branch, Mail Code 1946, P.O. Box 149347, Austin, Texas, 78714-9347, or by email to margaret.horton@dshs.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, 1100 West 49th Street, Austin, Texas, 78756. The meeting date will be

posted on the Immunization Branch website at www.ImmunizeTexas.com. Please contact Margaret Horton by phone at (512) 776-6427 or email at margaret.horton@dshs.texas.gov, or Debbie Meischen by phone (512) 776-6319 or email at deborah.meischen@dshs.texas.gov for additional information.

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.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §81.023, which provides the department the authority to develop immunization requirements for children; Health and Safety Code, §81.081, which grants the department the authority to impose control measures to prevent the spread of disease and protect the public health; Health and Safety Code, §161.004, which allows the department to develop and implement immunization requirements for vaccine-preventable diseases and provides avenues for exemptions from immunization requirements; Health and Safety Code, §161.0041, which delineates requirements for the Immunization Exemption Affidavit Form; Education Code §38.001, which grants the department the authority to require immunizations for school entry; Education Code, §38.002, which requires the department to develop and administer the Annual Report of Immunization Status of Students in conjunction with the Texas Education Agency (TEA); and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The amendments affect Education Code, Chapter 38; Health and Safety Code, Chapters 81; 161 and 1001; and Government Code, Chapters 531 and 2001.

§97.61. Children and Students Included in Vaccine Requirements.

(a) (No change.)

(b) The vaccines required in this section are also required for all children in the State of Texas, including children admitted, detained, or committed in Texas Department of Criminal Justice, Department of State Health Services, and the Texas Juvenile Justice Department (TJJD) [~~Texas Youth Commission~~] facilities.

(c) (No change.)

§97.62. Exclusions from Compliance.

Exclusions from compliance are allowable on an individual basis for medical contraindications, reasons of conscience, including a religious belief, and active duty with the armed forces of the United States. Children and students in these categories must submit evidence for exclusion from compliance as specified in the Health and Safety Code, §161.004(d), Health and Safety Code, §161.0041, Education Code, Chapter 38, Education Code, Chapter 51, and the Human Resources Code, Chapter 42.

(1) To claim an exclusion for medical reasons, the child or student must present an exemption [~~a~~] statement to the school or child-care facility, dated and signed by a [~~the child's~~] physician (M.D. or D.O.), properly licensed and in good standing in any state in the United States [~~duly registered and licensed to practice medicine in the United States~~] who has examined the child or student. The statement must state [~~, in which it is stated~~] that, in the physician's opinion, the vaccine required is medically contraindicated or poses a significant risk to the health and well-being of the child or student or any member of the child's or student's household. Unless it is written in the statement that a lifelong condition exists, the exemption statement is valid for only one year from the date signed by the physician.

(2) To claim an exclusion for reasons of conscience, including a religious belief, the child's parent, legal guardian, or a student 18 years of age or older must present to the school or child-care facility a completed, signed and notarized affidavit on a form provided by the department [~~must be presented by the child's parent or legal guardian,~~] stating that the child's parent, [~~or~~] legal guardian, or the student declines vaccinations for reasons of conscience, including because of the person's religious beliefs. The affidavit will be valid for a two-year period from the date of notarization. A [~~The~~] child or student, who has not received the required immunizations for reasons of conscience, including religious beliefs, may be excluded from school in times of emergency or epidemic declared by the commissioner of the department [~~public health~~].

(A) A person claiming exclusion for reasons of conscience, including a religious belief, from a required immunization may only obtain the affidavit form by submitting a [~~written~~] request (via online, fax, mail, or hand-delivery) to the department. The request must include the following information:

(i) full name of child or student; [~~and~~]

(ii) child's or student's date of birth (month/day/year);[~~.~~]

(iii) complete mailing address, including telephone number; and

(iv) number of requested affidavit forms (not to exceed 5).

(B) Requests for affidavit forms must be submitted to the department through one of the following methods:

(i) (No change.)

(ii) by facsimile to (512) 776-7544 [~~at (512) 458-7544~~];

(iii) by hand-delivery to [~~at~~] the department's physical address at 1100 West 49th Street, Austin, Texas 78756; or

(iv) via the department's Immunization program [~~Internet~~] website (at www.ImmunizeTexas.com [~~go to www.ImmunizeTexas.org~~]).

(C) The department will mail the requested affidavit form(s) [~~Upon request, one affidavit form for each child will be mailed unless otherwise specified (shall~~] (not to exceed [~~a maximum of~~] five forms per child or student) to the specified mailing address.

(D) The department shall not maintain a record of the names of individuals who request an affidavit and shall return the original documents (when [~~request (where~~] applicable) with the requested affidavit forms [~~requested~~].

(3) (No change.)

§97.63. Immunization Requirements in Child-care Facilities, Pre-Kindergarten, Early Childhood Programs, and Texas Elementary and Secondary Schools.

Every child in the state shall be vaccinated against vaccine-preventable diseases caused by infectious agents, in accordance with the following immunization schedule. While the department recommends that

providers immunize children according to the recommendations found on the department's website at www.ImmunizeTexas.com, this section sets out minimum immunization requirements for school entry for the child. The child must have the indicated vaccinations by the grade level indicated. The vaccination schedule also indicates the grade before which the child should not obtain the specific vaccination. A copy of the current recommended schedule is available at www.ImmunizeTexas.com, or by mail by writing the Department of State Health Services, Mail Code 1946, P.O. Box 149347, Austin, Texas 78714-9347.

(1) (No change.)

(2) For diseases listed below, a child or student shall show acceptable evidence of vaccination prior to entry, attendance, or transfer to a child-care facility or public or private elementary or secondary school.

(A) (No change.)

(B) Students in kindergarten through twelfth grade shall have the following vaccines, according to the schedule listed.

(i) Poliomyelitis.

(I) Kindergarten through twelfth grade [~~entry~~]. Students are required to have four doses of polio vaccine--one of which must have been received on or after the fourth birthday. Or, if the third dose was administered on or after the fourth birthday, only three doses are required. Four doses of oral polio vaccine (OPV) or inactivated poliovirus vaccine (IPV) in any combination by age four to six years old is considered a complete series, regardless of age at the time of the third dose.

(II) (No change.)

(ii) Diphtheria/Tetanus/Pertussis.

(I) Kindergarten through sixth grade [~~entry~~]. Students are required to have five doses of a diphtheria/tetanus/pertussis-containing vaccine --[-]one of which must have been received on or after the fourth birthday. Or, if the fourth dose was administered on or after the fourth birthday, only four doses are required.

(II) (No change.)

(III) Tdap.

(-a-) Seventh grade. Students are [~~Beginning SY 2009 - 2010, students will be~~] required to have one booster dose of a tetanus/diphtheria/pertussis-containing vaccine for entry into the 7th grade, if at least five years have passed since the last dose of a tetanus-containing vaccine. If five years have not elapsed since the last dose of a tetanus-containing vaccine at entry into the 7th grade, then this dose will become due as soon as the five-year interval has passed. Td vaccine is an acceptable substitute, if Tdap vaccine is medically contraindicated.

(-b-) Grades 8 - 12. Students [~~Beginning SY 2009 - 2010, students~~] who have not already received Tdap vaccine are required to receive one booster dose of Tdap when ten years have passed since the last dose of a tetanus-diphtheria-containing vaccine.

(IV) (No change.)

(iii) MMR. Beginning SY 2016 - 2017 [~~2009 - 2010~~], students enrolling in kindergarten through 12th grade are required to have two doses of MMR vaccine with the first dose received on or after the first birthday. Students vaccinated prior to 2009 with two doses of measles and one dose each of rubella and mumps satisfy this requirement. [~~for the following grades and school years:~~]

~~*(I)* SY 2009 - 2010: K;~~

~~*(II)* SY 2010 - 2011: K - 1;~~

~~*(III)* SY 2011 - 2012: K - 2;~~

~~*(IV)* SY 2012 - 2013: K - 3;~~

~~*(V)* SY 2013 - 2014: K - 4;~~

~~*(VI)* SY 2014 - 2015: K - 5;~~

~~*(VII)* SY 2015 - 2016: K - 6;~~

~~*(VIII)* SY 2016 - 2017: K - 7;~~

~~*(IX)* SY 2017 - 2018: K - 8;~~

~~*(X)* SY 2018 - 2019: K - 9;~~

~~*(XI)* SY 2019 - 2020: K - 10;~~

~~*(XII)* SY 2020 - 2021: K - 11; and~~

~~*(XIII)* SY 2021 - 2022: K - 12.~~

(iv) Hepatitis B.

(I) Students enrolling in kindergarten through 12th grade are required to have three doses of hepatitis B vaccine [~~no later than entry into kindergarten~~].

(II) (No change.)

(v) Varicella. Beginning SY 2016 - 2017 [~~2009 - 2010~~], students enrolling in kindergarten through 12th grade are required to have two doses of varicella vaccine received on or after the first birthday. [~~for the following grades and school years (Two doses are required if the child was thirteen years old or older at the time the first dose of varicella vaccine was received):~~]

~~*(I)* SY 2009 - 2010: K, 7;~~

~~*(II)* SY 2010 - 2011: K - 1, 7 - 8;~~

~~*(III)* SY 2011 - 2012: K - 2, 7 - 9;~~

~~*(IV)* SY 2012 - 2013: K - 3, 7 - 10;~~

~~*(V)* SY 2013 - 2014: K - 4, 7 - 11;~~

~~*(VI)* SY 2014 - 2015: K - 5, 7 - 12; and~~

~~*(VII)* SY 2015 - 2016: K - 12.~~

(vi) Hepatitis A. For SY 2016 - 2017 [~~2009 - 2010~~], students are required to have two doses of hepatitis A vaccine with the first dose received on or after the first birthday for the following grades and school years:

~~*(I)* SY 2009 - 2010: K;~~

~~*(II)* SY 2010 - 2011: K - 1;~~

~~*(III)* SY 2011 - 2012: K - 2;~~

~~*(IV)* SY 2012 - 2013: K - 3;~~

~~*(V)* SY 2013 - 2014: K - 4;~~

~~*(VI)* SY 2014 - 2015: K - 5;~~

~~*(VII)* SY 2015 - 2016: K - 6;~~

(I) [~~(VIII)~~] SY 2016 - 2017: K - 7;

(II) [~~(IX)~~] SY 2017 - 2018: K - 8;

(III) [~~(X)~~] SY 2018 - 2019: K - 9;

(IV) [~~(XI)~~] SY 2019 - 2020: K - 10;

(V) [~~(XII)~~] SY 2020 - 2021: K - 11; and

(VI) [~~(XIII)~~] SY 2021 - 2022: K - 12.

(vii) Meningococcal.

[(I) ~~Students are required to have one dose of meningococcal vaccine for the following grades and school years:~~]

[~~(-a-) SY 2009 - 2010: 7;~~]

[~~(-b-) SY 2010 - 2011: 7 - 8;~~]

[~~(-c-) SY 2011 - 2012: 7 - 9;~~]

[~~(-d-) SY 2012 - 2013: 7 - 10;~~]

[~~(-e-) SY 2013 - 2014: 7 - 11; and~~]

[~~(-f-) SY 2014 - 2015: 7 - 12.~~]

[(II)] Effective SY 2016 - 2017 [~~2015 - 2016~~], students [~~aged 11 - 12 years or~~] enrolling in 7th - 12th grades are required to have one dose of quadrivalent meningococcal conjugate vaccine (MCV4) on or after the student's 11th birthday.

§97.64. Required Vaccinations for Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education.

(a) (No change.)

(b) Vaccines Required. Students must have [~~the~~] all of the following vaccinations before they may engage in the course activities described in subsection (a) of this section:

(1) Tetanus-Diphtheria Vaccine [~~Tetanus-diphtheria~~]. One dose of a tetanus-diphtheria toxoid (Td) is required within the last ten years. The booster dose may be in the form of a tetanus-diphtheria-pertussis containing vaccine (Tdap).

(2) Measles, Mumps, and Rubella Vaccines.

(A) (No change.)

(B) Students born on or after January 1, 1957, must show, prior to patient contact, acceptable evidence of vaccination of two doses [~~one dose~~] of a mumps vaccine.

(C) (No change.)

(3) Hepatitis B Vaccine. Students are required to receive a complete series of hepatitis B vaccine prior to the start of direct patient care [~~or show serologic confirmation of immunity to hepatitis B virus~~].

(4) Varicella Vaccine. Students are required to have received two doses [~~one dose~~] of varicella (chickenpox) vaccine [~~on or after the student's first birthday or, if the first dose was administered on or after the student's thirteenth birthday, two doses of varicella (chickenpox) vaccine are required~~].

(c) Limited Exceptions:

(1) Notwithstanding the other requirements in this section, a student may be provisionally enrolled in these courses if the student has received at least one dose of each specified vaccine prior to enrollment and goes on to complete each vaccination series as rapid as medically feasible [~~on schedule~~] in accordance with the Centers for Disease Control and Prevention's Recommended Adult Immunization Schedule as approved by the Advisory Committee on Immunization Practices (ACIP)[~~, American College of Obstetricians and Gynecologists (ACOG), the American Academy of Family Physicians (AAFP), and the American College of Physicians~~]. However, the provisionally enrolled student may not participate in coursework activities involving the contact described in subsections (a) and/or (d) of this section until the full vaccination series has been administered.

(2) (No change.)

(3) The immunization requirements in subsections (b) and (d) of this section are not applicable to individuals who can properly demonstrate proof of laboratory [~~serological~~] confirmation of immunity or laboratory confirmation of disease. Vaccines for which this may be potentially demonstrated, and acceptable methods for demonstration, are found in §97.65 of this title (relating to Exceptions to Immunization Requirements (Verification of Immunity/History of Illness)). Such a student cannot participate in coursework activities involving the contact described in subsection (a) of this section until such time as proper documentation has been submitted and accepted.

(d) Students enrolled in schools of veterinary medicine.

(1) Rabies Vaccine. Students enrolled in schools of veterinary medicine whose coursework involves direct contact with animals or animal remains shall receive a complete primary series of rabies vaccine prior to such contact. Serum antibody levels must be checked every two years, with a booster dose of rabies vaccine administered if the rabies virus-neutralizing antibody response [~~titer~~] is inadequate according to current Centers for Disease Control and Prevention guidelines [~~guidance~~].

(2) (No change.)

(3) Tetanus-Diphtheria Vaccine. One dose of a tetanus-diphtheria toxoid (Td) is required within the last ten years. The booster dose may be in the form of a tetanus-diphtheria-pertussis containing vaccine (Tdap).

(e) (No change.)

§97.65. Exceptions to Immunization Requirements (Verification of Immunity/History of Illness).

(a) (No change.)

(b) A written statement from a parent (or legal guardian or managing conservator), school nurse, or physician attesting to a child's/student's [~~child's~~] positive history of varicella disease (chickenpox), or of varicella immunity, is acceptable in lieu of a vaccine record for that disease (see form at http://www.dshs.state.tx.us/immunize/docs/c-9.pdf).

§97.66. Provisional Enrollment for (Non-Higher Education; Non-Veterinary) Students.

(a) (No change.)

(b) A student who is homeless, as defined by §103 of the McKinney Act, 42 USC §11302, shall be admitted temporarily for 30 days if acceptable evidence of vaccination is not available. The school shall promptly refer the student to an appropriate health provider [~~public health programs~~] to obtain the required vaccinations.

§97.67. School Records.

All schools and child-care facilities are required to maintain immunization records sufficient for a valid audit or other assessment to be completed by federal, state and/or local public health officials. Immunization records may be maintained in paper and/or electronic form.

§97.68. Acceptable Evidence of Vaccination(s).

(a) (No change.)

(b) Documentation of vaccines administered that include the signature or stamp of the physician or physician's [~~his/her~~] designee, or public health personnel, is acceptable. Immunization records generated from electronic health record systems must include clinic contact information and the provider's signature/stamp.

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

§97.69. Transfer of Immunization Records.

(a) A student can be enrolled provisionally for no more than 30 days if the student [~~he/she~~] transfers from one Texas school to another, and is awaiting the transfer of the immunization record.

(b) A dependent of a person who is on active duty with the armed forces of the United States can be enrolled provisionally for no more than 30 days if the student [~~he/she~~] transfers from one school to another and is awaiting the transfer of the immunization record.

§97.70. Review of Records and Providing Assistance.

Representatives of the department and local health authorities may advise and assist schools in meeting the [~~these~~] requirements delineated in this subchapter. The department shall conduct periodic review of school immunization records in order to determine compliance with this subchapter.

§97.71. Annual Report of Immunization Status of Students.

All public school districts and accredited private schools [~~Schools~~] shall submit annual reports of the immunization status of students, in a format prescribed by the department, to monitor compliance with the immunization [~~these~~] requirements.

§97.72. Additional Vaccination Requirements.

Under Texas Health and Safety Code, Chapter 81, Subchapter E, additional vaccinations may be required by the department and/or the local health authority in specific situations under the mechanism of a control order containing control measures to prevent the spread of disease.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2016.

TRD-201600702
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 776-6972

♦ ♦ ♦

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 702. INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING THE ACCEPTANCE OF GIFTS AND DONATIONS TO THE INSTITUTE

25 TAC §702.11

The Cancer Prevention and Research Institute of Texas (Institute) proposes an amendment to §702.11 regarding what constitutes a professional conflict of interest. Specifically, the amendment clarifies that an individual subject to the rule has a professional conflict of interest if the individual performs work as a consultant or a contractor for a grant applicant. The amendment also expands the scope of the rule to include the time that an individual subject to the rule actively seeks to represent an entity receiving or applying to receive Institute funds.

Background and Justification

The proposed change to §702.11(d)(4) addresses one type of professional conflict of interest an individual subject to the rule may hold. Currently, an individual subject to the rule has a professional conflict of interest if he or she is representing "in business or law" an entity receiving or applying to receive money from the Institute. The proposed amendment clarifies that such representation includes serving as a consultant or contractor to the grant applicant. It also expands the applicability of the rule to include the time that the individual is actively seeking to represent a grant applicant. Finally, the proposed amendment provides examples of activities that constitute "actively seeking to represent" such that the rule is invoked.

Fiscal Note

Kristen Pauling Doyle, General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule changes are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule changes are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of policies and procedures the Institute will follow to implement its statutory duties.

Small Business and Micro-business Impact Analysis

Ms. Doyle has determined that the rule changes shall not have an effect on small businesses or on micro businesses.

Written comments on the proposed rule changes may be submitted to Ms. Doyle, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than April 4, 2016. Parties filing comments are asked to indicate whether or not they support the rule revisions proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to *kdoyle@cprit.texas.gov.* Comments may be submitted by facsimile transmission to (512) 475-2563.

Statutory Authority

The rule change is proposed under the authority of the Texas Health and Safety Code Annotated, §102.106 and §102.108, which allow the Oversight Committee to adopt additional; conflict of interest standards and provides the Institute with broad rule-making authority to administer the chapter, respectively. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article or code that is affected by this rule.

§702.11. Conflicts of Interest Requiring Recusal.

(a) For purposes of this chapter, a Conflict of Interest exists when an individual subject to this rule has an interest in the outcome of a Grant Application submitted by an entity receiving or applying to receive money from the Institute such that the individual is in a position to gain financially, professionally, or personally from either a positive or negative evaluation of the Grant Application. Individuals subject to this rule are:

(1) Oversight Committee Members;

(2) Institute employees;

(3) Scientific Research and Prevention Programs Committee Members;

(4) Program Integration Committee Members; and

(5) Independent Contractors that perform services associated with the Grant Review Process on behalf of the Institute, such as facilitating grant review activities, evaluating the intellectual property held by or licensed to a Grant Applicant, or performing a business management due diligence review.

(b) Except under exceptional circumstances as provided in §702.17 of this chapter (relating to Exceptional Circumstances Requiring Participation), an individual who has a financial, professional, or personal interest, as set forth herein, in an entity receiving or applying to receive money from the Institute shall recuse himself or herself and may not participate in the review, discussion, deliberation, or vote related to the entity.

(c) A financial Conflict of Interest exists if the individual subject to this rule or a Relative of the individual subject to this rule:

(1) Owns or controls, directly or indirectly, an ownership interest in an entity receiving or applying to receive money from the Institute or in a foundation or similar organization affiliated with the entity;[.]

(A) Interests subject to this provision include sharing in profits, proceeds, or capital gains. Examples of ownership or control, include but are not limited to owning shares, stock, or otherwise, and are not dependent on whether voting rights are included;[.]

(B) It is not a financial Conflict of Interest if the ownership interest is limited to shares owned via an investment in a publicly traded mutual fund or similar investment vehicle so long as the individual subject to this rule does not exercise any discretion or control regarding the investment of the assets of the fund or other investment vehicle;[.]

(2) Could reasonably foresee that an action taken by the Scientific Research and Prevention Programs Committee, the Program Integration Committee, the Institute, or its Oversight Committee related to an entity receiving or applying to receive money from the Institute could result in a financial benefit to the individual; or[.]

(3) Has received a financial benefit from the Grant Applicant unrelated to the Grant Application of more than $5,000 within the past twelve months. This total includes fees, stock and other benefits. It also includes current stock holdings, equity interest, intellectual property or real property interest, but does not include diversified mutual funds or similar investment vehicle in which the person does not exercise any discretion or control regarding the investment of the assets of the fund or other investment vehicle.

(d) For purposes of this rule, a professional Conflict of Interest exists if the individual subject to this rule or a Relative of the individual subject to this rule:

(1) Is a member of the board of directors, other governing board or any committee of an entity or of a foundation or similar organization affiliated with an entity receiving or applying to receive money from the Institute during the same Grant Review Cycle;

(2) Serves as an elected or appointed officer of an entity receiving or applying to receive money from the Institute or of a foundation or similar organization affiliated with the entity;

(3) Is an employee of or is negotiating future employment with an entity receiving or applying to receive money from the Institute or a foundation or similar organization affiliated with the entity;

(4) Represents in business or law, including actively seeking to represent, an entity receiving or applying to receive money from the Institute or a foundation or similar organization affiliated with the entity;

(A) Representation that constitutes a professional Conflict of Interest includes providing services as a consultant or contractor;

(B) "Actively seeking to represent" includes activities such as responding to a request for proposals or qualifications issued by the entity applying to receive money from the Institute, providing a solicited or unsolicited proposal for work to the entity applying to receive money from the Institute, and negotiating terms of service for representation even if a final agreement has not yet been executed;

(C) For the purposes of this rule, an individual is no longer considered to be actively seeking to represent an entity if that entity has selected another provider or has notified the individual that the individual's services are not needed;

(5) Is a colleague, scientific mentor, or student of a Senior Member or Key Personnel of the research or prevention program team listed on the Grant Application, or is conducting or has conducted research or other significant professional activities with a Senior Member or Key Personnel of the research or prevention program team listed on the Grant Application within three years of the date of the review;

(6) Is a student, postdoctoral associate, or part of a laboratory research group for a Senior Member or Key Personnel of the research or prevention program team listed on the Grant Application or has been within the past six years;

(7) Is engaged or is actively planning to be engaged in collaboration with a Senior Member or Key Personnel of the research or prevention program team listed on the Grant Application; or

(8) Has long-standing scientific differences or disagreements with a Senior Member or Key Personnel of the research or prevention program team listed on the Grant Application that are known to the professional community and could be perceived as affecting objectivity.

(e) For purposes of this rule, a personal Conflict of Interest exists if a Senior Member or Key Personnel of the research or prevention program team listed on the Grant Application or an applicant is a Relative or close personal friend of an individual subject to this rule.

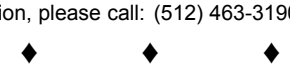
(f) Nothing herein shall prevent the Oversight Committee from adopting more stringent standards with regard to prohibited conflicts of interest.

(g) The General Counsel and Chief Compliance Officer may provide guidance to individuals subject to this section on what interests would constitute a Conflict of Interest or an appearance of a Conflict of Interest.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600748
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 463-3190



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER A. GENERAL RULES

30 TAC §101.1, §101.10

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §101.1 and §101.10.

If adopted, the amended rules would be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

On February 6, 2015, the EPA finalized revisions (80 FR 8787) to 40 Code of Federal Regulations (CFR) Part 51, Subpart A, Air Emissions Reporting Rule (AERR) that lowered the lead point source reporting threshold to 0.5 tons per year (tpy). The current TCEQ emissions inventory (EI) reporting rule, §101.10 (and previous version of the AERR) language requires a source to submit an EI if it has 10 tpy or more of actual or 25 tpy or more of potential lead emissions. This proposed amendment would lower the lead emissions delineation threshold for point source in §101.10 to align with reporting requirements in the AERR.

Currently, sources that are within 25 miles from the shoreline are required to submit an EI if the source meets one of the reporting thresholds in §101.10. The proposed amendment would change the distance from the shoreline to 9.0 nautical miles for consistency with Texas' legal offshore jurisdiction.

Other proposed changes codify existing business processes and clarify the EI requirements.

Additionally, the EPA has made multiple, recent revisions to the federal definition of volatile organic compounds (VOC) in 40 CFR §51.100(s), to exclude certain organic compounds from regulation as a VOC since the agency last updated its VOC definition in §101.1(116) in 2010. The latest finalized EPA definition of VOC would be incorporated in this proposed rule change. The specific organic compounds that would be excluded from the agency's definition of VOC with this revision include: *trans*-1,3,3,3-tetrafluoropropene; HCF_2OCF_2H (HFE-134); $HCF_2OCF_2OCF_2H$ (HFE-236cal2); $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13); $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); *trans* 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; and 2-amino-2-methyl-1-propanol.

Section by Section Discussion

§101.1, Definitions

The EPA has made multiple, recent revisions to the federal definition of VOC in 40 CFR §51.100(s), to exclude certain organic compounds from regulation as a VOC. The TCEQ definition of VOC in §101.1 was last updated in 2010 and references the federal definition as amended on January 21, 2009; therefore, the TCEQ's definition is not consistent with the current EPA definition. The proposed amendment to the definition of VOC in §101.1(116) would incorporate the most recent final revision to the federal definition in 40 CFR §51.100(s), which was published in the *Federal Register* on March 27, 2014 (79 FR 17037).

§101.10, Emissions Inventory Requirements

The proposed amendment shortens the applicable distance for a site on waters from 25 miles to 9.0 nautical miles (10.4 statute miles) from the shoreline. Texas' territorial waters only extend 9.0 nautical miles. At this time, no sites located between 9.0 nautical and 25 statute miles from the shoreline report EIs to Texas. If a site existing between 9.0 nautical miles and 25 statute miles from shore should be required to report in the future, this site would be captured in a federal EI. This proposed amendment aligns emissions collection practices to territory included in Texas' legal offshore jurisdiction and reduces the risk of double reporting of emissions form sources existing between 9.0 nautical miles and 25 statute miles from the Texas shoreline.

Section 101.10(a) requires an inventory to be submitted on forms or other media as approved by the commission. The proposed amendment removes the redundant phrase "forms or other" from this subsection. The phrase "media approved by the commission" succinctly covers this requirement.

Section 101.10(a)(3) is proposed to align the reporting requirement with the EPA's AERR in 40 CFR Part 51. On February 6, 2015, the EPA finalized revisions (80 FR 8787) to the AERR that lowered the lead point source reporting threshold to 0.5 tpy. The current TCEQ EI reporting rule, §101.10 (and previous version of the AERR) language requires a source to submit an EI if it has 10 tpy or more of actual or 25 tpy or more of potential lead emissions. This proposed amendment would lower the lead emissions delineation threshold for point source in §101.10 to align with reporting requirements in the AERR. Existing §101.10(a)(3) - (5) are renumbered to allow for this additional lead reporting requirement as proposed subsection (a)(3).

Currently, the data needed to meet the new EPA lead reporting threshold requirement are collected under the special inventory requirements in subsection (b)(2) and (3). This proposed amendment will make the requirement clear to the community and does not require the agency to rely on the special inventory provision to collect data that is reported annually.

In addition to initial EIs, all owners or operators of accounts continuing to meet the reporting requirements in subsection (a) are required to annually update their EI. The proposed amendment adds subsection (a)(5) to the list of applicability requirements listed in subsection (b)(2) that are required to submit an annual emissions inventory update (AEIU). This addition includes the proposed inclusion of the new lead reporting requirement to this existing requirement.

An amendment is proposed in subsection (a)(4) to restructure the sentence to clarify that greenhouse gases are excluded from the applicability determination purposes of the paragraph. Their exclusion was always intended and is the current practice.

An amendment is proposed in subsection (a)(5) to change the units from "tons" to "tpy" to more clearly define the period over which the emissions are calculated. An annual time-period has always been assumed for this applicability but the amendment is proposed to clarify.

The term "microns" is changed to "micrometers" in the proposal to align language in §101.10(b)(1) with the reporting rule in 40 CFR Part 51. In applied sciences, a micron is a commonly accepted alternative term to micrometer and, thus, the proposed amendment has no effect on the population of sources required to report an EI or on the methodology for estimating emissions.

Particulate matter with aerodynamic diameter less than or equal to 2.5 micrometers ($PM_{2.5}$) are proposed for addition to the list of contaminants that shall be reported in the EI under subsection (b). The list includes the phrase "any other contaminant subject to NAAQS" (the National Ambient Air Quality Standards). The contaminant, $PM_{2.5}$, is subject to the NAAQS and is already required for inclusion in an EI. However, specifically listing $PM_{2.5}$ clarifies the reporting requirement and does not change any existing reporting requirement to the agency.

EIs are not required for accounts with small changes in emissions as listed in subsection (b)(2)(A). A certifying letter may be submitted instead of an AEIU. Because $PM_{2.5}$ is specifically being listed in the proposal as a required pollutant (although, as a regulated pollutant, it is already required) in an AEIU, it is added to this list of pollutants and is to be considered when determining if an AEIU is required.

A second certifying statement has been added as §101.10(d)(2). Texas Health and Safety Code (THSC), §382.0215(f) requires that an owner or operator that is required to submit an EI and had no emissions events during the reporting year must include as part of the inventory a statement to this effect. The EI update process and reporting forms already include this certifying statement. An EI cannot be considered complete, or for electronically submitted accounts, submitted without either completing this certification or submitting emissions event data. The proposed amendment does not change this practice nor the wording in the certifying statement on the EI; it only includes the existing practice, which is required by THSC, §382.0215, into §101.10.

Because, under the proposal, subsection (b) has been expanded to include a second certifying statement, its structure has been changed. The first requirement has been renumbered as subsection (b)(1) and the new requirement, addressed previously, has been numbered as subsection (b)(2).

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rulemaking would implement federal regulations that lower the lead emissions reporting threshold for point sources to 0.5 tpy of emissions. Currently, the TCEQ EI reporting rule requires a source to submit an EI if it has 10 tpy or more of actual or 25 tpy or more of potential lead emissions. The proposed rulemaking would lower the lead emissions delineation threshold for point sources in order to be consistent with reporting requirements in the federal AERR.

Currently, over 100 sites report some (potentially very small) quantities of lead under EI requirements, principally as a result of reporting requirements for other contaminants. There are two sources that already are reporting lead emissions that would be applicable under the proposed rulemaking that would not otherwise be required to report an annual EI. For these two sources, the data is collected under the special inventory requirements of agency rules. Because the data is already being collected under the special inventory requirements, no additional facilities are expected to be required to report inventory based on the proposed rules. The estimated increase in emissions fees for these two sources would be less than $100.

In addition, sources that currently are within 25 miles from the shoreline are required to submit an EI if the source meets one of the reporting thresholds in the agency's EI requirements. The proposed rulemaking would change the distance from the shoreline to 9.0 nautical miles in order to be consistent with other state regulations. At this time, no sites located between 9.0 nautical and 25 statute miles from the shoreline report EIs to Texas. If a site between 9.0 nautical and 25 statute miles from shore should be required to report in the future, this site would be captured in a federal EI. The proposed rulemaking aligns emissions collection practices with territory included in Texas' legal offshore jurisdiction and reduces the risk of double reporting of emissions.

The proposed rulemaking would also exclude certain organic compounds from regulation as a VOC in order to make TCEQ's definition of a VOC consistent with the current EPA's definition. The EPA has excluded these compounds from the federal definition of VOC due to their negligible potential for ozone formation. Data for chemicals that are proposed to be excluded from regulation as a VOC is not collected in the EI. Therefore, the agency does not expect any cost savings from not having to collect this data. The excluded VOC chemicals will also not need to be included in any permit application.

Other proposed changes codify existing business processes and clarify the EI requirements. If adopted, the amended rules would be submitted to the EPA as revisions to the SIP.

No fiscal implications are anticipated for the agency or for any other units of state or local government that own or operate affected facilities.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be consistency with federal rules and clarity for the regulated community. While updating the definition of VOC would exclude certain compounds from regulation for SIP purposes, the EPA has excluded these compounds from the federal definition of VOC due to their negligible ozone formation potential.

The proposed rules are not anticipated to result in fiscal implications for businesses or individuals.

No sources or facilities have been identified in the agency's point source EI as emitting the specific organic compounds that are proposed to be delisted from the definition of a VOC. Even if a source does use the specific organic compounds, the removal of the delisted organic compounds from the definition of VOC imposes no requirement or burden and therefore imposes no new costs. The exclusion of the compounds may result in cost savings for some sources but such savings cannot be quantified because the possibility and degree of savings is highly dependent on the specific circumstances.

Currently over 100 sites report some (potentially very small) quantities of lead. There are two sources that would be required to report an EI solely on the proposed revised threshold for lead. Currently, the data needed to meet the new EPA lead reporting threshold requirement are collected under special inventory requirements of agency rules. Therefore, these two sources already are reporting lead emissions and the emissions are less than 1 ton per source. The estimated increase in emissions fees for these two sources would be less than $100.

Texas' territorial waters only extend 9.0 nautical miles. At this time, no sites located between 9.0 nautical and 25 statute miles

from the shoreline report EIs to Texas. If a site existing between 9.0 nautical miles and 25 statute miles from shore should be required to report in the future, this site would be captured in a federal EI. The proposed rulemaking aligns emissions collection practices to territory included in Texas' legal offshore jurisdiction and reduce the risk of double reporting of emissions.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect for small or micro-businesses. The proposed rules impose no new requirements or regulations on small or micro-businesses and impose no new costs. The exclusion of regulated chemical compounds may result in cost savings for some small or micro-businesses but such savings cannot be quantified because the possibility and degree of savings is highly dependent on the specific circumstances.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way and are necessary to maintain consistency with federal rules in order to protect the public health, safety, environmental and economic welfare of the state.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed this proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and determined that it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means "a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, 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." Additionally, this proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The amendment to Chapter 101 is proposed to align Texas rules with the current federal regulations found in 40 CFR Part 51. Additionally, the amendment will clarify requirements in §101.10 and change the applicability to sources that are within 9.0 nautical miles of the shoreline in accordance with state and federal jurisdiction over offshore sources.

The proposed rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85). The provisions of the Federal Clean Air Act (FCAA) recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The requirement to provide a fiscal analysis of adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These rules are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted the adopted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was

only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a) because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ); Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of this proposed rulemaking is to amend sections of the Texas Administrative Code (TAC), which would align TCEQ regulations with current EPA regulations. Additionally, even if the proposed rulemaking was a major environmental rule, it does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because it does not meet the definition of a "major environmental rule," nor does it meet any of the four applicability criteria for a major environmental rule.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific intent of this proposed rulemaking is to amend sections of the TAC, which would align TCEQ regulations with current EPA regulations. The proposed rulemaking would substantially advance this stated purpose by updating the TCEQ rules to be consistent with the EPA's rules; codifying existing business processes; and clarifying the EI requirements.

Texas Government Code, §2007.003(b)(4) provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal and state law. THSC, §382.0215 requires the agency to develop the capacity for electronic reporting of emissions, including emissions events. Additionally, 42 USC, §7410 requires a state to adopt a SIP that provides for the implementations, maintenance, and enforcement of NAAQS in each air quality control region of the state. Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4).

Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a "taking" under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking would not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations.

In addition, because the subject proposed regulations do not provide more stringent requirements they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under the Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

There is no anticipated change in reporting requirements or number of sources subject to the Federal Operating Permits Program as a result of the proposed changes in Chapter 101. Currently, the proposed excluded VOC compounds are not reported to the EI. If a source subject to the Federal Operating Permits Program emitting one of these compounds should be processed for a permit, these compounds would not need to be included in the permit.

The proposed amendment for lowering the lead reporting threshold would align §101.10 with the reporting requirements in the EPA's AERR (40 CFR Part 51). At this time, sources subject to this reporting solely on the basis of lower lead emissions reporting threshold are already captured in the inventory through the special inventory requirements of §101.10.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 29, 2016, at 10:00 a.m. in Building E, Room

201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-040-101-AI. The comment period closes on April 4, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Kathy Pendleton, P.E., Air Quality Division, at (512) 239-1936.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Additionally, the amendments are proposed under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause emissions of air contaminants to submit information so that the commission may develop an emissions inventory; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe requirements for measuring and monitoring emissions of air contaminants and to examine records relating to the operation of any air pollution or emission control equipment or facility; and THSC, §382.0215, concerning Assessment of Emissions Due to Emissions Events, that requires an owner or operator of a regulated entity required by THSC, §382.014 to submit an annual emissions inventory report and which has experienced no emissions events during the relevant year to submit a statement stating that no emissions events were experienced that year.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.017, and 382.0215.

§101.1. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in the air quality rules in this title, have the following meanings, unless the context clearly indicates otherwise.

(1) Account--For those sources required to be permitted under Chapter 122 of this title (relating to Federal Operating Permits Program), all sources that are aggregated as a site. For all other sources, any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.

(2) Acid gas flare--A flare used exclusively for the incineration of hydrogen sulfide and other acidic gases derived from natural gas sweetening processes.

(3) Agency established facility identification number--For the purposes of Subchapter F of this chapter (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities), a unique alphanumeric code required to be assigned by the owner or operator of a regulated entity that the emission inventory reporting requirements of §101.10 of this title (relating to Emissions Inventory Requirements) are applicable to each facility at that regulated entity.

(4) Ambient air--That portion of the atmosphere, external to buildings, to which the general public has access.

(5) Background--Background concentration, the level of air contaminants that cannot be reduced by controlling emissions from man-made sources. It is determined by measuring levels in non-urban areas.

(6) Boiler--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(7) Capture system--All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(8) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(9) Carbon adsorber--An add-on control device that uses activated carbon to adsorb volatile organic compounds from a gas stream.

(10) Carbon adsorption system--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(11) Coating--A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

(12) Cold solvent cleaning--A batch process that uses liquid solvent to remove soils from the surfaces of parts or to dry the parts

by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(13) Combustion unit--Any boiler plant, furnace, incinerator, flare, engine, or other device or system used to oxidize solid, liquid, or gaseous fuels, but excluding motors and engines used in propelling land, water, and air vehicles.

(14) Combustion turbine--Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft will be treated as one unit.

(15) Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility that disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(16) Commercial incinerator--An incinerator used to dispose of waste material from retail and wholesale trade establishments.

(17) Commercial medical waste incinerator--A facility that accepts for incineration medical waste generated outside the property boundaries of the facility.

(18) Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves that has the potential to leak volatile organic compounds.

(19) Condensate--Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

(20) Construction-demolition waste--Waste resulting from construction or demolition projects.

(21) Control system or control device--Any part, chemical, machine, equipment, contrivance, or combination of same, used to destroy, eliminate, reduce, or control the emission of air contaminants to the atmosphere.

(22) Conveyorized degreasing--A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

(23) Criteria pollutant or standard--Any pollutant for which there is a national ambient air quality standard established under 40 Code of Federal Regulations Part 50.

(24) Custody transfer--The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(25) De minimis impact--A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source that has undergone a major modification that does not exceed the significance levels as specified in 40 Code of Federal Regulations §51.165(b)(2).

(26) Domestic wastes--The garbage and rubbish normally resulting from the functions of life within a residence.

(27) Emissions banking--A system for recording emissions reduction credits so they may be used or transferred for future use.

(28) Emissions event--Any upset event or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.

(29) Emissions reduction credit--Any stationary source emissions reduction that has been banked in accordance with [~~Chapter 101,~~] Subchapter H, Division 1 of this chapter [~~title~~] (relating to Emission Credit Program [~~Banking and Trading~~]).

(30) Emissions reduction credit certificate--The certificate issued by the executive director that indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

(31) Emissions unit--Any part of a stationary source that emits, or would have the potential to emit, any pollutant subject to regulation under the Federal Clean Air Act.

(32) Excess opacity event--When an opacity reading is equal to or exceeds 15 additional percentage points above an applicable opacity limit, averaged over a six-minute period.

(33) Exempt solvent--Those carbon compounds or mixtures of carbon compounds used as solvents that have been excluded from the definition of volatile organic compound.

(34) External floating roof--A cover or roof in an open top tank that rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

(35) Federal motor vehicle regulation--Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines, 40 Code of Federal Regulations Part 85.

(36) Federally enforceable--All limitations and conditions that are enforceable by the United States Environmental Protection Agency administrator, including those requirements developed under 40 Code of Federal Regulations (CFR) Parts 60 and 61; requirements within any applicable state implementation plan (SIP); and any permit requirements established under 40 CFR §52.21 or under regulations approved under 40 CFR Part 51, Subpart 1, including operating permits issued under the approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(37) Flare--An open combustion unit (i.e., lacking an enclosed combustion chamber) whose combustion air is provided by uncontrolled ambient air around the flame, and that is used as a control device. A flare may be equipped with a radiant heat shield (with or without a refractory lining), but is not equipped with a flame air control damping system to control the air/fuel mixture. In addition, a flare may also use auxiliary fuel. The combustion flame may be elevated or at ground level. A vapor combustor, as defined in this section, is not considered a flare.

(38) Fuel oil--Any oil meeting the American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D396-01, Standard Specifications for Fuel Oils, revised 2001. This includes fuel oil grades 1, 1 (Low Sulfur), 2, 2 (Low Sulfur), 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

(39) Fugitive emission--Any gaseous or particulate contaminant entering the atmosphere that could not reasonably pass

through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(40) Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

(41) Gasoline--Any petroleum distillate having a Reid vapor pressure of four pounds per square inch (27.6 kilopascals) or greater that is produced for use as a motor fuel, and is commonly called gasoline.

(42) Greenhouse gases (GHGs)--the aggregate group of six greenhouse gases: carbon dioxide (CO_2), nitrous oxide (N_2O), methane (CH_4), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6).

(43) Hazardous wastes--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.,* as amended.

(44) Heatset (used in offset lithographic printing)--Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

(45) High-bake coatings--Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(46) High-volume low-pressure spray guns--Equipment used to apply coatings by means of a spray gun that operates between 0.1 and 10.0 pounds per square inch gauge air pressure measured at the air cap.

(47) Incinerator--An enclosed combustion apparatus and attachments that is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device that burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period is considered to be an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually is also considered to be an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director. Devices burning untreated wood scraps, waste wood, or sludge from the treatment of wastewater from the process mills as a primary fuel for heat recovery are not included under this definition. Combustion devices permitted under this title as combustion devices other than incinerators will not be considered incinerators for application of any rule within this title provided they are installed and operated in compliance with the condition of all applicable permits.

(48) Industrial boiler--A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(49) Industrial furnace--Cement kilns; lime kilns; aggregate kilns; phosphate kilns; coke ovens; blast furnaces; smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces; titanium dioxide chloride process oxidation reactors; methane reforming furnaces; pulping recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and other devices the commission may list.

(50) Industrial solid waste--Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class 1 industrial solid waste or Class 1 waste is any industrial solid waste designated as Class 1 by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 and §335.505 of this title (relating to Definitions and Class 1 Waste Determination).

(B) Class 2 industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class 1 or Class 3, as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(C) Class 3 industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 Waste Determination).

(51) Internal floating cover--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

(52) Leak--A volatile organic compound concentration greater than 10,000 parts per million by volume or the amount specified by applicable rule, whichever is lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

(53) Liquid fuel--A liquid combustible mixture, not derived from hazardous waste, with a heating value of at least 5,000 British thermal units per pound.

(54) Liquid-mounted seal--A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

(55) Maintenance area--A geographic region of the state previously designated nonattainment under the Federal Clean Air Act Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under 42 United States Code, §7505a, as described in 40 Code of Federal Regulations Part 81 and in pertinent *Federal Register* notices.

(56) Maintenance plan--A revision to the applicable state implementation plan, meeting the requirements of 42 United States Code, §7505a.

(57) Marine vessel--Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

(58) Mechanical shoe seal--A metal sheet that is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(59) Medical waste--Waste materials identified by the Department of State Health Services as "special waste from health care-related facilities" and those waste materials commingled and discarded with special waste from health care-related facilities.

(60) Metropolitan Planning Organization--That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code (USC), §134 and 49 USC, §1607.

(61) Mobile emissions reduction credit--The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state rules) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter F of this title (relating to Vehicle Retirement and Mobile Emission Reduction Credits), and that has been banked in accordance with Subchapter H, Division 1 of this chapter (relating to Emission Credit Program [~~Banking and Trading~~]).

(62) Motor vehicle--A self-propelled vehicle designed for transporting persons or property on a street or highway.

(63) Motor vehicle fuel dispensing facility--Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(64) Municipal solid waste--Solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

(65) Municipal solid waste facility--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(66) Municipal solid waste landfill--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste landfill (MSWLF) unit also may receive other types of Resource Conservation and Recovery Act Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(67) National ambient air quality standard--Those standards established under 42 United States Code, §7409, including standards for carbon monoxide, lead, nitrogen dioxide, ozone, inhalable particulate matter, and sulfur dioxide.

(68) Net ground-level concentration--The concentration of an air contaminant as measured at or beyond the property boundary minus the representative concentration flowing onto a property as measured at any point. Where there is no expected influence of the air contaminant flowing onto a property from other sources, the net ground level concentration may be determined by a measurement at or beyond the property boundary.

(69) New source--Any stationary source, the construction or modification of which was commenced after March 5, 1972.

(70) Nitrogen oxides (NO_x)--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(71) Nonattainment area--A defined region within the state that is designated by the United States Environmental Protection Agency (EPA) as failing to meet the national ambient air quality standard (NAAQS or standard) for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of 42 United States Code, §7407(d). For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations (CFR) Part 81 and pertinent *Federal Register* notices. The designations and classifications for the one-hour ozone national ambient air quality standard in 40 CFR Part 81 were retained for the purpose of anti-backsliding and upon determination by the EPA that any requirement is no longer required for purposes of anti-backsliding, then that requirement no longer applies.

(72) Non-reportable emissions event--Any emissions event that in any 24-hour period does not result in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined in this section.

(73) Opacity--The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

(74) Open-top vapor degreasing--A batch solvent cleaning process that is open to the air and that uses boiling solvent to create solvent vapor used to clean or dry parts through condensation of the hot solvent vapors on the parts.

(75) Outdoor burning--Any fire or smoke-producing process that is not conducted in a combustion unit.

(76) Particulate matter--Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

(A) Particulate matter with diameters less than 10 micrometers (PM_{10})--Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured by a reference method based on 40 Code of Federal Regulations (CFR) Part 50, Appendix J, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated with that Part 53.

(B) Particulate matter with diameters less than 2.5 micrometers ($PM_{2.5}$)--Particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix L, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated with that Part 53.

(77) Particulate matter emissions--All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by United States Environmental Protection Agency Reference Method 5, as specified at 40 Code of Federal Regulations (CFR) Part 60, Appendix A, modified to include particulate caught by an impinger train; by an equivalent or alternative method, as specified at 40 CFR Part 51; or by a test method specified in an approved state implementation plan.

(A) Direct PM emissions--Solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct 2.5 micrometers ($PM_{2.5}$) emissions include elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal materials, metals, and sea salt).

(B) Secondary PM emissions--Those air pollutants other than $PM_{2.5}$ direct emissions that contribute to the formation of $PM_{2.5}$. $PM_{2.5}$ precursors include sulfur dioxide (SO_2), nitrogen oxides (NO_x), volatile organic compounds, and ammonia.

(78) Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(79) $PM_{2.5}$ emissions--Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51, or by a test method approved under a state implementation plan or under a United States Environmental Protection Agency delegation or approval.

(80) PM_{10} emissions--Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51, or by a test method specified in an approved state implementation plan.

(81) Polychlorinated biphenyl compound--A compound subject to 40 Code of Federal Regulations Part 761.

(82) Process or processes--Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(83) Process weight per hour--"Process weight" is the total weight of all materials introduced or recirculated into any specific process that may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "process weight per hour" will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during that the equipment used to conduct the process is idle. For continuous operation, the "process weight per hour" will be derived by dividing the total process weight for a 24-hour period by 24.

(84) Property--All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

(85) Reasonable further progress--Annual incremental reductions in emissions of the applicable air contaminant that are sufficient to provide for attainment of the applicable national ambient air quality standard in the designated nonattainment areas by the date required in the state implementation plan.

(86) Regulated entity--All regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location. Owners or operators of pipelines, gathering lines, and flowlines under common ownership or control in a particular county may be treated as a single regulated entity for purposes of assessment and regulation of emissions events.

(87) Remote reservoir cold solvent cleaning--Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

(88) Reportable emissions event--Any emissions event that in any 24-hour period, results in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined in this section.

(89) Reportable quantity (RQ)--Is as follows:

(A) for individual air contaminant compounds and specifically listed mixtures by name or Chemical Abstracts Service (CAS) number, either:

(i) the lowest of the quantities:

(I) listed in 40 Code of Federal Regulations (CFR) Part 302, Table 302.4, the column "final RQ";

(II) listed in 40 CFR Part 355, Appendix A, the column "Reportable Quantity"; or

(III) listed as follows:

(-a-) acetaldehyde - 1,000 pounds, except in the Houston-Galveston-Brazoria (HGB) and Beaumont-Port Arthur (BPA) ozone nonattainment areas as defined in paragraph (71) [~~(70)~~] of this section, where the RQ must be 100 pounds;

(-b-) butanes (any isomer) - 5,000 pounds;

(-c-) butenes (any isomer, except 1,3-butadiene) - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (71) [~~(70)~~] of this section, where the RQ must be 100 pounds;

(-d-) carbon monoxide - 5,000 pounds;

(-e-) 1-chloro-1,1-difluoroethane (HCFC-142b) - 5,000 pounds;

(-f-) chlorodifluoromethane (HCFC-22) - 5,000 pounds;

(-g-) 1-chloro-1-fluoroethane (HCFC-151a) - 5,000 pounds;

(-h-) chlorofluoromethane (HCFC-31) - 5,000 pounds;

(-i-) chloropentafluoroethane (CFC-115) - 5,000 pounds;

(-j-) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124) - 5,000 pounds;

(-k-) 1-chloro-1,1,2,2 tetrafluoroethane (HCFC-124a) - 5,000 pounds;

(-l-) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee) - 5,000 pounds;

(-m-) decanes (any isomer) - 5,000 pounds;

(-n-) 1,1-dichloro-1-fluoroethane (HCFC-141b) - 5,000 pounds;

(-o-) 3,3-dichloro-1,1,2,2-pentafluoropropane (HCFC-225ca) - 5,000 pounds;

(-p-) 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb) - 5,000 pounds;

(-q-) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114) - 5,000 pounds;

(-r-) 1,1-dichlorotetrafluoroethane (CFC-114a) - 5,000 pounds;

(-s-) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a) - 5,000 pounds;

(-t-) 1,1-difluoroethane (HFC-152a) - 5,000 pounds;

(-u-) difluoromethane (HFC-32) - 5,000 pounds;

(-v-) ethanol - 5,000 pounds;

(-w-) ethylene - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (71) [~~(70)~~] of this section, where the RQ must be 100 pounds;

(-x-) ethylfluoride (HFC-161) - 5,000 pounds;

(-y-) 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea) - 5,000 pounds;

(-z-) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa) - 5,000 pounds;

(-aa-) 1,1,1,2,3,3-hexafluoropropane (HFC-236ea) - 5,000 pounds;

(-bb-) hexanes (any isomer) - 5,000 pounds;

(-cc-) isopropyl alcohol - 5,000 pounds;

(-dd-) mineral spirits - 5,000 pounds;

(-ee-) octanes (any isomer) - 5,000 pounds;

(-ff-) oxides of nitrogen - 200 pounds in ozone nonattainment, ozone maintenance, early action compact areas, Nueces County, and San Patricio County, and 5,000 pounds in all other areas of the state, which should be used instead of the RQs for nitrogen oxide and nitrogen dioxide provided in 40 CFR Part 302, Table 302.4, the column "final RQ";

(-gg-) pentachlorofluoroethane (CFC-111) - 5,000 pounds;

(-hh-) 1,1,1,3,3-pentafluorobutane (HFC-365mfc) - 5,000 pounds;

(-ii-) pentafluoroethane (HFC-125) - 5,000 pounds;

(-jj-) 1,1,2,2,3-pentafluoropropane (HFC-245ca) - 5,000 pounds;

(-kk-) 1,1,2,3,3-pentafluoropropane (HFC-245ea) - 5,000 pounds;

(-ll-) 1,1,1,2,3-pentafluoropropane (HFC-245eb) - 5,000 pounds;

(-mm-) 1,1,1,3,3-pentafluoropropane (HFC-245fa) - 5,000 pounds;

(-nn-) pentanes (any isomer) - 5,000 pounds;

(-oo-) propane - 5,000 pounds;

(-pp-) propylene - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (71) [~~(70)~~] of this section, where the RQ must be 100 pounds;

(-qq-) 1,1,2,2-terachlorodifluoroethane (CFC-112) - 5,000 pounds;

(-rr-) 1,1,1,2-tetrachlorodifluoroethane (CFC-112a) - 5,000 pounds;

(-ss-) 1,1,2,2-tetrafluoroethane (HFC-134) - 5,000 pounds;

(-tt-) 1,1,1,2-tetrafluoroethane (HFC-134a) - 5,000 pounds;

(-uu-) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113) - 5,000 pounds;

(-vv-) 1,1,1-trichloro-2,2,2-trilfloroethane (CFC-113a) - 5,000 pounds;

(-ww-) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123) - 5,000 pounds;

(-xx-) 1,1,1-trifluoroethane (HFC-143a) - 5,000 pounds;

(-yy-) trifluoromethane (HFC-23) - 5,000 pounds;

(-zz-) toluene - 1,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (71) [~~(70)~~] of this section, where the RQ must be 100 pounds; or

(-aaa-) 3-Pentanone, 1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-, CAS No. 756-13-8, or C6 fluoroketone - 5,000 pounds;

(ii) if not listed in clause (i) of this subparagraph, 100 pounds;

(iii) for greenhouse gases, individually or collectively, there is no reportable quantity, except for the specific individual air contaminant compounds listed in this paragraph;

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound that equals or exceeds the amount specified in subparagraph (A) of this paragraph;

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this paragraph is not known, any amount of the mixture that equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this paragraph;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this paragraph are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this paragraph are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas excluding carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen or air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or the associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C) for opacity from boilers and combustion turbines as defined in this section fueled by natural gas, coal, lignite, wood, fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, opacity that is equal to or exceeds 15 additional percentage points above the applicable limit, averaged over a six-minute period. Opacity is the only RQ applicable to boilers and combustion turbines described in this paragraph; or

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount, approved by the executive director based on any relevant conditions and a screening model, that would be reported prior to ground level concentrations reaching at any distance beyond the closest regulated entity property line:

(i) less than one-half of any applicable ambient air standards; and

(ii) less than two times the concentration of applicable air emission limitations.

(90) Rubbish--Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(91) Scheduled maintenance, startup, or shutdown activity--For activities with unauthorized emissions that are expected to exceed a reportable quantity (RQ), a scheduled maintenance, startup, or shutdown activity is an activity that the owner or operator of the regulated entity whether performing or otherwise affected by the activity, provides prior notice and a final report as required by §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements); the notice or final report includes the information required in §101.211 of this title; and the actual unauthorized emissions from the activity do not exceed the emissions estimates submitted in the initial notification by more than an RQ. For activities with unauthorized emissions that are not expected to, and do not, exceed an RQ, a scheduled maintenance, startup, or shutdown activity is one that is recorded as required by §101.211 of this title. Expected excess opacity events as described in §101.201(e) of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) resulting from scheduled maintenance, startup, or shutdown activities are those that provide prior notice (if required), and are recorded and reported as required by §101.211 of this title.

(92) Sludge--Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

(93) Smoke--Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

(94) Solid waste--Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under Texas Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 *et seq.).*

(95) Sour crude--A crude oil that will emit a sour gas when in equilibrium at atmospheric pressure.

(96) Sour gas--Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

(97) Source--A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

(98) Special waste from health care-related facilities--A solid waste that if improperly treated or handled, may serve to transmit infectious disease(s) and that is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(99) Standard conditions--A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kiloPascals).

(100) Standard metropolitan statistical area--An area consisting of a county or one or more contiguous counties that is officially so designated by the United States Bureau of the Budget.

(101) Submerged fill pipe--A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 centimeters) from the bottom or, when applied to a tank that is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

(102) Sulfur compounds--All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(103) Sulfuric acid mist/sulfuric acid--Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as H_2SO_4 and must include sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in 40 Code of Federal Regulations Part 60, Appendix A.

(104) Sweet crude oil and gas--Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

(105) Total suspended particulate--Particulate matter as measured by the method described in 40 Code of Federal Regulations Part 50, Appendix B.

(106) Transfer efficiency--The amount of coating solids deposited onto the surface or a part of product divided by the total amount of coating solids delivered to the coating application system.

(107) True vapor pressure--The absolute aggregate partial vapor pressure, measured in pounds per square inch absolute, of all volatile organic compounds at the temperature of storage, handling, or processing.

(108) Unauthorized emissions--Emissions of any air contaminant except water, nitrogen, ethane, noble gases, hydrogen, and oxygen that exceed any air emission limitation in a permit, rule, or order of the commission or as authorized by Texas Health and Safety Code, §382.0518(g).

(109) Unplanned maintenance, startup, or shutdown activity--For activities with unauthorized emissions that are expected to exceed a reportable quantity or with excess opacity, an unplanned maintenance, startup, or shutdown activity is:

(A) a startup or shutdown that was not part of normal or routine facility operations, is unpredictable as to timing, and is not the type of event normally authorized by permit; or

(B) a maintenance activity that arises from sudden and unforeseeable events beyond the control of the operator that requires the immediate corrective action to minimize or avoid an upset or malfunction.

(110) Upset event--An unplanned and unavoidable breakdown or excursion of a process or operation that results in unauthorized emissions. A maintenance, startup, or shutdown activity that was re-

ported under §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), but had emissions that exceeded the reported amount by more than a reportable quantity due to an unplanned and unavoidable breakdown or excursion of a process or operation is an upset event.

(111) Utility boiler--A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

(112) Vapor combustor--A partially enclosed combustion device used to destroy volatile organic compounds by smokeless combustion without extracting energy in the form of process heat or steam. The combustion flame may be partially visible, but at no time does the device operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system that can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(113) Vapor-mounted seal--A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

(114) Vent--Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

(115) Visible emissions--Particulate or gaseous matter that can be detected by the human eye. The radiant energy from an open flame is not considered a visible emission under this definition.

(116) Volatile organic compound--As defined in 40 Code of Federal Regulations §51.100(s), except §51.100(s)(2) - (4), as amended on March 27, 2014 (79 FR 17037) [~~January 21, 2009 (74 FR 3441)~~].

(117) Volatile organic compound (VOC) water separator--Any tank, box, sump, or other container in which any VOC, floating on or contained in water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

§101.10. Emissions Inventory Requirements.

(a) Applicability. The owner or operator of an account or source in the State of Texas or on waters that extend 9.0 nautical [~~25~~] miles from the shoreline meeting one or more of the following conditions shall submit emissions inventories or related data as required in subsection (b) of this section to the commission on [~~forms or other~~] media approved by the commission:

(1) an account which meets the definition of a major facility/stationary source, as defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions);

(2) any account in an ozone nonattainment area emitting a minimum of ten tons per year (tpy) volatile organic compounds (VOC), 25 tpy nitrogen oxides (NO_X), or 100 tpy or more of any other contaminant subject to National Ambient Air Quality Standards [~~national ambient air quality standards~~] (NAAQS);

(3) any account that emits a minimum of 0.5 tpy of lead (Pb);

(4) [~~(3)~~] any account that emits or has the potential to emit 100 tpy or more of any contaminant, except for greenhouse gases as listed in §101.1 of this title (relating to Definitions) [~~GHGs,~~] individually or collectively[~~, as listed in §101.1 of this chapter (relating to Definitions)~~];

(5) [~~(4)~~] any account which emits or has the potential to emit 10 tpy [~~tons~~] of any single or 25 tpy [~~tons~~] of aggregate hazardous air pollutants as defined in Federal Clean Air Act (FCAA), §112(a)(1); and

(6) [~~(5)~~] any minor industrial source, area source, non-road mobile source, or mobile source of emissions subject to special inventories under subsection (b)(3) of this section. For purposes of this section, the term "area source" means a group of similar activities that, taken collectively, produce a significant amount of air pollution.

(b) Types of inventories.

(1) Initial emissions inventory. Accounts, as identified in subsection (a)(1), (2), (3), [~~or~~] (4), or (5) of this section, shall submit an initial emissions inventory (IEI) for any criteria pollutant or hazardous air pollutant (HAP) that has not been identified in a previous inventory. The IEI shall consist of actual emissions of VOC, NO_X, carbon monoxide (CO), sulfur dioxide (SO_2), Pb [~~lead (Pb)~~], particulate matter with an aerodynamic diameter [~~of~~] less than or equal to 10 micrometers [~~microns in diameter~~] (PM_{10}), particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers ($PM_{2.5}$), any other contaminant subject to an NAAQS, emissions of all HAPs identified in FCAA, §112(b), or any other contaminant requested by the commission from individual emission units within an account. For purposes of this section, the term "actual emission" is the actual rate of emissions of a pollutant from an emissions unit as it enters the atmosphere. The reporting year will be the calendar year or seasonal period as designated by the commission. Reported emission activities must include annual routine emissions; excess emissions occurring during maintenance activities, including start-ups and shutdowns; and emissions resulting from upset conditions. For the ozone nonattainment areas, the inventory shall also include typical weekday emissions that occur during the summer months. For CO nonattainment areas, the inventory shall also include typical weekday emissions that occur during the winter months. Emission calculations must follow methodologies as identified in subsection (c) of this section.

(2) Statewide annual emissions inventory update (AEIU). Accounts meeting the applicability requirements during an inventory reporting period as identified in subsection (a)(1), (2), (3), [~~or~~] (4), or (5) of this section shall submit an AEIU that [~~which~~] consists of actual emissions as identified in paragraph (1) of this subsection [~~subsection (b)(1) of this section~~] if any of the following criteria are met. If none of the following criteria are met, a letter certifying such shall be submitted instead:

(A) any change in operating conditions, including start-ups, permanent shut-downs of individual units, or process changes at the account, that results in at least a 5.0% or 5 tpy, whichever is greater, increase or reduction in total annual emissions of VOC, NO_X, CO, SO_2, Pb, [~~or~~] PM_{10}, or $PM_{2.5}$ from the most recently submitted emissions data of the account; or

(B) a cessation of all production processes and termination of operations at the account.

(3) Special inventories. Upon request by the executive director or a designated representative of the commission, any person owning or operating a source of air emissions which is or could be affected by any rule or regulation of the commission shall file emissions-related data with the commission as necessary to develop an inventory of emissions. Owners or operators submitting the requested data may make special procedural arrangements with the Emissions Assessment Section to submit data separate from routine emission inventory submissions or other arrangements as necessary to support claims of confidentiality.

(c) Calculations. Actual measurement with continuous emissions monitoring systems (CEMS) is the preferred method of calcu-

lating emissions from a source. If CEMS data is not available, other means for determining actual emissions may be utilized in accordance with detailed instructions of the commission. Sample calculations representative of the processes in the account must be submitted with the inventory.

(d) Certifying statements [~~statement~~].

(1) A certifying statement, required by [~~the~~] FCAA, §182(a)(3)(B), is to be signed by the owner(s) or operator(s) and shall accompany each emissions inventory to attest that the information contained in the inventory is true and accurate to the best knowledge of the certifying official.

(2) A certifying statement, required by Texas Health and Safety Code, §382.0215(f) is to be signed by the owner(s) or operators(s) required to submit an emissions inventory and shall be submitted with each emission inventory if no emissions events were experienced at the site during the reporting year to the best knowledge of the certifying official.

(e) Reporting requirements. The IEI or subsequent AEIUs shall contain emissions data from the previous calendar year and shall be due on March 31 of each year or as directed by the commission. Owners or operators submitting emissions data may make special procedural arrangements with the Emissions Assessment Section to submit data separate from routine emission inventory submissions or other arrangements as necessary to support claims of confidentiality. Emissions-related data submitted under a special inventory request made under subsection (b)(3) of this section are due as detailed in the letter of request.

(f) Enforcement. Failure to submit emissions inventory data as required in this section shall result in formal enforcement action under Texas Water Code, Chapter 7.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600789
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 239-6812

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER A. GENERAL PROVISIONS

34 TAC §31.1

The Teacher Retirement System of Texas (TRS) proposes amendments to §31.1 in Chapter 31, Subchapter A of TRS' rules. Chapter 31 concerns employment after service or disability retirement, and Subchapter A addresses the general provisions governing employment after retirement. Section 31.1 provides definitions to certain terms applicable to Chapter 31, including school year, substitute, and third-party entity for purposes of employment after retirement.

TRS proposes amending §31.1(b) regarding the definition of a substitute by allowing for work in a position that is vacant, provided the retiree does not serve more than 20 days in a vacant position. It has been represented to staff that retirees often exceed the limits on employment after retirement because they inadvertently combine substitute work in a vacant position with other substitute work. The combination occurs when a retiree "substitutes" in a position that (1) the retiree does not know is vacant, or (2) the position becomes vacant due to death or a decision by the current employee not to return to work after the retiree begins serving in the position. The retiree serving in the now-vacant position may have already substituted for more than one-half the days in that month before learning that the position is vacant. Work in a vacant position is not work as a substitute under the current TRS definition. When combining work as a substitute and other work in the same calendar month, a retiree who retired after January 1, 2011 is limited to working no more than one-half the number of work days in that calendar month. Surcharges are also owed when the work exceeds one-half time. In order to provide relief in these and similar circumstances, staff proposes to provide a 20-day cap on working in a position that is vacant. The 20-day limit will allow ample time for a retiree to discover that the position is vacant and/or for the employer to make other arrangements for the assignment without jeopardizing the retiree's annuity. Limiting the number of days the retiree may serve in a vacant position is also in keeping with the concept of a substitute being a person who serves on a "temporary basis."

The proposed amendments also clarify that a retiree will not be considered a substitute while serving in a vacant position that was last held by that retiree.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §31.1 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 Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify the rule concerning employment by service retirees as substitutes.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Because the proposed rule clarifies how much and under what conditions service retirees may be employed as substitutes without forfeiting their retirement annuities during such employment, the rule is designed to avoid any economic cost to persons required to comply with it. Mr. Guthrie and Mr. Welch have determined that there will be no negative effect on a local economy because of the proposal, and therefore no negative local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch 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 Brian Guthrie, 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 §824.601 of the Government Code, which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service, and §825.102 of the Government Code, which authorizes the board to adopt rules for the administration of the funds of the retirement system.

Cross-Reference to Statute: The proposed amendments affect Government Code, §825.4092, which provides for a pension surcharge for re-employed retirees; §824.601, which provides for loss of annuity by any service or disability retiree who works for a TRS-covered employer unless such employment is exempted by law from forfeiture of annuity; Government Code; §824.602, which sets forth the exceptions to the loss of monthly annuities of retirees employed in Texas public educational institutions; §824.6022, which requires employers to file a monthly certified statement of employment of retirees and makes it an offense for an administrator who is responsible for filing such a statement to knowingly fail to do so; and Insurance Code, §1575.204, which provides for a retiree health benefit (TRS-Care) surcharge for re-employed retirees.

§31.1. Definitions.

(a) School year--For purposes of employment after retirement, a twelve-month period beginning on September 1 and ending on August 31 of the calendar year.

(b) Substitute--For purposes of employment after retirement, a person who serves on a temporary basis in the place of a current employee(s). A substitute may be paid no more than the daily rate of pay set by the employer. Effective September 1, 2016, a substitute includes a retiree who serves in a vacant position for no more than 20 days. A retiree may serve as a substitute in more than one vacant position each school year provided the retiree serves no more than 20 days in each vacant position. In no event may a retiree be considered a substitute while serving in a vacant position that was last held by that retiree. Service as a substitute that does not meet this definition is not eligible substitute service for purposes of an exception to forfeiture of annuity payments under §31.13 of this title [~~chapter~~] (relating to Substitute Service).

(c) Third party entity--For purposes of employment after retirement, an entity retained by a Texas public educational institution to provide personnel to the institution who perform duties or provide services that employees of that institution would otherwise perform or provide.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600746
Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 542-6438

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.55

The Texas Board of Criminal Justice proposes amendments to §151.55, concerning Disposal of Surplus Agricultural Goods and Agricultural Personal Property. The amendments are proposed in conjunction with a proposed rule review of §151.55 as published in other sections of the *Texas Register.* The proposed amendments are necessary to conform the rule to current practice.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of 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 each year of 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 conformity with current practice.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, §497.113.

Cross Reference to Statutes: None.

§151.55. Disposal of Surplus Agricultural Goods and Agricultural Personal Property.

(a) Policy. It is the policy of the Texas Board of Criminal Justice (TBCJ) that surplus agricultural goods produced by the Texas Department of Criminal Justice (TDCJ) and surplus agricultural personal property used in the TDCJ's agricultural operations be disposed in the most efficient manner possible for the goods or personal property being disposed.

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

(1) Surplus agricultural goods are those agricultural commodities grown, produced, purchased, or acquired by the TDCJ for use within the TDCJ or other state or local agency or non-profit organization, which exceed the needs of the TDCJ operations, which are not required for its foreseeable needs, and which have been determined to be surplus by the TDCJ chief financial officer in coordination with the TDCJ director of Agribusiness, Land and Minerals.

(2) Surplus agricultural personal property is personal property related to the agricultural operations of the TDCJ and grown, produced, purchased, or acquired by the TDCJ, including livestock and

farming equipment and implements, which exceeds the needs of the TDCJ operations, which is not required for its foreseeable needs, and which has been determined to be surplus by the chief financial officer in coordination with the director of Agribusiness, Land and Minerals.

(c) Procedures.

(1) The TBCJ hereby authorizes the chief financial officer or designee to sell or dispose of surplus agricultural goods and surplus agricultural personal property. Sale or disposal shall be accomplished in such a manner so as to provide, if possible, reasonable consideration for the sale or disposal of such surplus items.

(2) When items of agricultural goods or agricultural personal property are considered surplus, the director of Agribusiness, Land and Minerals shall provide a written report to the chief financial officer setting forth those items of agricultural goods and agricultural personal property considered to be surplus. In those instances requiring immediate action due to the perishable nature of such items, the report may be transmitted via email [~~e-mail~~]. The chief financial officer shall review the report and determine if such items shall be sold or disposed as surplus agricultural goods or personal property.

(3) The chief financial officer shall review the report submitted as required herein and shall determine if such reported items are surplus to the needs of the TDCJ, and the terms and method of sale or disposal of such items. Sale or disposal of surplus agricultural goods or agricultural personal property includes:

(A) sale in the usual market for such items;

(B) direct sale by bid or negotiated sale;

(C) exchange for other agricultural products and finished goods; and

(D) donation of food commodities to state, local, or non-profit organizations.

(4) Proceeds from the sale of surplus agricultural goods and surplus agricultural personal property shall be deposited in the appropriate TDCJ fund to be used for purchase of agricultural goods and agricultural personal property necessary for the operation of the TDCJ.

(5) Prices of sales shall be at prevailing market prices or better.

(6) After TDCJ staff takes action on the disposition of surplus agricultural goods and agricultural personal property, a report detailing the actions shall be submitted for inclusion in the materials provided to the TBCJ at each meeting.

[~~(6) The TDCJ staff shall include, as an agenda item for the Consent Agenda at the next regularly scheduled TBCJ meeting following sale or disposition of surplus agricultural items, a report detailing the sale or other disposition of surplus agricultural goods and agricultural personal property.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600828

Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: April 3, 2016
For further information, please call: (936) 437-6700

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER P. SERVICES AND BENEFITS FOR TRANSITION PLANNING TO A SUCCESSFUL ADULTHOOD

DIVISION 3. TEXAS TUITION AND FEE WAIVER FOR YOUTH RETURNING TO A PARENT

40 TAC §700.1630

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §700.1630, concerning Texas Tuition and Fee Waiver for youth returning to a parent, in Chapter 700, Child Protective Services. Current law allows youth who exit foster care prior to their 18th birthday to a non-parent managing conservator to potentially qualify for the Texas Tuition and Fee waiver. However, youth who exit foster care to a parent's permanent managing conservatorship do not. Since the Texas Tuition and Fee Waiver is a valuable benefit there is a disincentive for youth to exit foster care to a parent's care prior to turning 18 because if the youth ages out of DFPS conservatorship he or she can potentially qualify for the waiver. Senate Bill (SB) 206, Section 3, 84th Legislature, Regular Session, was enacted to help alleviate this issue and promote permanency by allowing youth who return to a parent whether parental rights have been terminated or not to qualify for the Texas Tuition and Fee Waiver. The rules were drafted in consultation with the Texas Higher Education Coordinating Board as required by SB 206, Section 3.

New §700.1630 specifies the eligibility criteria for the Texas Tuition and Fee Waiver when the youth is returned to a parent, including the starting age for youth. DFPS proposes: (1) the starting age of 14 for those in permanent managing conservatorship of DFPS as this is a pivotal age for youth; and (2) the starting age of 16 or older for those in temporary managing conservatorship (TMC) as the potential length of a TMC case could be close to 24 months (when a monitored return occurs) until the case is either dismissed or the department is named permanent managing conservator. Also the title to Subchapter P is changed to "Services and Benefits for Transition Planning to a Successful Adulthood."

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no effect on DFPS. However, the Texas

college the former foster care client attends will have to absorb the cost of the tuition and fees not charged to the student qualifying for the waiver. The Texas Higher Education Coordinating Board projected for the first five-year period the section will be in effect the estimated cost on Texas colleges is $650,000 for Fiscal Year (FY) 2016; $650,000 for FY 2017; $650,000 for FY 2018; $650,000 for FY 2019; and $650,000 for FY 2020. There will be no fiscal implications for local government as a result of enforcing or administering the section.

Ms. Henderson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that more former foster care youth will attend college which will assist youth in building an independent and successful life. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Ms. Henderson has determined that the proposed new section 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, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Quyona Gregg at (512) 438-2611 in DFPS's Legal Division. Electronic comments may be submitted to Quyona.Gregg@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-536, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements Senate Bill 206, Section 3, as codified at Texas Education Code §54.366(c).

§700.1630. When can youth returning to a parent receive the Texas Tuition and Fee Waiver?

(a) The following populations are eligible for the Texas Tuition and Fee Waiver, regardless of whether parental rights are terminated or not:

(1) Youth age 14 or older who are in DFPS's permanent managing conservatorship on or after the effective date of this rule, and who subsequently exit conservatorship to the legal responsibility of a parent.

(2) Youth age 16 or older who are in DPFS's temporary managing conservatorship on or after the effective date of this rule, and who subsequently exit conservatorship to the legal responsibility of a parent.

(b) If after exiting the foster care system the youth returns to DFPS conservatorship, the youth's eligibility will be based on their current foster care circumstances.

(c) The student must enroll in an institution of higher education as defined by Texas Education Code §61.003 not later than the student's 25th birthday to receive the Texas Tuition and Fee Waiver.

(d) The student must meet any other applicable statutory requirement concerning the Texas Tuition and Fee Waiver for students exempted by Texas Education Code §54.366.

(e) This rule is applicable beginning with tuition and fees charged at a Texas public institution of higher education as defined by the Texas Education Code §61.003 for the 2016 fall semester.

(f) The term parent means a biological parent or an adoptive parent.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600833
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 438-2611

♦ ♦ ♦

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE TRAFFICKING VICTIM SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.4551, 748.4759, and 748.4763, in Chapter 748, concerning Minimum Standards for General Residential Operations. The purpose of the amendments is to implement House Bill (HB) 418 that was passed by the 84th Texas Legislature in 2015.

This bill created Human Resources Code (HRC) §42.0531, which allows a commissioners court of a county or a governing body of a municipality to contract with a child-placing agency (CPA) that is licensed by Child Care Licensing (CCL) to verify a "secure" foster home that provides trafficking victim services. Although CCL does not use the term "secure" foster home, CCL already has in place rules with additional requirements for CPAs and the foster homes that provide trafficking victim services. While the current requirements cover many of the requirements set forth in this new statute, the statute includes a few additional mandates for foster homes that provide trafficking victim services. These amendments will make the current CPA/foster home rules consistent with the "secure" foster homes as mandated by HRC §42.0531.

In addition, even though HB 418 only applies to CPA foster homes that provide trafficking victim services, CCL is also amending the General Residential Operation (GRO) rules related to operations that provide trafficking victim services to be consistent with the similar CPA rules. HRC §42.042(g-2) requires the Executive Commissioner to adopt standards that address the needs of trafficking victims at GROs. These proposed changes to Chapter 748 are consistent with that mandate.

The amendment to §748.4551 makes the rule consistent with CPA rules related to trafficking victim services, and requires an operation to develop policies that address how an operation will: (1) provide life skills training for children over 14 years old; (2) tailor education to the child's needs; and (3) provide mentoring services. The word "therapy" has also been changed to "counseling" to be consistent with the rest of the chapter.

The amendment to §748.4759 makes the rule consistent with the CPA rules related to trafficking victim services, and requires: (1) that the individual counseling that must be provided to children must address any issues noted in the behavioral health assessment and whether intervention and additional treatment is needed for sexual assault; and (2) family counseling, as appropriate.

The amendment to §748.4763 makes the rule consistent with the CPA rules related to trafficking victim services, and requires that a child's initial service plan include updated plans for behavioral health treatment, including intervention and treatment services for sexual assault, for children who require it.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be that the quality of care for trafficking victims will be improved by strengthening minimum standards related to GROs when trafficking victim services are provided to a base number of children. There is an anticipated adverse impact on businesses, including small and micro businesses, when GROs are required to comply with these rule changes. GROs will be impacted if they currently provide or choose to provide trafficking victim services to a base number of children. Currently, there are two GROs providing these services. At this time it is unknown whether these two GROs currently meet the recommended rule changes. If these two operations do not currently meet the recommended rule changes or other GROs choose to begin providing trafficking victim services to a base number of children, then there will be a fiscal impact to their program.

The DFPS 2014 Annual Report and Data Book states that there are 156 GROs. Licensing has identified the following proposed rules in Chapter 748 as potentially having an adverse impact on the 156 GROs: (1) §748.4551 of this title (relating to What additional child-care policies must I develop?); and (2) §748.4759 of this title (relating to What mental health services are required for a child receiving trafficking victim services?).

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations for each rule that are projected to have a fiscal impact on at least some GROs.

For GROs, the staff time required to comply with the standards will impact professional level service providers and the child-care administrator. For use in the impact analysis, DFPS calculated hourly wages for each of these categories of GRO staff, as follows (actual salaries paid to staff by a GRO may be greater or less than the averages used for these projections):

(1) Professional Level Service Providers - The 2015 average salary for Child Protective Services (CPS) Foster and Adoptive Home Development (FAD) Supervisors (CPS Supervisors I - II) was used to determine the salary costs for the professional level service providers, because it is assumed they perform functions similar to those performed by professional level service providers. The Fiscal Year (FY) 2015 average salary for a FAD Supervisor is $51,233 per year or $24.63 per hour.

(2) Child-Care Administrator - The 2015 average salary for CPS Regional Directors was used to determine the salary costs for the child-care administrator, because it is assumed that this position functions in a similar capacity to that of a child-care administrator. The FY 2015 average salary for a CPS Regional Director is $92,466 per year or $44.45 per hour.

Of the 156 GROs, the number of children that each operation cares for varies significantly. The capacity for some operations may be in the hundreds. Other operations have 50 to 100 children, while still others may have 25 or fewer children in their care. Given this variation, it is not possible to project the fiscal impact to each operation; however, it is possible to project an average "unit cost" for certain types of activities newly required by the amended rules.

Fiscal Impact for Proposed §748.4551: This rule requires additional GRO policies relating to (1) life skills training for children 14 years of age or older; (2) tailoring education to the child's needs; and (3) mentoring. It will be a one-time cost to develop these three policies. It is anticipated that the Child-Care Administrator and two professional level service providers will work together to develop these policies. It is anticipated that a Child-Care Administrator and the two professional level service providers will spend an average of 60 to 80 hours each in the development of these three policies. Therefore, the total one-time cost for the development of these three policies will be between approximately $5,622.60 and $7,496.80. This cost was calculated at the low end of the range as follows: {60 hours X $44.45 (Child-Care Administrator hourly costs) + 60 hours X $24.63 (professional level service provider hourly costs) X 2 (professional level service providers)}; and at the high end of the range as follows: {80 hours X $44.45 (Child-Care Administrator hourly costs) + 80 hours X $24.63 (professional level service provider hourly costs) X 2 (professional level service providers)}. Note: It is assumed that GROs can absorb these additional duties related to these services; however, if those duties cannot be absorbed then a GRO will need to hire additional staff to perform the functions. For example, some GROs may want to hire a part-time or full-time teacher to help with educational services. Child Care Licensing estimates that a full-time teacher would be similar in cost to a Professional Level Service Provider, or $51,233 per year.

Fiscal Impact for Proposed §748.4759(a)(2): This subsection requires a trafficking victim to be provided family counseling, as appropriate. It is not anticipated that family counseling will need to be provided in every instance; however, it may need to be provided in certain situations. It is anticipated that Medicaid and

other private insurance will only pay for limited family counseling. It is assumed that based on research an hour of family counseling will cost between $75 and $125 per hour.

There will be an effect on large, small, or micro-businesses because the proposed amendments apply to the approximately 156 GROs. Of the 156 GROs, it is estimated that only 25% (or 39 GROs) are small businesses, and 16% (or 25 GROs) are micro businesses. These 39 small businesses and 25 micro-businesses fall within the statutory definition, because only these businesses are for-profit businesses.

The projected economic impact on small and micro-businesses was addressed for GROs in the foregoing section of the preamble. However, as stated earlier, the impact only relates to two GROs currently operating and those GROs that choose to provide trafficking victim services to a base number of children. If a GRO chooses to provide these services, then the impact that applied to GROs that provide foster care services is the same for those GROs identified as a small or micro-business. As noted above, with the widely varying number of children cared for by GROs, the fiscal impact of these rules to particular GROs will vary, with the total dollar impact likely to be greater for GROs that serve a larger number of children and less for GROs that serve a smaller number of children.

DFPS did not consider any alternatives to the rule amendments being proposed to ameliorate the impact on GROs who are small or micro-businesses, because the very purpose of this legislative requirement and these rule changes is to ensure the health and safety of trafficking victims and to improve their quality of care - regardless of the size of the GRO.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Licensing Division. Electronic comments may be submitted to *Gerry.Williams@dfps.state.tx.us.* Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-539, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

DIVISION 2. POLICIES AND PROCEDURES

40 TAC §748.4551

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the HRC §42.0531, which was added by HB 418, and HRC §42.042(g-2).

§748.4551. What additional child-care policies must I develop?

You must develop written policies that address how your operation will:

(1) Provide a variety of engaging activities to help trafficking victims develop their skills and independence and gain a sense of personal identity, including providing life skills training for children 14 years of age or older; [~~and~~]

(2) Tailor education to the child's needs;

(3) Provide mentoring services; and

(4) [~~(2)~~] Prevent and discourage trafficking victims from running away from your operation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600834
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 438-5559

♦ ♦ ♦

DIVISION 6. ADMISSION AND SERVICE PLANNING

40 TAC §748.4759, §748.4763

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the HRC §42.0531, which was added by HB 418, and HRC §42.042(g-2).

§748.4759. What mental health services are required for a child receiving trafficking victim services?

(a) A professional service provider must:

(1) Provide individual counseling [~~therapy~~] to each child receiving trafficking victim services. The counseling must address any issues noted in the behavioral health assessment and whether intervention and additional treatment is needed for sexual assault;[~~; and~~]

(2) Provide family counseling, as appropriate; and

(3) [~~(2)~~] Assess the frequency and duration of the counseling [~~therapy~~].

(b) (No change.)

(c) If a child refuses counseling [~~therapy~~], you must document this refusal in the child's record.

(d) (No change.)

§748.4763. What additional items must be included in the child's initial service plan?

(a) In addition to the requirements and items noted in §748.1337 of this title (relating to What must a child's initial service plan include?), the initial service plan for a child receiving trafficking victim services must include:

(1) The plans to obtain alcohol treatment, substance abuse treatment, or both, for children who require it; [~~and~~]

(2) Updated plans for behavioral health treatment, including intervention and treatment services for sexual assault, for children who require it; and

(3) [~~(2)~~] A description of any legal services required for the child and how you will assist the child in meeting those needs.

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600835
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 438-5559

CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES
SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR CHILD-PLACING AGENCIES THAT PROVIDE TRAFFICKING VICTIM SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.4051, 749.4259, and 749.4263, in Chapter 749, concerning Minimum Standards for Child-Placing Agencies. The purpose of the amendments is to implement House Bill (HB) 418 that was passed by the 84th Texas Legislature in 2015.

This bill created Human Resources Code (HRC) §42.0531, which allows a commissioners court of a county or a governing body of a municipality to contract with a child-placing agency (CPA) that is licensed by Child Care Licensing (CCL) to verify a "secure" foster home that provides trafficking victim services. Although CCL does not use the term "secure" foster home, CCL already has in place rules with additional requirements for CPAs and the foster homes that provide trafficking victim services. While the current requirements cover many of the requirements set forth in this new statute, the statute includes a few additional mandates for foster homes that provide trafficking victim services. These amendments will make the current CPA/foster home rules consistent with the "secure" foster homes as mandated by HRC §42.0531.

The amendment to §749.4051 requires a CPA that provides trafficking victim services to develop policies that address how a foster home will: (1) provide life skills training for children over 14 years old; (2) tailor education to the child's needs; and (3) provide mentoring services. The word "therapy" has also been changed to "counseling" to be consistent with the rest of the chapter.

The amendment to §749.4259 requires: (1) that individual counseling provided to children must address any issues noted in the behavioral health assessment and whether intervention and additional treatment is needed for sexual assault; and (2) family counseling, as appropriate.

The amendment to §749.4263 requires that a child's initial service plan must include updated plans for behavioral health treatment, including intervention and treatment services for sexual assault, for children who require it.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Henderson also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be that the quality of care for trafficking victims will be improved by strengthening minimum standards related to CPAs when trafficking victim services are provided to a base number of children. There is an anticipated adverse impact on businesses, including small and micro-businesses, when CPAs are required to comply with these rule changes. Currently, there are no CPAs providing these services. If a CPA chooses to begin providing trafficking victim services to a base number of children, then there will be a fiscal impact to their program.

The DFPS 2014 Annual Report and Data Book states that there are 217 CPAs. Of the 217 CPAs, it is estimated that 169 provide foster care services (which can be foster care services only, or foster care and adoption services). The other estimated 48 CPAs that only provide adoption services will not be discussed in this fiscal impact analysis. The rule changes do not affect the adoption only CPAs, because they do not provide trafficking victim services.

Of the 169 CPAs that provide foster care services, 158 are private CPAs. There are 11 CPS regional divisions that operate as certified CPAs. The 11 CPS CPAs will not be discussed in this section of the fiscal impact analysis, because they do not meet the legal definition of a large, small, or micro business.

Licensing has identified the following proposed rules in Chapter 749 as potentially having an adverse impact on the 158 CPAs: (1) §749.4051 of this title (relating to What additional child-care policies must I develop?); and (2) §749.4259 of this title (relating to What mental health services are required for a child receiving trafficking victim services?)

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations for each rule that are projected to have a fiscal impact on at least some CPAs.

For CPAs, the staff time required to comply with the standards will impact child placement management staff and the child-placing agency administrator. For use in the impact analysis, DFPS calculated hourly wages for each of these categories of CPA

staff, as follows (actual salaries paid to staff by a CPA may be greater or less than the averages used for these projections):

(1) Child Placement Management Staff - The 2015 average salary for Foster and Adoptive Home Development (FAD) Supervisors (CPS Supervisors I - II) was used to determine the salary costs for the child placement management staff because the FAD Supervisor is the position that most often meets the minimum qualifications for and acts as the child placement management staff for CPS. The FY 2015 average salary for a FAD Supervisor is $51,233 per year or $24.63 per hour.

(2) CPA Administrator - The 2015 average salary for CPS Regional Directors was used to determine the salary costs for the CPA administrator because the CPS Regional Directors act as the CPA administrator for each CPS region. The FY 2015 average salary for a CPS Regional Director is $92,466 per year or $44.45 per hour.

Of the 158 private CPAs, the number of children that each CPA cares for varies significantly. The capacity for some CPAs may be in the hundreds. Other CPAs have 50 to 100 children, while still others may have 25 or fewer children in their care. Given this variation, it is not possible to project the fiscal impact to each CPA; however, it is possible to project an average "unit cost" for certain types of activities newly required by the amended rules.

Fiscal Impact for Proposed §749.4051: This rule requires additional CPA policies relating to: (1) life skills training for children 14 years of age or older; (2) tailoring education to the child's needs; and (3) mentoring. It will be a one-time cost to develop these three policies. It is anticipated that the CPA Administrator and two child placement management staff will work together to develop these policies. It is anticipated that a CPA Administrator and the two child placement management staff will spend an average of 60 to 80 hours each in the development of these three policies. Therefore, the total one-time cost for the development of these three policies will be between approximately $5,622.60 and $7,496.80. This cost was calculated at the low end of the range as follows: {60 hours X $44.45 (CPA Administrator hourly costs) + 60 hours X $24.63 (child placement management staff hourly costs) X 2 (child placement management staff)}; and at the high end of the range as follows: {80 hours X $44.45 (CPA Administrator hourly costs) + 80 hours X $24.63 (child placement management staff hourly costs) X 2 (child placement management staff)}. Note: It is assumed that CPAs can absorb these additional duties related to these services; however, if those duties cannot be absorbed then a CPA will need to hire additional staff to perform the functions. For example, some CPAs may want to hire a part-time or full-time teacher to help foster homes with educational services. Child Care Licensing estimates that a full-time teacher would be similar in cost to a Child Placement Management Staff, or $51,233 per year.

Fiscal Impact for Proposed §749.4259: This subsection requires a trafficking victim to be provided family counseling, as appropriate. It is not anticipated that family counseling will need to be provided in every instance; however, it may need to be provided in certain situations. It is anticipated that Medicaid and other private insurance will only pay for limited family counseling. It is assumed that based on research an hour of family counseling will cost between $75 and $125 per hour.

There will be an effect on large, small, or micro-businesses because the proposed amendments apply to the approximately 158 private CPAs that provide foster care services. Of those, only 20 potentially fall within the statutory definition of a small or micro-business, because only 20 of the CPAs are for-profit business. Of these 20 CPAs, it is estimated that almost all of them are small businesses, and probably half are micro-businesses.

The projected economic impact on small and micro-businesses was addressed for CPAs in the foregoing section of the preamble. However, as stated earlier, the impact only relates to those CPAs that choose to provide trafficking victim services to a base number of children. If a CPA chooses to provide these services, then the impact that applied to CPAs that provide foster care services is the same for those CPAs identified as a small or micro-business. As noted above, with the widely varying number of children cared for by CPAs, the fiscal impact of these rules to particular CPAs will vary, with the total dollar impact likely to be greater for CPAs that serve a larger number of children and less for CPAs that serve a smaller number of children.

DFPS did not consider any alternatives to the rule amendments being proposed to ameliorate the impact on CPAs who are small or micro-businesses, because the very purpose of this legislative requirement and these rule changes was to ensure the health and safety of trafficking victims and to improve their quality of care, regardless of the size of the CPA.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Licensing Division. Electronic comments may be submitted to *Gerry.Williams@dfps.state.tx.us.* Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-539, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

DIVISION 2. POLICIES AND PROCEDURES

40 TAC §749.4051

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the HRC §42.0531, which was added by HB 418.

§749.4051. What additional child-care policies must I develop?

You must develop written policies that address how a foster home will:

(1) Provide a variety of engaging activities to help trafficking victims develop their skills and independence and gain a sense of personal identity, including providing life skills training for children 14 years of age or older; [~~and~~]

(2) Tailor education to the child's needs;

(3) Provide mentoring services; and

(4) [~~(2)~~] Prevent and discourage trafficking victims from running away from the foster home.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600836
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 438-5559

♦ ♦ ♦

DIVISION 5. ADMISSION AND SERVICE PLANNING

40 TAC §749.4259, §749.4263

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the HRC §42.0531, which was added by HB 418.

§749.4259. What mental health services are required for a child receiving trafficking victim services?

(a) A specialized professional service provider must:

(1) Provide individual counseling [~~therapy~~] to each child receiving trafficking victim services. The counseling must address any issues noted in the behavioral health assessment and whether intervention and additional treatment is needed for sexual assault; [~~; and~~]

(2) Provide family counseling, as appropriate; and

(3) [~~(2)~~] Assess the frequency and duration of the counseling [~~therapy~~].

(b) (No change.)

(c) If a child refuses counseling [~~therapy~~], you must document this refusal in the child's record.

(d) (No change.)

§749.4263. What additional items must be included in the child's initial service plan?

(a) In addition to the requirements and items noted in §749.1309 of this title (relating to What must a child's initial service plan include?), the initial service plan for a child receiving trafficking victim services must include:

(1) The plans to obtain alcohol treatment, substance abuse treatment, or both, for children who require it; [~~and~~]

(2) Updated plans for behavioral health treatment, including intervention and treatment services for sexual assault, for children who require it; and

(3) [~~(2)~~] A description of any legal services required for the child and how you will assist the child in meeting those needs.

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600837
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: April 3, 2016
For further information, please call: (512) 438-5559

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 33. FEES

4 TAC §33.4, §33.5

The Texas Animal Health Commission (commission) adopts the repeal of §33.4, concerning Laboratory Fees, and §33.5, concerning Herd Status/Certification Fees, in Chapter 33, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7322). The text of the rules will not be republished.

The agency had fee authority for these rules under §161.060(b) of the Texas Agriculture Code, which is entitled "Authority to Set and Collect Fees". The authority allowed the commission by rule to set and collect a fee for any service provided by the commission, including: (1) the inspection of animals or facilities; (2) the testing of animals for disease; (3) obtaining samples from animals for disease testing; (4) disease prevention, control or eradication, and treatment efforts; (5) services related to the transport of livestock; (6) control and eradication of ticks and other pests; and (7) any other service for which the commission incurs a cost. Subsection 161.060(b) expired on August 31, 2015, and as such the agency is repealing certain fee rules that are no longer authorized by statute.

No comments were received regarding adoption of the repeal.

STATUTORY AUTHORITY

The repeal is authorized by the Texas Agriculture Code §161.046, which provides the commission with authority to adopt rules relating to the protection of livestock, exotic livestock, domestic fowl or exotic fowl, as well as Texas Government Code §2001.039, which authorizes a state agency to repeal a rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 17, 2016.

TRD-201600737
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: March 8, 2016
Proposal publication date: October 23, 2015
For further information, please call: (512) 719-0722

♦ ♦ ♦

CHAPTER 49. EQUINE

4 TAC §49.7

The Texas Animal Health Commission (commission) adopts new §49.7, concerning Persons or Laboratories Performing Equine Infectious Anemia Tests, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7323). The text of the rule will not be republished.

The purpose of the new section is to add a requirement that a person or laboratory who performs an official Equine Infectious Anemia (EIA) test in the State of Texas must meet and be in compliance with the requirements found in Title 9, Code of Federal Regulations §75.4(c), which is entitled *"Approval of Laboratories, and Diagnostic or Research Facilities".*

House Bill 3738 was passed during the 84th Regular Texas Legislative Session amending the Texas Agriculture Code to require the commission to adopt rules that require a person or laboratory to be approved by the commission if the person or laboratory performs an official EIA test. The bill requires the rules to include approval requirements; provisions governing the issuance, renewal, and revocation of an approval; inspection requirements; recordkeeping requirements; equine infectious anemia testing methods approved by the commission; and proficiency standards.

The commission has certain EIA testing requirements for equine. The United States Department of Agriculture has a process for the approval of diagnostic laboratories which conduct EIA tests. This amendment proposes to adopt these same requirements for intrastate testing by reference to 9 CFR §75.4(c). There is discussion at the federal level that may alter the current federal role in regulating diagnostic laboratories which test for EIA and potentially leave the responsibility of approving such laboratories to the states. If the federal program is abandoned, the commission will propose and enact state standards.

No comments were received regarding adoption of the new rule.

STATUTORY AUTHORITY

The new section 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, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.0602, entitled "Persons or Laboratories Performing Equine Infectious Anemia Tests", the commission shall adopt rules that require a person or laboratory to be approved

by the commission if the person or laboratory performs an official equine infectious anemia test.

Pursuant to §161.005, entitled "Commission Written Instruments", 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.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", 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.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 17, 2016.

TRD-201600738
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: March 8, 2016
Proposal publication date: October 23, 2015
For further information, please call: (512) 719-0722

♦ ♦ ♦

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 5. ADMINISTRATION OF FINANCE AGENCIES

7 TAC §5.101

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, the finance agencies) adopts the amendment to §5.101, concerning employee training and education assistance programs without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 15). The amended rule will not be republished.

Government Code §656.048 was amended effective September 1, 2015, by Section 3 of H.B. 3337 (Acts 2015, 84th Leg., R.S., Ch. 366, §3), to establish certain requirements for agency tuition reimbursement programs. This amendment is adopted to reflect the new statutory requirement that the agency head authorize tuition reimbursement payment for an employee who has successfully completed a course at an institution of higher education.

The finance agencies received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code, §5.101, which provides for training and education assistance to employees of the finance agencies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600759
Catherine Reyer
General Counsel
Finance Commission of Texas
Effective date: March 10, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 475-1301

♦ ♦ ♦

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.13

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §33.13, concerning how to obtain a new money services business license without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 16). The amended rule will not be republished.

These amendments establish that the deadlines to respond to new license applications for money transmitter and currency exchange licenses also apply to a request for approval of a proposed change of control of a money services business.

In accordance with Texas Finance Code §151.605(b), a person may not directly or indirectly acquire control of a license holder or a person in control of a license holder without the prior written approval of the commissioner. The remaining subsections of §151.605 explain the requirements for obtaining such approval from the commissioner and the criteria used by him or her in making a final determination. However, it does not currently set timelines for the commissioner's and department's response to a proposed change of control.

The department adopts two amendments to §33.13 to provide internal deadlines for the commissioner and department and provide clarity to license holders seeking change of control approval. Currently, §33.13(a) explains that the section applies to applicants seeking a new money transmission or currency exchange license under Finance Code, Chapter 151. The first change establishes that the time tables and deadlines discussed in §33.13 also apply to a request for approval of a proposed change of control of a money services business licensed under Finance Code, Chapter 151. The department also adopts an amendment to the title of §33.13 to clarify that it pertains to proposed change of control deadlines. This change will enable license holders to easily locate the time tables imposed.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Finance Code, §151.102(a)(1), which provides that the commission may adopt rules to administer and enforce Chapter 151, including rules necessary or appropriate to implement and clarify Chapter 151.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600760
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: March 10, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 475-1301

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) adopts new §83.3003 (repeal and replace); adopts amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and adopts the repeal of §83.3003 (repeal and replace), in 7 TAC Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The commission adopts the amendments to §§83.3004, 83.6003, 83.6006, 83.6007, and 83.6008; and adopts the repeal of §83.3003 (repeal and replace) without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 16).

The commission adopts new §83.3003 (repeal and replace) and the amendments to §83.5001 with changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 16). These changes are being made in order to address the official comment received, as discussed in the following paragraph.

The commission received one written comment on the proposal from the Consumer Service Alliance of Texas. The comment included recommendations relating to the license transfer issues of permission to operate and transferee's authority to engage in business as provided in §83.3003. Additionally, the comment offered suggestions related to the data reporting requirements contained in §83.5001 and the implementation period of these rule changes. The commission's response to the official comment is included after the purpose discussions following each respective rule provision receiving comments.

In general, the purpose of the adoption regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039.

The adopted rule changes clarify three main areas: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers.

This is the second of two anticipated rule actions for credit access businesses. In the January 1, 2016, issue of the *Texas Register,* the commission adopted the first rule action, including rule changes relating to definitions, license applications, fees, examination authority, and recordkeeping requirements.

The notice of intention to review 7 TAC Chapter 83, Subchapter B was published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6165). The commission received no comments in response to that notice.

The individual purposes of the adopted rule changes are outlined in the paragraphs to follow.

Section 83.3003 has been repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Both the prior and new versions of §83.3003 describe what constitutes a transfer of ownership requiring the filing of a transfer application. The new rule largely maintains the requirements under the former rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed location. In response to a precomment, this definition includes technical changes to the definition of "transfer of ownership" previously codified at §83.3003(a). These changes include placing the reference to acquisition by gift, devise, or descent in the general language at the beginning of the definition, and removing the current rule's

statement that a transfer of ownership includes an acquisition where the OCCC "has reason to believe that proper regulation of the licensee dictates that a transfer must be processed."

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §393.620. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing credit access business license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. The subsection's second sentence states: "A request for permission to operate may be denied even if the application contains all of the required information." This sentence is similar to a sentence in the former rule at §83.3003(d). The commenter objected to this sentence, stating: "No guidelines are given for a denial. Reasons for denying a request for permission to operate fall into broad categories, such as current enforcement problems, issues with management or ownership, etc.... Those categories should be spelled out in the proposed rule." The commission believes that listing the categories for denying a permission to operate, such as enforcement and management issues, is unnecessary. The permission to operate is a temporary authorization, and denial of the request is not a final denial of the license application. The OCCC allows the permission-to-operate procedure in order to accommodate transferees that wish to begin doing business after a routine transfer of ownership. The alternative would be to prohibit the transferee from engaging in business until after the license application is approved. It is important to maintain the current rule's flexibility to ensure that the OCCC can respond to unanticipated situations that require a closer review of the application before the transferee begins business. Prudent parties can address potential problems in several ways. They can submit application materials well in advance of the transfer of ownership. By doing this, the parties can ensure that they have resolved outstanding issues without having to rely on the temporary permission to operate. Alternatively, the transferee could wait until approval of the permission to operate to begin operating the business. Either of these practices would seem to address the commenter's concerns. Thus, the commission maintains the language proposed in §83.3003(f) for this adoption, with the addition of this clarifying statement: "The denial of a request for permission to operate does not create a right to a hearing."

Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. The commenter requested a "time frame where the agency either makes a decision before the deadline, or tacitly approves the request by not making the decision before the deadline." The commission believes that a time frame for the permission to operate is unnecessary. As discussed above, denial of the request is not a final denial of the license application. Although the agency has occasionally denied requests for permission to operate in certain situations in the past, the agency would generally deny the application if there were a significant issue preventing approval. Regarding the requirement that the transferee immediately cease doing business if the OCCC denies the permission to operate, the same commenter stated: "It is disruptive for consumers with outstanding loan transactions to have the buyer's employees assume operational responsibility for a store, only to have a subsequent decision by the agency require the seller to 're-staff' the store temporarily." As discussed above, prudent transferees can address this issue by submitting application materials in advance of the transfer of ownership, or by waiting until approval of the permission to operate to begin operating the business. Accordingly, the commission declines to add a time frame for agency decision on the permission to operate as it is unnecessary.

Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where the transferor and transferee share joint and several responsibility.

In §83.3004, concerning Change in Form or Proportionate Ownership, conforming changes are adopted corresponding to new §83.3003. Throughout subsections (b) and (c), references have been added to the second path a transferee may take, i.e., a new license application on transfer of ownership.

Section 83.5001 relates to quarterly and annual reports that credit access businesses are required to file with the OCCC. In the proposal, an amendment to subsection (a) stated: "All information provided on each quarterly or annual report must be accurate." Regarding this requirement, the commenter suggested adding the following phrase at the end of this provision: "and consistent with all requirements in this section notwithstanding other requirements imposed by other authorities." The commenter explained: "Recent amendments to municipal ordinances indicate cities may implement their own credit access business data reports. The Consumer Financial Protection Bureau has announced it will be publishing comprehensive payday and motor vehicle title rules in the first calendar quarter of 2016 that will likely include data reporting. Local and federal rules may conflict with state reporting instructions. We seek to avoid difficulties with overlapping regulatory structures by clarifying that the Texas statutes and rules are designed for its data collection purposes."

In response to this comment, the amended text in §83.5001(a) states: "Each quarterly or annual report must be completed in accordance with the OCCC's instructions. All information provided on each quarterly or annual report must be accurate and calculated in accordance with the OCCC's instructions." This is intended to clarify that the annual and quarterly reports submitted to the OCCC must comply with the OCCC's instructions. Any additional reports required under a municipal ordinance or federal law are separate from the quarterly and annual reports submitted to the OCCC under Texas Finance Code, §393.627 and §83.5001.

Subsection (e) codifies the administrative penalty structure currently used by the agency, where the penalties increase the more times a credit access business fails to send in a timely, accurate report within a reporting year. Subsection (e)(2) provides a $100 administrative penalty per licensed location for the first violation, $500 for the second violation, and $1,000 for the third and subsequent violations. In addition, subsection (e)(3)

provides for license suspension or revocation for the fourth or subsequent violation. These amendments are based on three sections: Texas Finance Code, §14.208, which authorizes the OCCC to issue injunctions and assess an administrative penalty against a licensee that violates an injunction; Texas Finance Code, §14.251(a-1), which authorizes the agency to assess an administrative penalty against a credit access business that knowingly and wilfully violates Chapter 393; and Texas Finance Code, §393.614(a), which authorizes the agency to suspend or revoke a credit access business license if the licensee knowingly violates Chapter 393.

Section 83.5001(e) includes a change from the proposal to specify the OCCC's authority to assess an administrative penalty for violating an injunction.

In §83.6003, concerning Posting of Fee Schedule and Notices, the adopted amendments update the in-store notice with the OCCC's contact information. Under Texas Finance Code, §393.222(a)(2), a credit access business must post a notice containing the OCCC's contact information in a conspicuous location. The amendment to subsection (a)(2) includes the OCCC's updated website and the updated email address for consumer complaints. The amendment also includes updated language regarding how to file a complaint. The amendment to subsection (b)(2) contains a conforming change describing the notice as the "OCCC notice."

In §83.6006, concerning Format, the amendment to subsection (c) specifies that the consumer cost disclosure must fit on one page, printed on one side. This replaces the former language stating that the disclosure must be printed on two pages. The adopted amendment conforms to the amended figures in §83.6007, which are shortened from two pages to one.

In §83.6007, concerning Consumer Disclosures, amendments adopted throughout subsections (a) through (d) make a technical correction to replace the word "or" with "and." The amendments require the credit access business to provide the consumer cost disclosure "before a credit application is provided and before a financial evaluation occurs." One precommenter requested clarification that the disclosure must be provided only once. To clarify, the credit access business must provide the disclosure once, at a time that is both before a credit application is provided and before a financial evaluation occurs. This provision is based on Texas Finance Code, §393.222(a), which requires the credit access business to provide the disclosure "[b]efore providing services described by Section 393.221(1)," that is, before the credit access business assists the consumer in obtaining a payday or title loan.

The adoption also includes amendments to the figures accompanying §83.6007, which are the model forms for the consumer cost disclosure. The amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. There are two primary purposes to the adopted amendments to the disclosures. First, the amendments streamline the disclosures to simplify layout and remove redundant information. Second, the amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2014 quarterly and annual reports provided by credit access businesses to the OCCC.

In addition, the adopted amendments to the consumer disclosures include information required by state and federal law. Texas Finance Code, §393.223(a), requires the consumer disclosure to include "(1) the interest, fees, and annual percentage rates, as applicable, to be charged on a deferred presentment transaction or on a motor vehicle title loan, as applicable, in comparison to interest, fees, and annual percentage rates to be charged on other alternative forms of consumer debt; (2) the amount of accumulated fees a consumer would incur by renewing or refinancing a deferred presentment transaction or motor vehicle title loan that remains outstanding for a period of two weeks, one month, two months, and three months; and (3) information regarding the typical pattern of repayment of deferred presentment transactions and motor vehicle title loans." The consumer disclosure must also include additional items to comply with the advertising provisions of the Truth in Lending Act, 15 U.S.C. §1664, and Regulation Z, 12 C.F.R. §1026.24. In particular, Regulation Z, 12 C.F.R. §1026.24(d)(2), requires disclosure of the annual percentage rate and terms of repayment. Also, 12 C.F.R. §1026.24(c) provides that if a simple rate of interest other than the annual percentage rate is disclosed, it must be "stated in conjunction with, but not more conspicuously than, the annual percentage rate."

The commenter requested a delayed implementation date for providing the amended credit access business disclosures under §83.6007. The commenter recommended a 30-day delay for licensees that do not use preprinted forms, and a delayed date of September 1, 2016, for licensees that use preprinted forms. In response to this comment, the agency will allow a delayed implementation date of September 1, 2016, for all licensees to provide the amended versions of the disclosures under §83.6007. From the rule's effective date until September 1, 2016, licensees may provide consumers with either the previous versions of the disclosures or the amended versions. Starting on September 1, 2016, licensees must provide the amended versions. Regardless of which version of the forms they use, licensees must ensure that their disclosures comply with all requirements in Texas Finance Code, §393.223 and the amended rule text of §83.6007 and §83.6008. In particular, licensees must ensure that they: (1) use the disclosure corresponding to the correct product (e.g., multiple payment payday loan), (2) provide the disclosure at a time that is both before a credit application is provided and before a financial evaluation occurs, and (3) ensure that the disclosure is completed with all required information.

The adopted amendments to the consumer disclosures include changes based on oral precomments made at the stakeholders meeting on the proposed rules. Two precommenters suggested that the annual percentage rate should be more prominent than the interest rate paid to the third-party lender, and that the interest rate should be disclosed below the dollar amount of interest. In response to this precomment, the interest rate has been placed near the dollar amount of interest. One precommenter also suggested that for the multiple-payment disclosures, the disclosure should include the total amount of fees and interest the consumer would pay at the end of the term of the loan, in addition to the amounts for two weeks, one month, two months, and three months. In response to this precomment, the multiple-payment disclosures include an additional row with this information. Credit access businesses may omit this extra row if the loan term is two weeks, one month, two months, or three months, and they may move the extra row if the loan term falls in between one of the other periods.

In §83.6008, concerning Permissible Changes, the adopted amendments include an updated citation to Regulation Z. In addition, new subsection (a)(6) specifies that the disclosure may include a form number, and new subsection (b) specifies that

the credit access business may make changes to the consumer disclosure that the OCCC approves in writing.

DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3003

This repeal is adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600791
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: March 10, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

7 TAC §83.3003, §83.3004

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5001 are adopted under Texas Finance Code, §393.622(a)(2), which authorizes the commission to adopt rules relating to reporting. The amendments to §83.6005 are adopted under Texas Finance Code, §393.222(b), which authorizes the commission to adopt rules to implement the requirement to provide a notice containing the OCCC's contact information. The amendments to §83.6006, §83.6007, and §83.6008 are adopted under Texas Finance Code, §393.223(c), which authorizes the commission to adopt rules to implement the requirement to provide the consumer cost disclosure.

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

§83.3003. Transfer of License; New License Application on Transfer of Ownership.

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a credit access business license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §83.3004 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(A) 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;

(B) 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;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

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

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) 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;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No credit access business license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §393.620. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a credit access business license at the time of the application, then the application must include the information required for new license applications under §83.3002 of this title (relating to Filing of New Application). The instructions in §83.3002 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a credit access business license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.3002 of this title. The instructions in §83.3002 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.3002 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept joint and several responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a credit access business. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §83.3007(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the OCCC's final approval of an application described by subsection (e), the transferor is responsible to any consumer and to the OCCC for all credit access business activity performed under the license.

(2) Responsibility of transferee. After a transferee begins performing credit access business activity under a license, the transferee is responsible to any consumer and to the OCCC for all credit access business activity performed under the license. In addition, a transferee is responsible for any transactions that it purchases from the transferor.

(3) Joint and several responsibility. If a transferee begins performing credit access business activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing credit access business activity and before the OCCC's final approval of the license transfer.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600779

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: March 10, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

DIVISION 5. OPERATIONAL REQUIREMENTS

7 TAC §83.5001

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5001 are adopted under Texas Finance Code, §393.622(a)(2), which authorizes the commission to adopt rules relating to reporting.

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

§83.5001. Data Reporting Requirements.

(a) Generally. Each licensee must file the required reports described by this section for the prior period's credit access business activity in a form prescribed by the commissioner and must comply with all instructions relating to submitting the reports. During each calendar year, licensees are required to submit four quarterly reports as provided by Texas Finance Code, §393.627. Additionally, certain quarterly data will be collected by the OCCC on an annual basis under Texas Finance Code, §393.622(a)(1). For purposes of this section, the term "annual report" refers to the quarterly data submitted on an annual basis. Each quarterly or annual report must be completed in accordance with the OCCC's instructions. All information provided on each quarterly or annual report must be accurate and calculated in accordance with the OCCC's instructions.

(b) Due dates.

(1) Quarterly reports. The quarterly reports are due on:

(A) April 30, for transactions conducted during January through March;

(B) July 31, for transactions conducted during April through June;

(C) October 31, for transactions conducted during July through September; and

(D) January 31, for transactions conducted during October through December.

(2) Annual report. The annual report is due on January 31 for transactions conducted during the preceding January through December.

(c) Confidentiality. All individual licensee submissions of data, whether submitted on a quarterly or annual basis, are confidential in their entirety under the provisions of Texas Finance Code, §393.622(b).

(d) Aggregated public information. The OCCC will publish aggregated data on its website within a reasonable time after each quarterly report and annual report is due.

(e) Enforcement actions. The OCCC may take enforcement actions described by this subsection if a licensee violates this section by failing to file a complete and accurate quarterly or annual report by the applicable deadline.

(1) Injunction. As provided by Texas Finance Code, §14.208(a), if the OCCC has reasonable cause to believe that a licensee has violated this section, it may issue an injunction ordering the licensee to file one or more complete, accurate, and timely quarterly or annual reports.

(2) Administrative penalty. As provided by Texas Finance Code, §14.251, the OCCC may assess an administrative penalty against a licensee that knowingly and wilfully violates Texas Finance Code, §393.627 or this section. In addition, as provided by Texas Finance Code, §14.208(c), the OCCC may assess an administrative penalty against a licensee that violates an injunction described by paragraph (1).

(A) First violation. If the licensee violates this section and has not violated this section during any of the four quarters preceding the violation, then the administrative penalty is $100 for each licensed location.

(B) Second violation. If the licensee violates this section during any of the four quarters following a first violation described by subparagraph (A), then the administrative penalty is $500 for each licensed location.

(C) Third and subsequent violations. If the licensee violates this section during any of the four quarters following a second violation described by subparagraph (B), then the administrative penalty is $1,000 for each licensed location. The $1,000 administrative penalty applies to subsequent violations that occur during any of the four quarters following a third or subsequent violation described by this subparagraph.

(3) Suspension or revocation for fourth or subsequent violation. If the licensee violates this section during any of the four quarters following a third or subsequent violation described by subsection (e)(2)(C), then the OCCC may suspend or revoke the licensee's license, as provided by Texas Finance Code, §393.614.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600785
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: March 10, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

DIVISION 6. CONSUMER DISCLOSURES AND NOTICES

7 TAC §§83.6003, 83.6006 - 83.6008

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Sub-

chapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. The amendments to §83.6005 are adopted under Texas Finance Code, §393.222(b), which authorizes the commission to adopt rules to implement the requirement to provide a notice containing the OCCC's contact information. The amendments to §83.6006, §83.6007, and §83.6008 are adopted under Texas Finance Code, §393.223(c), which authorizes the commission to adopt rules to implement the requirement to provide the consumer cost disclosure.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600788
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: March 10, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS
SUBCHAPTER B. RULES FOR CRAFTED PRECIOUS METAL DEALERS

The Finance Commission of Texas (commission) adopts amendments to §§85.1001, 85.1009, and 85.2001 in Subchapter B of 7 TAC Chapter 85, concerning the registration and reporting of crafted precious metal dealers.

The commission adopts the amendments to §85.1001 with changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 23). These changes are being made in order to make a technical correction to a citation contained in a definition.

The commission adopts the amendments to §85.1009 and §85.2001 without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 23).

The commission received no written comments on the proposal.

In general, the purpose of the amendments is to implement changes resulting from the commission's review of Chapter 85, Subchapter B under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 85, Subchapter B was published in the *Texas Register* on November 13, 2015 (40 TexReg 8035). The agency did not receive any comments on the notice of intention to review.

The adopted amendments are technical in nature, providing clarification and conforming changes in accordance with a revised rule, recent legislation, and updated agency contact information. The individual purposes of the amendments to each section are provided in the following paragraphs.

In §85.1001, concerning Definitions, a technical correction has been made to clarify the definition of "Local law enforcement." In §85.1001(4)(B)(ii)(II), the word "not" has been inserted before the phrase "in a municipality that maintains a police department." The agency believes that the inclusion of "not" clarifies the original intent of this provision, and that this word had been inadvertently omitted at the time the rule was initially adopted. Section 85.1001(4)(B)(ii)(II) defines local law enforcement to be the local county sheriff of the dealer's permanent registered location, for mail order or Internet sales where a non-resident seller enters a transaction with a dealer located in a municipality without a police department. The amendment's language is based on Texas Occupations Code, §1956.063(b), which provides that required reports must be sent to the chief of police if the transaction occurs in a municipality that maintains a police department, and to the sheriff of the county if the transaction occurs in another location.

Since the proposal, a technical correction has been made in §85.1001(2), amending the Texas Occupations Code citation contained in the definition of "Crafted precious metal." The revised citation refers to §1956.051(3) in order to correct an accidental transposition of two numbers.

In §85.1009, concerning Revocation, an amendment is provided in subsection (b) to update an internal rule reference to 7 TAC §9.1(a), relating to contested case procedure.

The commission previously adopted amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and which rules apply to a hearing conducted by the State Office of Administrative Hearings. Amended subsection (a) in §9.1 as adopted reads: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Section 85.1009(b) identifies the rules of procedure applicable to a contested case hearing regarding a notice to revoke a crafted precious metal dealer's registration for alleged violations of Texas Occupations Code, Chapter 1956. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section §85.2001, concerning Transaction Report Form and Records, contains two amendments regarding recently revised information. The first amendment in subsection (a)(8) corresponds to 2015 legislation, and the second in subsection (a)(13) provides updated agency contact information.

First, crafted precious metal dealers must accept a Texas handgun license as a valid form of identification for purchases of crafted precious metal as of September 1, 2015. During the most recent legislative session, the Texas Legislature passed HB 2739. This new law added Section 506.001(a) to the Texas Business and Commerce Code stating: "A person may not deny the holder of a concealed handgun license issued under Subchapter H, Chapter 411, Government Code, access to goods, services, or facilities...because the holder has or presents a concealed handgun license rather than a driver's license or other acceptable form of personal identification." This means that dealers

must now accept handgun licenses as a valid form of identification, in addition to the other forms of identification listed in Section 1956.062(c) of the Texas Occupations Code. The amendment uses the phrase "handgun license" in accordance with HB 910, the open-carry law passed by the Texas Legislature during the most recent session. HB 910 replaces the phrase "concealed handgun license" with "handgun license" throughout the statutes governing handgun licenses. HB 910 went into effect on January 1, 2016.

As a result, the amendments to §85.2001(a)(8) add the phrase "or handgun license number" to the list of identification numbers to be recorded on the transaction report form by crafted precious metal dealers.

Second, in accordance with instructions from the Texas Department of Information Resources, the Office of Consumer Credit Commissioner (OCCC) has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. In order to provide consumers with the best contact information for the agency, this adoption amends §85.2001(a)(13) with the OCCC's updated contact information.

DIVISION 1. REGISTRATION PROCEDURES

7 TAC §85.1001, §85.1009

The amendments are adopted under Texas Occupations Code, §1956.0611, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the adopted amendments are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

§85.1001. Definitions.

The following terms, when used in this subchapter, have the following meanings:

(1) Broken item--An item that has been damaged so that it cannot be used for its original purpose without substantial repair.

(2) Crafted precious metal--Has the meaning provided by Texas Occupations Code, §1956.051(3). The term does not include a coin, a bar, a commemorative medallion, an item that contains incidental or trace amounts of precious metal, or an item that is purchased by a dealer for 105% or more of the item's scrap value.

(3) Date of purchase.

(A) For in-person sales, the date of purchase is the date the seller transfers the crafted precious metal to the dealer.

(B) For mail order or Internet sales, the date of purchase is the earlier of:

(i) the date the dealer sends payment for the crafted precious metal; or

(ii) the date the seller agrees by phone or written communication to a price offered by the dealer.

(4) Local law enforcement.

(A) For in-person sales, local law enforcement is:

(i) the chief of police of the municipality where the sale occurs, if the sale occurs in a municipality that maintains a police department; or

(ii) the sheriff of the county where the sale occurs, if the sale does not occur in a municipality that maintains a police department.

(B) For mail order or Internet sales, local law enforcement is:

(i) if the seller resides in Texas:

(I) the chief of police of the municipality where the seller resides, if the seller resides in a municipality that maintains a police department; or

(II) the sheriff of the county where the seller resides, if the seller does not reside in a municipality that maintains a police department; or

(ii) if the seller does not reside in Texas and the dealer's permanent registered location is in Texas:

(I) the chief of police of the municipality of the dealer's permanent registered location, if the dealer's permanent registered location is in a municipality that maintains a police department; or

(II) the sheriff of the county of the dealer's permanent registered location, if the dealer's permanent registered location is not in a municipality that maintains a police department.

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

(6) Permanent registered location--A location where a crafted precious metal dealer engages in the business of buying crafted precious metal for one year or longer.

(7) Scrap--An item that is intended to be melted down or otherwise transformed so that it will not be used for its original purpose.

(8) Scrap value--The value at which an item would be purchased by a person who will melt the item or otherwise transform it so that it will not be used for its original purpose.

(9) Seller--An individual selling crafted precious metal to a dealer, including a transferor.

(10) Temporary location--A location where a crafted precious metal dealer engages in the business of buying crafted precious metal for less than one year.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600793
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: March 10, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

DIVISION 2. OPERATIONAL REQUIREMENTS

7 TAC §85.2001

The amendments are adopted under Texas Occupations Code, §1956.0611, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the adopted amendments are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600795
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: March 10, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 936-7621

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to §25.24, relating to Credit Requirements and Deposits, and §25.478, relating to Credit Requirements and Deposits, without changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8087). The proposed amendments will implement legislative changes made by Senate Bill 734 of the 84th Legislature, Regular Session. The amendments will make clear that the annual interest rate shall be set by the commission on or before December 1 of each calendar year to be used for the next calendar year. Project Number 45133 is assigned to this proceeding.

The commission did not receive comments on the proposed amendments. The commission did not receive a request for a public hearing.

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.24

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2015) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction: and specifically, the amendments made to §183.003 of the Utilities Code, by Senate Bill 734 of the 84th Legislature, Regular Session, which directs the commission on when to set the rate of interest for the following calendar year.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, Senate Bill 734, and Utilities Code §183.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600757
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 10, 2016
Proposal publication date: November 20, 2015
For further information, please call: (512) 936-7293

♦ ♦ ♦

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.478

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2015) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction: and specifically, the amendments made to §183.003 of the Utilities Code, by Senate Bill 734 of the 84th Legislature, Regular Session, which directs the commission on when to set the rate of interest for the following calendar year.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, Senate Bill 734, and Utilities Code §183.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600758
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 10, 2016
Proposal publication date: November 20, 2015
For further information, please call: (512) 936-7293

♦ ♦ ♦

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §26.24, §26.27

The Public Utility Commission of Texas (commission) adopts amendments to §26.24, relating to Credit Requirements and Deposits, and §26.27, relating to Bill Payment and Adjustments, without changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8088). The proposed amendments will implement legislative changes made by Senate Bill 734 of the 84th Legislature, Regular Session. The amendments will make clear that the annual interest rate shall be set by the commission on or before December 1 of each calendar year to be used for the next calendar year. Project Number 45132 is assigned to this proceeding.

The commission did not receive comments on the proposed amendments. The commission did not receive a request for a public hearing.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2015) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction: and specifically, the amendments made to §183.003 of the Utilities Code, by Senate Bill 734 of the 84th Legislature, Regular Session, which directs the commission on when to set the rate of interest for the following calendar year.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, Senate Bill 734, and Utilities Code §183.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600756
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 10, 2016
Proposal publication date: November 20, 2015
For further information, please call: (512) 936-7293

♦ ♦ ♦

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

The Texas Commission of Licensing and Regulation (Commission) adopts a new rule at 16 Texas Administrative Code (TAC) Chapter 61, §61.120 and the repeal of current §61.120 without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8712). The rule will not be republished.

The adopted new rule and repeal implement House Bill 3315 (H.B. 3315), 84th Legislature, Regular Session (2015), which allows the Commission to establish a Combative Sports Advisory Board (Board) to address a wider range of issues.

The adopted new §61.120 provides that the Combative Sports Advisory Board consist of four physicians, one boxing promoter, one mixed martial arts promoter, one sports referee or judge, one former combative sports contestant and one public member to make up the composition of the board.

The adopted repeal of current §61.120 is replaced with new §61.120.

The Texas Department of Licensing and Regulation (Department) drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8712). The deadline for public comments was January 4, 2016. The Department received one comment on the proposed rules during the 30-day public comment period.

Comment--The Texas Chiropractic Association (TCA) requested that the Department consider allowing Doctors of Chiropractic to be eligible for Advisory Board membership. TCA also described the areas of expertise Doctors of Chiropractic may specialize in that may assist in the broader range of issues the Combative Sports Advisory Board may discuss and make recommendations on.

Department Response--The Department disagrees due to the nature of this program and injuries, Doctors of Chiropractic are not trained or equipped to treat trauma in general and head trauma in particular. These injury types are most common in the sport and need specialized medical treatment. Therefore, the Department did not make any changes to the proposed rule based on this comment.

The Board was scheduled to meet on January 15, 2016, to discuss the proposed rules and the public comment received. However, the Board lacked a quorum, therefore no recommendations were made, but the Department did receive input from the present Board members. Since a quorum of the Board was not present, no votes were taken at the January 15, 2016, meeting. At its meeting on February 10, 2016, the Commission adopted the proposed rules without changes to the rule as published.

16 TAC §61.120

The repeal is adopted under Texas Occupations Code, Chapters 51 and 2052, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 17, 2016.

TRD-201600720
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 15, 2016
Proposal publication date: December 4, 2015
For further information, please call: (512) 463-8179

♦ ♦ ♦

16 TAC §61.120

The new rule is adopted under Texas Occupations Code, Chapters 51 and 2052, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 17, 2016.

TRD-201600721
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 15, 2016
Proposal publication date: December 4, 2015
For further information, please call: (512) 463-8179

♦ ♦ ♦

CHAPTER 86. VEHICLE TOWING AND BOOTING

16 TAC §§86.225 - 86.228

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 TAC Chapter 86, §§86.225 - 86.228 without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8713). The rules will not be republished.

The adopted new rules establish a process that expedites tow truck permits, consent tow operator licenses and tow company licenses in areas that are included in an Emergency Disaster Proclamation by the Governor of the State of Texas and the Executive Director finds the emergency rules necessary to implement in the disaster area. The adopted new rules are necessary to implement this process and allow the towing industry to quickly respond to an emergency disaster.

The adopted new §86.225 establishes the general guidelines for issuing an emergency consent tow truck permit, consent tow operator license and tow company license.

The adopted new §86.226 creates the requirements for the emergency consent tow permit.

The adopted new §86.227 creates the requirements for the emergency consent tow operator license.

The adopted new §86.228 creates the requirements for the emergency tow company license.

The Texas Department of Licensing and Regulation (Department) drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8713). The deadline for public comments was January 4, 2016. The Department received one comment on the proposed rules during the 30-day public comment period.

Comment--AAA Texas supports the proposed rules and described the challenges the industry faced during the May 2015 flood in Houston.

Department Response--The Department appreciates this comment and did not make any changes to the proposed rules based on this comment.

The Towing, Storage and Booting Advisory Board (Board) met on January 14, 2015, to discuss the proposed rules and the public comment received. The Board recommended that the Commission adopt the proposed rules as published in the Texas Register without changes. At its meeting on February 10, 2016, the Commission adopted the proposed rules without changes as recommended by the Board.

The new rules are adopted under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 17, 2016.

TRD-201600722
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 15, 2016
Proposal publication date: December 4, 2015
For further information, please call: (512) 463-8179

♦ ♦ ♦

PART 8. TEXAS RACING COMMISSION

CHAPTER 301. DEFINITIONS

16 TAC §301.1

The Texas Racing Commission adopts an amendment to 16 TAC §301.1, concerning Definitions, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 60).

The section sets out definitions for terms that are used elsewhere within the rules. The amendment removes the definition for "historical racing". This change is adopted in conjunction with the adoption of the repeal of Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.* Since the rules that authorized historical racing are being repealed, the definition of historical racing should also be repealed. The amendment also renumbers the subsequent definitions in the list in order to accommodate the removal of this definition.

No comments were received regarding adoption of this specific amendment. The Commission did receive comments regarding the overall repeal of the rules authorizing historical racing, and those comments are addressed in the preamble to the adopted repeal of Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.*

The amendment is adopted under the following provisions of Texas Revised Civil Statutes Annotated, Article 179e: §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and other rules to administer the Act that are consistent with the Act; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600843
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: March 13, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 833-6699

♦ ♦ ♦

CHAPTER 303. GENERAL PROVISIONS
SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

16 TAC §303.31, §303.42

The Texas Racing Commission adopts amendments to 16 TAC §303.31, concerning the regulation of racing, and §303.42, concerning the approval of charity race days, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 63).

Section 303.31 sets out the Commission's broad responsibility to regulate each race meeting conducted in this state. Section 303.42 sets out the requirements for each racing association to conduct charity race days and the criteria the Commission will review in approving those race days. The amendment to §303.31 inserts the phrase "live and simulcast" into the rule and the amendments to §303.42 eliminate all references related to historical racing. The purpose of the amendments is to restore the rules to the language that existed prior to the adoption of the historical racing rules. These amendments are adopted in conjunction with the repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.*

No comments were received regarding adoption of these specific amendments. The Commission did receive comments regarding the overall repeal of the rules authorizing historical racing, and those comments are addressed in the preamble to the adopted repeal of Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.*

The amendments are adopted under the following provisions of Texas Revised Civil Statutes Annotated, Article 179e: §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and other rules to administer the Act that are consistent with the Act; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering; and §11.011, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering on simulcast races. The amendment to §303.42 is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §8.02 and §10.01, which require the Commission to adopt rules relating to the conduct of race days.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600844
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: March 13, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 833-6699

♦ ♦ ♦

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

The Texas Racing Commission adopts amendments to 16 TAC §309.8, concerning racetrack license fees, §309.297, concerning purse accounts, §309.299, concerning the horsemen's representative, and §309.361, concerning the Greyhound Purse Account and Kennel Account, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 65).

Section 309.8 sets out the purpose of racetrack license fees, the amounts and due dates for the fees, and describes how the fees may be adjusted. Section 309.297 sets out the requirements governing how horse purse accounts are administered and paid out. Section 309.299 sets out the purpose of the horsemen's representative, the process by which the horsemen's representative is recognized, and the authority and responsibilities of the horsemen's representative. Section 309.361 sets out the requirements governing how greyhound purse and kennel accounts are administered and paid out. The adopted amend-

ments to each of these rules restore them to the language that existed within them prior to the adoption of the historical racing rules. The amendments accomplish this goal by deleting all references to historical racing and reinserting previously deleted language that limited the application of the rules to only live and simulcast racing. These changes are adopted in conjunction with the adopted repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.*

No comments were received regarding adoption of these specific amendments. The Commission did receive comments regarding the overall repeal of the rules authorizing historical racing, and those comments are addressed in the preamble to the adopted repeal of Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.*

SUBCHAPTER A. RACETRACK LICENSES
DIVISION 1. GENERAL PROVISIONS

16 TAC §309.8

The amendment to §309.8 is adopted under Texas Revised Civil Statutes Annotated, Article 179e §5.01, which requires the Commission to set fees to cover the costs of regulating, overseeing and licensing live and simulcast racing at racetracks, and §6.18, which allows the Commission prescribe a reasonable annual fee to be paid by each racetrack licensee.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600845
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: March 13, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 833-6699

♦ ♦ ♦

SUBCHAPTER C. HORSE RACETRACKS
DIVISION 4. OPERATIONS

16 TAC §309.297, §309.299

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §6.08, which provides that legal title to purse accounts at a horse racing association is vested in the horsemen's organization, and §1.03(77), which establishes that the horsemen's organization is recognized by the commission to represent horse owners and trainers in negotiating and contracting with associations on subjects relating to racing.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600846
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: March 13, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 833-6699

♦ ♦ ♦

SUBCHAPTER D. GREYHOUND RACETRACKS
DIVISION 2. OPERATIONS

16 TAC §309.361

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §10.05, which recognizes the Texas Greyhound Association as the officially designated state greyhound breed registry.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600848
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: March 13, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 833-6699

♦ ♦ ♦

CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS

The Texas Racing Commission adopts amendments to 16 TAC §321.5, concerning the pari-mutuel auditor, §321.12, concerning time synchronization, §321.13, concerning the pari-mutuel track report, §321.23, concerning wagering explanations, §321.25, concerning wagering information, and §321.27, concerning the posting of race results, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 69).

Section 321.5 establishes the role and responsibilities of the pari-mutuel auditor. Section 321.12 sets out synchronization requirements in order to ensure accurate verification of off times with the close of betting on live and simulcast races. Section 321.13 describes the requirements for an association's record keeping of wagering activities at the racetrack. Section 321.23 describes the wagering explanations an association must include in its official live and simulcast programs. Section 321.25 requires an association to provide accurate wagering information for handicapping purposes. Section 321.27 requires that an association submit a plan for posting race results to the wagering public and sets out the minimum requirements for the plan. The adopted amendments to each of these rules restore them to the language that existed within them prior to the adoption of the historical racing rules. The amendments accomplish this goal by deleting all references to historical racing and reinserting previously deleted language that limited the application of the rules to only live and simulcast racing. These changes are adopted in conjunction with the adopted repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.*

No comments were received regarding adoption of these specific amendments. The Commission did receive comments regarding the overall repeal of the rules authorizing historical racing, and those comments are addressed in the preamble to the adopted repeal of Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.*

DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.5, 321.12, 321.13

The amendments are adopted under the following provisions of Texas Revised Civil Statutes Annotated, Article 179e: §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and other rules to administer the Act that are consistent with the Act; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering; and §11.011, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering on simulcast races.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600851
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: March 13, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 833-6699

♦ ♦ ♦

DIVISION 2. WAGERING INFORMATION AND RESULTS

16 TAC §§321.23, 321.25, 321.27

The amendments are adopted under the following provisions of Texas Revised Civil Statutes Annotated, Article 179e: §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and other rules to administer the Act that are consistent with the Act; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering; and §11.011, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering on simulcast races.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600852
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: March 13, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 833-6699

♦ ♦ ♦

SUBCHAPTER F. REGULATION OF HISTORICAL RACING

16 TAC §§321.701, 321.703, 321.705, 321.707, 321.709, 321.711, 321.713, 321.715, 321.717, 321.719

The Texas Racing Commission adopts the repeal of 16 TAC §321.701, concerning the purpose of historical racing, §321.703, concerning historical racing, §321.705, concerning requests to conduct historical racing, §321.707, concerning the requirements for operating a historical racing totalisator system, §321.709, concerning types of pari-mutuel wagers for historical racing, §321.711, concerning historical racing pool and seed pools, §321.713, concerning deductions from pari-mutuel pools, §321.715, concerning contract retention and pari-mutuel wagering record retention, §321.717, effect of conflict, and §321.719, severability, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 70).

Section 321.701 sets out the purpose of initially adopting the historical racing rules. Section 321.703 describes the license to conduct historical racing, requires associations to enter into contracts that establish the portion of each association's commission that will be set aside for purses and breeder incentives, provides

for the allocation of these deductions among the breeds. Section 321.705 describes the process and requirements by which associations request approval to conduct historical racing. Section 321.707 describes the minimum operational requirements of a historical racing totalisator system. Section 321.709 describes the types of pari-mutuel wagers that may be offered through a historical racing system. Section 321.711 provides the minimum requirements for the seed pool and prohibits associations from conducting historical racing in a manner that allows patrons to wager against the association. Section 321.713 permits associations to deduct a portion of each historical racing pool as its commission. Section 321.715 requires associations to retain copies of all historical racing contracts and records of all wagering on historical races. Section 321.717 provides that the provisions of Subchapter F controls in the event that the provisions conflict with Subchapter A of Chapter 321. Section 321.719 provides that if any part of Subchapter F is held invalid, that part is severable and its invalidity does not affect other parts that can be given effect without the invalid part. The repeal of Chapter 321, Subchapter F, repeals each of these rules.

REASONED JUSTIFICATION. The repeal of these rules is necessary to bring the Commission's rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority. Texas Racing Act §3.02 requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and other rules to administer the Act that are consistent with the Act. Since the Commission has not appealed the decision of the District Court, it must repeal the historical racing rules in order to comply with the statutory requirement that its rules be consistent with the Act.

SUMMARY OF COMMENTS AND AGENCY RESPONSES.

The Commission received approximately 1,000 comments in response to the publication of these proposed repeals. Of these comments, only one supported the repeal. The remaining comments all opposed repeal of the historical racing rules.

Comment: The Kickapoo Texas Traditional Tribe of Texas observed that a Travis County District Court had found that the rules exceeded the Commission's authority and that the Commission had not appealed that decision, therefore it was appropriate for the Commission to repeal the rules in order to rid the Texas Administrative Code of void rules.

Agency Response: The agency agrees.

Comment: Sam Houston Race Park (SHRP) commented that the entire racing industry supported the adoption of the historical racing rules and provided a compilation of prior comments as evidence of the hope that historical racing provided to the industry. SHRP also commented that the legality of historical racing was still on appeal and requested that the Commission await the outcome of the legal process before making any changes. SHRP pointed out that individual legislators had expressed support for the Commission and/or historical racing during prior comment periods. SHRP closed by again pointing to the extensive support the industry had shown for the historical racing rules.

Agency Response: The agency agrees that the racing industry has shown broad and consistent support for the historical racing rules. However, broad support does not outweigh the District Court's decision.

Comment: The Texas Horsemen's Partnership (THP) commented that the Commission is being coerced by an unconstitutional action by a legislative body and urges the Commission to reject the repeal of the historical racing rules pending the outcome of the industry's appeal of the District Court's decision.

Agency Response: The agency disagrees with THP's conclusion that the Commission is being coerced by an unconstitutional action. The agency is acting to bring its rules in compliance with a court order. The THP has asserted this claim before a Travis County District Court and on emergency appeal to the Third Court of Appeals, and has yet to obtain a court order that validates this assertion.

Comment: Representatives of the Texas Paint Horse Association and the American Paint Horse Association wrote in opposition to the repeal and expressed hope that historical racing would provide economic support to the racing industry.

Agency Response: The agency appreciates the association's position but concludes that the District Court's decision requires that the historical racing rules be repealed in order to comply with the Act's requirement that the rules be consistent with the Act.

Comment: The Texas Quarter Horse Association urged the Commission to not repeal the rules and observed that it had not been successful in scheduling meeting with state leaders to persuade them to release appropriations to the Commission.

Agency Response: The agency appreciates the association's position but concludes that the District Court's decision requires that the historical racing rules be repealed in order to comply with the Act's requirement that the rules be consistent with the Act.

Comment: The Texas Thoroughbred Association wrote in opposition to the repeal, observed that the prospect of historical racing is the only thing providing hope to the industry, and requested that the Commission await the outcome of the industry's appeal before making any changes.

Agency Response: The agency appreciates the association's position but concludes that the District Court's decision requires that the historical racing rules be repealed in order to comply with the Act's requirement that the rules be consistent with the Act.

Comment: The Commission received 983 form letters and emails expressing opposition to repeal. These comments observed that historical racing would provide economic support to the industry and protested about the appearance of undue influence by out-of-state casino interests. The comments also requested that the Commission await the outcome of the industry's appeal before making any changes.

Agency Response: The agency appreciates the commenters' position but concludes that the District Court's decision requires that the historical racing rules be repealed in order to comply with the Act's requirement that the rules be consistent with the Act.

Comment: The Commission received a number of comments from individual industry participants and business people who opposed repeal of the rules. These individuals pointed out the poor economic condition of the industry and their avid interest in it. They requested that the Commission support the industry by not repealing the rules and awaiting the outcome of the industry's appeal.

Agency Response: The agency appreciates the commenters' positions but concludes that the District Court's decision requires that the historical racing rules be repealed in order to comply with the Act's requirement that the rules be consistent with the Act.

STATUTORY AUTHORITY. The repeal of these rules is adopted under the following provisions of Texas Revised Civil Statutes Annotated, Article 179e: §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and other rules to administer the Act that are consistent with the Act; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering; and §11.011, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering on simulcast races.

The repeal of these rules implements Texas Revised Civil Statutes Annotated, Article 179e.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600853
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: March 13, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 833-6699

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

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

22 TAC §153.18

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.18, Appraiser Continuing Education, without changes as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8863). The amendments add additional opportunities for appraiser license holders to obtain continuing education credits consistent with criteria established by the Appraiser Qualifications Board (AQB) and statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

The reasoned justification for the amendments is to provide additional opportunities for appraiser license holders to earn continuing education credits as allowed by the AQB and to align the rule with statutory changes adopted by the 84th Legislature.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1103.153, which authorizes TALCB to adopt rules relating to continuing education requirements for license holders.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600847
Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: March 13, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 936-3652

♦ ♦ ♦

22 TAC §153.22

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts new 22 TAC §153.22, Voluntary Appraiser Trainee Experience Reviews, without changes as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8864). This rule establishes a voluntary program through which an appraiser trainee may receive feedback about their appraisal work product from the Board before submitting an application for licensure.

The reasoned justification for this rule is to provide an opportunity for appraiser trainees to receive feedback from the Board regarding the trainee's work product before the trainee submits an application for licensure.

No comments were received on the rule as proposed.

This rule is adopted under Texas Occupations Code §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

The statute affected by the new rule is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by this rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600849
Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: March 13, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 936-3652

♦ ♦ ♦

22 TAC §153.27

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts amendments to 22 TAC §153.27, License by Reciprocity, without changes as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8865). These amendments streamline the Board's process for verifying an applicant's licensure in another state and will lower the cost and simplify the application process for applicants who apply for a license under this section.

The reasoned justification for the amendments is to simplify the Board's process for verifying an applicant's licensure in another state, improve efficiency, and lower costs for license holders.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600850
Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: March 13, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 936-3652

♦ ♦ ♦

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.8

The Texas State Board of Pharmacy adopts amendments to §281.8 concerning Grounds for Discipline for a Pharmacy License. The amendments are adopted without changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9063). The rule will not be republished.

The amendments to §281.8 update the grounds for discipline for a pharmacy to include abusive, intimidating, or threatening behavior toward a board member or employee during the performance of such member or employee's lawful duties.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600768
Gay Dodson, R. Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 10, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8026

♦ ♦ ♦

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.2, §283.5

The Texas State Board of Pharmacy adopts amendments to §283.2 concerning Definitions and §283.5 concerning Pharmacist-Intern Duties. The amendments are adopted without changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9064).

The amendments to §283.2 update the definition of a healthcare professional to include dentists, podiatrists, veterinarians, advanced practice registered nurses, and physician assistants. The amendments to §283.5 allow intern-trainees to perform the duties of a pharmacist while under the supervision of a pharmacist preceptor at a site assigned by the college/school of pharmacy, correct references to pharmacist-interns, and clarify that only individuals engaged in sterile compounding are required to meet the training requirements.

No comments were received.

The amendments are adopted under §§551.002, 554.051, and 558.057 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §558.057 as authorizing the agency adopt rules regarding individuals serving as healthcare professional preceptors.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600769
Gay Dodson, R. Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 10, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8026

CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §§315.1 - 315.14

The Texas State Board of Pharmacy adopts new §315.1 regarding Definitions, §315.2 regarding Official Prescription Form, §315.3 regarding Prescriptions, §315.4 regarding Exceptions to Use of Form, §315.5 regarding Pharmacy Responsibility - Generally, §315.6 regarding Pharmacy Responsibility - Electronic Reporting, §315.7 regarding Pharmacy Responsibility - Oral, Telephonic, or Emergency Prescription, §315.8 regarding Pharmacy Responsibility - Modification of Prescription, §315.9 regarding Pharmacy Responsibility - Out-of-State Practitioner, §315.10 regarding Return of Unused Official Prescription Form, §315.11 regarding Release of Prescription Data, §315.12 regarding Schedule III through V Prescription Forms, §315.13 regarding Official Prescription Form, and §315.14 regarding Official Prescription. The new rules are adopted with changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9067).

These new rules implement Senate Bill 195 passed by the 84th Texas Legislature which transfers the Prescription Monitoring Program from the Texas Department of Public Safety to the Texas State Board of Pharmacy, effective September 1, 2016.

The National Association of Chain Drug Stores (NACDS) provided comments as follows: The general recordkeeping requirements in §315.5 should be changed to reference from "enter" to "record." The Board agrees with the comment and adopted the rule with the change. Section 315.6 should be changed to clearly specify that pharmacies must report dispensed controlled substance information within 7 days. The Board agrees with the comment and adopted the rule with the change. The requirement to report the office prescription control number should be eliminated. The Board disagrees with the comment in that the control number validates the schedule II prescriptions and reduces fraudulent prescriptions.

The APRN Strategic Alliance commented that the definition of mid-level was not appropriate and recommended that a definition for advanced practice registered nurse be added to the definitions. The Board agrees with the comment and adopted the rules with the definition added to the rules.

The new rules are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the new rules: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.1. Definitions - Effective September 1, 2016.

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

(1) TCSA--The Texas Controlled Substances Act (Texas Health and Safety Code, Chapter 481).

(2) Advanced practice registered nurse--A registered nurse licensed by the Texas Board of Nursing to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

(3) Day--A calendar day unless the context clearly indicates a business day.

(4) Drug Enforcement Administration (DEA)--The Federal Drug Enforcement Administration.

(5) Electronic transmission--The transmission of information in electronic form such as computer to computer, electronic device to computer, e-mail, or the transmission of the exact visual image of a document by way of electronic media.

(6) Emergency situation--A situation described in the Code of Federal Regulations, Title 21, §1306.11(d).

(7) Individual practitioner--A physician, dentist, veterinarian, optometrist, podiatrist, or other individual licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner.

(8) Institutional practitioner--A hospital or other person (other than an individual practitioner) licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice, but does not include a pharmacy.

(9) Locum tenen--An individual practitioner who practices in a temporary position in this state and licensed by the appropriate Texas state licensing board.

(10) Long-term care facility (LTCF)--An establishment licensed as such by the Texas Department of Aging and Disability Services.

(11) NDC #--A National Drug Code number.

(12) Physician assistant--An individual licensed as such by the Texas Physician Assistant Board.

(13) Record--A notification, order form, statement, invoice, prescription, inventory information, or other document for the acquisition or disposal of a controlled substance, precursor, or apparatus in any manner by a registrant or permit holder under a record keeping or inventory requirement of federal law, the TCSA, or this chapter.

(14) Reportable prescription--A prescription for a controlled substance:

(A) listed in Schedule II through V; and

(B) not excluded from this chapter by a rule adopted under the TCSA, §481.0761(b).

(15) Temporary controlled substances registration (TCSR)--A controlled substances registration issued to a locum tenen or a health practitioner for a period of time not to exceed 90 days.

§315.2. Official Prescription Form - Effective September 1, 2016.

(a) A practitioner may order official prescription forms from the board only if the practitioner is registered by the DEA to prescribe a Schedule II controlled substance.

(b) The board is the sole source for the official prescription forms. However, official prescription forms issued prior to September 1, 2016, by the Texas Department of Public Safety are valid forms.

(c) This subsection applies only to an institutional practitioner who is employed by a hospital or other training institution. An institutional practitioner authorized by a hospital or institution to prescribe a Schedule II controlled substance under the DEA registration of the hospital or institution may order official prescription forms under this section if:

(1) the practitioner prescribes a controlled substance in the usual course of the practitioner's training, teaching program, or employment at the hospital or institution;

(2) the appropriate state health regulatory agency has assigned an institutional permit or similar number to the practitioner; and

(3) the hospital or institution:

(A) maintains a current list of each institutional practitioner and each assigned institutional permit number; and

(B) makes the list available to another registrant or a member of a state health regulatory or law enforcement agency for the purpose of verifying the authority of the practitioner to prescribe the substance.

(d) An advanced practice registered nurse or physician assistant operating under a prescriptive authority agreement pursuant to Texas Occupations Code, Chapter 157 may order official prescription forms under this section if authority to prescribe has been delegated by a physician. Upon withdrawal of the delegating physician's authority such forms are void and must be returned to the board.

§315.3. Prescriptions - Effective September 1, 2016.

(a) Schedule II Prescriptions.

(1) Except as provided by subsection (e) of this section, a practitioner, as defined in the TCSA, §481.002(39)(A), must issue a written prescription for a Schedule II controlled substance only on an official Texas prescription form or through an electronic prescription that meets all requirements of the TCSA. This subsection also applies to a prescription issued in an emergency situation.

(2) A practitioner who issues a written prescription for any quantity of a Schedule II controlled substance must complete an official prescription form by legibly completing the spaces provided.

(3) A practitioner may issue multiple written prescriptions authorizing a patient to receive up to a 90-day supply of a Schedule II controlled substance provided:

(A) each prescription is issued for a legitimate medical purpose while practitioner is acting in the usual course of professional practice;

(B) the practitioner provides written instructions on each prescription, other than the first prescription that is to be dispensed within 21 days of issuance, indicating the earliest date on which a pharmacy may dispense each prescription; and

(C) the practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse.

(b) Schedules III through V Prescriptions.

(1) A practitioner, as defined in the TCSA, §481.002(39)(A), (C), (D), may use prescription forms and order forms through individual sources. A practitioner may issue, or allow to be issued by a person under the practitioner's direction or supervision, a Schedule III through V controlled substance on a prescription form for a valid medical purpose and in the course of medical practice.

(2) Schedule III through V prescriptions may be refilled up to five times within six months after date of issuance.

(c) Electronic prescription. A practitioner is permitted to issue and to dispense an electronic controlled substance prescription only in accordance with the requirements of the Code of Federal Regulations, Title 21, Part 1311.

(d) Controlled Substance prescriptions may not be postdated.

(e) Advanced practice registered nurses or physician assistants may only use the official prescription forms issued with their name, address, phone number, and DEA numbers, and the delegating physician's name and DEA number. The official prescription order form must be signed by the requesting advanced practice registered nurse or physician assistant, and by the delegating physician.

§315.4. Exceptions to Use of Form - Effective September 1, 2016.

(a) An official prescription form is not required for a medication order written for a patient who is admitted to a hospital at the time the medication order is written and dispensed.

(1) A practitioner may dispense or cause to be dispensed a Schedule II controlled substance to a patient who:

(A) is admitted to the hospital; and

(B) will require an emergency quantity of a controlled substance upon release from the hospital.

(2) Under paragraph (1) of this subsection, the controlled substance:

(A) may only be dispensed in a properly labeled container; and

(B) may not be more than a seven-day supply or the minimum amount needed for proper treatment of the patient until the patient can obtain access to a pharmacy, whichever is less.

(b) Subsection (a) of this section applies to a patient who is admitted to a hospital, including a patient:

(1) admitted to:

(A) a general hospital, special hospital, licensed ambulatory surgical center, surgical suite in a dental school, or veterinary medical school; or

(B) a hospital clinic or emergency room, if the clinic or emergency room is under the control, direction, and administration as an integral part of a general or special hospital;

(2) receiving treatment with a Schedule II controlled substance from a member of a Life Flight or similar medical team or an emergency medical ambulance crew or a paramedic-emergency medical technician operating as an extension of an emergency room of a general or special hospital; or

(3) receiving treatment with a Schedule II controlled substance while the patient is an inmate incarcerated in a correctional facility operated by the Texas Department of Criminal Justice or a correctional facility operating in accordance with the Health Services Plan adopted by the Texas Commission on Jail Standards.

(c) Subsection (a) of this section applies to an animal admitted to an animal hospital, including an animal that is a permanent resident of a zoo, wildlife park, exotic game ranch, wildlife management program, or state or federal research facility.

(d) An official prescription form is not required in a long-term care facility (LTCF) if:

(1) an individual administers the substance to an inpatient from the facility's medical emergency kit;

(2) the individual administering the substance is an authorized practitioner or an agent acting under the practitioner's order; and

(3) the facility maintains the proper records as required for an emergency medical kit in an LTCF.

(e) An official prescription form is not required when a therapeutic optometrist administers a topical ocular pharmaceutical agent in compliance with:

(1) the Texas Optometry Act; and

(2) a rule adopted by the Texas Optometry Board under the authority of the Texas Optometry Act.

§315.5. Pharmacy Responsibility - Generally - Effective September 1, 2016.

(a) Upon receipt of a properly completed prescription form, a dispensing pharmacist must:

(1) if the prescription is for a Schedule II controlled substance, ensure the date the prescription is presented is not later than 21 days after the date of issuance;

(2) if multiple prescriptions are issued by the prescribing practitioner allowing up to a 90-day supply of Schedule II controlled substances, ensure each prescription is neither dispensed prior to the earliest date intended by the practitioner nor dispensed beyond 21 days from the earliest date the prescription may be dispensed;

(3) record the date dispensed and the pharmacy prescription number;

(4) indicate whether the pharmacy dispensed to the patient a quantity less than the quantity prescribed; and

(5) if issued on an official prescription form, record the following information, if different from the prescribing practitioner's information:

(A) the brand name or, if none, the generic name of the controlled substance dispensed; or

(B) the strength, quantity, and dosage form of the Schedule II controlled substance used to prepare the mixture or compound.

(b) The prescription presented for dispensing is void, and a new prescription is required, if:

(1) the prescription is for a Schedule II controlled substance, 21 days after issuance, or 21 days after any earliest dispense date; or

(2) the prescription is for a Schedule III, IV, or V controlled substance, more than six months after issuance or has been dispensed five times during the six months after issuance.

§315.6. Pharmacy Responsibility - Electronic Reporting - Effective September 1, 2016.

Within seven days after the date a controlled substance prescription is dispensed, a pharmacy must electronically submit to the board the following data elements from all dispensed controlled substance prescriptions:

(1) the prescribing practitioner's DEA registration number including the prescriber's identifying suffix of the authorizing hospital or other institution's DEA number when applicable;

(2) the official prescription form control number if dispensed from a written official prescription form, unless the prescription is electronic and meets the requirements of Code of Federal Regulations, Title 21, Part 1311;

(3) the board's designated placeholder entered into the control number field if the prescription is electronic;

(4) the patient's name, age or date of birth, and address including city, state, and zip code; or such information on the animal's owner if the prescription is for veterinarian services;

(5) the date the prescription was issued and dispensed;

(6) the NDC # of the controlled substance dispensed;

(7) the quantity of controlled substance dispensed;

(8) the pharmacy's prescription number; and

(9) the pharmacy's DEA registration number.

§315.7. Pharmacy Responsibility - Oral, Telephonic, or Emergency Prescription - Effective September 1, 2016.

(a) If a pharmacy dispenses a controlled substance pursuant to an orally or telephonically communicated prescription from a practitioner or the practitioner's designated agent, the prescription must be promptly reduced to writing, including the information required:

(1) by law for a standard prescription; and

(2) by law and this subchapter for an official prescription, if issued for a Schedule II controlled substance in an emergency situation.

(b) After dispensing a Schedule II controlled substance pursuant to an orally or telephonically communicated prescription, the dispensing pharmacy must:

(1) maintain the written record created under subsection (a) of this section;

(2) note the emergency nature of the prescription;

(3) upon receipt from the practitioner, attach the original official prescription to the orally or telephonically communicated prescription; and

(4) retain both documents in the pharmacy records.

(c) A pharmacy that dispenses Schedule III, IV, or V controlled substances pursuant to an orally or telephonically communicated prescription must inform the prescribing practitioner in the event of an emergency refill of the prescription.

(d) All records generated under this section must be maintained for two years from the date the substance was dispensed.

§315.8. Pharmacy Responsibility - Modification of Prescription - Effective September 1, 2016.

The pharmacy is responsible for documenting the following information regarding a modified prescription:

(1) date the change or adding of information was authorized;

(2) information that was authorized to be added or changed;

(3) name of the prescribing practitioner granting the authorization; and

(4) initials or identification code of the pharmacist.

§315.9. Pharmacy Responsibility - Out-of-State Practitioner - Effective September 1, 2016.

(a) A Schedule II controlled substance prescription issued by a practitioner in another state not on the board's official prescription form may be dispensed if:

(1) the practitioner is authorized by the other state to prescribe the substance;

(2) the pharmacy has a plan approved by and on file with the board allowing the activity; and

(3) the pharmacy processes and submits the prescription according to the reporting requirements approved in the plan.

(b) The pharmacy may dispense a prescription for a Schedule III through V controlled substance issued by a practitioner in another state if the practitioner is authorized by the other state to prescribe the substance.

§315.10. Return of Unused Official Prescription Form - Effective September 1, 2016.

(a) An unused official prescription form is invalid and the practitioner or another person acting on behalf of the practitioner must return the unused form to the board with an appropriate explanation not later than the 30th day after the date:

(1) the practitioner's license to practice, DEA number is canceled, revoked, suspended, denied, or surrendered or amended to exclude the handling of all Schedule II controlled substances; or

(2) the practitioner is deceased.

(b) An individual who is an institutional practitioner must return an unused official prescription form to the administrator of the hospital or other training institution upon completion or termination of the individual's training at the hospital or institution. The administrator must return an unused official prescription form to the board not later than the 30th day after the date the individual completes or terminates all training programs.

(c) No individual may continue to use an official prescription form issued under an institutional practitioner's DEA number or similar number after the individual has been properly and individually licensed as a practitioner by the appropriate state health regulatory agency.

§315.11. Release of Prescription Data - Effective September 1, 2016.

(a) A person listed under §481.076(a) of the TCSA must show proper need for the information when requesting the release of prescription data. The showing of proper need is ongoing.

(b) A pharmacist may delegate access to prescription data to a pharmacy technician as defined by Texas Occupations Code, §551.003, employed at the pharmacy and acting under the direction of the pharmacist.

(c) A practitioner may delegate access to prescription data to an employee or other agent of the practitioner and acting at the direction of the practitioner.

§315.12. Schedule III through V Prescription Forms - Effective September 1, 2016.

(a) A practitioner, as defined in the TCSA, §481.002(39)(A), (C), and (D), may use prescription forms ordered through individual sources or through an electronic prescription that includes the controlled substances registration number issued by the board and meets all requirements of the TCSA.

(b) If a written prescription form is to be used to prescribe a controlled substance the dispensing practitioner must be registered with the DEA under both state and federal law to prescribe controlled substances.

§315.13. Official Prescription Form - Effective September 1, 2016.

(a) Accountability. A practitioner who obtains from the board an official prescription form is accountable for each numbered form.

(b) Prohibited acts. A practitioner may not:

(1) allow another practitioner to use the individual practitioner's official prescription form;

(2) pre-sign an official prescription blank;

(3) post-date an official prescription; or

(4) leave an official prescription blank in a location where the practitioner should reasonably believe another could steal or misuse a prescription.

(c) While not in use. While an official prescription blank is not in immediate use, a practitioner may not maintain or store the book at a location so the book is easily accessible for theft or other misuse.

(d) Voided. A practitioner must account for each voided official prescription form by sending the voided form to the board.

(e) Types of forms. Forms may be single or multiple copy forms as provided by the board.

(f) Faxed forms. Faxed official prescription forms will be accounted for as in the TCSA, §481.074(o).

§315.14. Official Prescription - Effective September 1, 2016.

(a) Report lost forms. Not later than close of business on the day of discovery, a practitioner must report a lost or stolen official prescription form to:

(1) the local police department or sheriff's office in an effective manner; and

(2) the board.

(b) Recovery report. Not later than close of business on the day of recovery of an official prescription form previously reported lost or stolen, a practitioner must, before using the recovered form, notify:

(1) the local law enforcement agency to which the matter was originally reported; and

(2) the board.

(c) Replacement/lost form. Not later than the close of business on the day that an official prescription is replaced or reported lost, with or without a replacement, the prescribing practitioner, or designated agent, shall report to the board the following:

(1) patient name, address, date of birth or age;

(2) all drug information; and

(3) official prescription form control number.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600770

Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 10, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8026

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.3, 703.11, 703.12, 703.14, 703.20, 703.21

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts amendments to §§703.3, 703.11, 703.12, 703.14, 703.20, and 703.21 regarding requests for applications, clarification on grant applications, matching form due dates, the prevention percentage of overall grant funds, no cost extensions, tobacco free policy waivers, report due dates, and report approval rules. CPRIT adopts §§703.3, 703.11, 703.14, and 703.20 without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8721). CPRIT adopts §703.21 with changes to the proposed text to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8721) and the rule will be republished. CPRIT adopts the amendment to §703.12 without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9459). After consideration of the public comments responsive to the rule change proposed for §703.13, CPRIT will not adopt a rule change to §703.13 as proposed in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8721).

Reasoned Justification

The proposed amendments affect various aspects of the processes related to grants for cancer prevention and research. One proposed amendment removes the requirement that requests for applications (RFAs) be published in the *Texas Register* which eliminates a duplicative step when RFAs are announced on the CPRIT website and listserv. Another proposed amendment clarifies that CPRIT staff or CPRIT's third party grants administrator may contact the grant applicant to seek clarification on information provided in a grant application. The proposed amendments also change the due date of matching verification forms, clarify the annual ten percent cap on the allocation of grant award funds to cancer prevention grants, and directs the CEO to announce the full amount of grant award funds that are available to be awarded for the fiscal year. A proposed amendment to the "no cost extension" request process allows CPRIT's Chief Executive Officer to review and approve a request that is submitted outside of the specified deadline. Another proposed amendment allows grantees to request a waiver to the tobacco free policy; this is applicable to research projects that require tobacco and are conducted at the grantee's institution. The last series of proposed amendments affect grantee reports. One proposed amendment allows a grantee to receive more time in submitting required reports that are due before the execution date of a contract. Another proposed amendment requires matching fund reports, progress reports, and Financial Status Reports (FSRs) be approved by, rather than simply submitted to, the Institute in order for a grantee to receive disbursement of grant funds.

A typographical error to the proposed amendment §703.21(b)(2)(C) must be corrected. The subsection should read: "Notwithstanding subsection (2), in the event that the Grant Recipient and Institute execute the Grant Contract after the effective date of the Grant Contract, the Program Officer may approve additional time for the Grant Recipient to prepare and submit the outstanding FSR(s). The Program Officer's approval may cover more than one FSR and more than one fiscal quarter." The word "one" was omitted from the last sentence of the subsection. This correction does not substantially change the meaning of the subsection as it was originally proposed.

Summary of Public Comments and Staff Recommendation

CPRIT received public comments from Kimberly F. Turner, Chief Audit Executive, Texas Tech University (Texas Tech) regarding proposed changes to §703.13 and from Wesley Harrott, Associate Vice President, Research Administration, The University of Texas M.D. Anderson Cancer Center (M.D. Anderson) regarding the proposed changes to §703.21.

Texas Tech submitted comments in reference to the proposed change to §703.13, which eliminates a program specific independent audit from the options a grantee may use to fulfill the audit requirement. Texas Tech contends that the program specific independent audit should remain a choice for grantees. In its public comment, Texas Tech asserts that a program specific independent audit is different from an agreed upon procedures audit. It is Texas Tech's opinion that retaining the option for a program specific independent audit, "provides a higher level of assurance as to the proper expenditure of CPRIT funds." While the agency does not concede the qualitative comparison made between the program specific independent audit and the agreed upon procedures option, CPRIT is persuaded that the program specific independent audit should remain an option for grantees at this time. The change originally proposed by the CPRIT will not be made. Texas Tech also comments suggesting that CPRIT obtain an annual audit of all expenditures for all grants made to institutions of higher education as defined by Texas Education Code §61.003. Texas Tech contends that, "This statewide engagement could be obtained at a much lower cost than the combined cost of multiple engagements the various higher education grant recipients must currently obtain." CPRIT declines to make this change to the rule because it is outside the scope of this proposed rulemaking.

M.D. Anderson submitted comments regarding proposed changes to §703.21. M.D. Anderson makes a general request that the rule be changed "to add a reasonable timeline for the CPRIT approval process e.g. 30 days for all reports and documents so that the disbursement of funds will be received in a timely manner." CPRIT declines to make this change to the rule because it is outside of the scope of the proposed rulemaking.

M.D. Anderson also comments with regard to the proposed change to §703.21(b)(2)(C), seeking clarity on how CPRIT will inform the grant recipient of the approval for additional time to prepare and submit additional FSRs. CPRIT has made a clarifying change to the proposed amendment to make clear that the Program Officer's approval will be in writing and maintained

in CPRIT's grant management system. While it is likely that CPRIT staff and the grant recipient will be communicating contemporaneously about the pending approval for additional time to prepare and submit outstanding FSRs, this non-substantive change ensures that the grant recipient will be notified of the Program Officer's approval via CPRIT's grant management system. Additionally, the same non-substantive change has been added to §703.21(b)(3)(C) to provide the same clarity.

The amendment originally proposed to §703.13 and published in the December 4, 2015, issue of the *Texas Register* will not be made. The proposed amendments to §703.21 will be republished to reflect the correction of the typographical error and the non-substantive change in the proposed amendment to §703.21(b)(2)(C). The remaining amendments to Chapter 703 will be adopted as published in the December 4, and December 25, 2015, issues of the *Texas Register* and will not be republished.

The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

§703.21. Monitoring Grant Award Performance and Expenditures.

(a) The Institute, under the direction of the Chief Executive Officer, shall monitor Grant Awards to ensure that Grant Recipients comply with applicable financial, administrative, and programmatic terms and conditions and exercise proper stewardship over Grant Award funds. Such terms and conditions include requirements set forth in statute, administrative rules, and the Grant Contract.

(b) Methods used by the Institute to monitor a Grant Recipient's performance and expenditures may include:

(1) Financial Status Reports Review - Quarterly financial status reports shall be submitted to the Institute within 90 days of the end of the state fiscal quarter (based upon a September 1 - August 31 fiscal year). The Institute shall review expenditures and supporting documents to determine whether expenses charged to the Grant Award are:

(A) Allowable, allocable, reasonable, necessary, and consistently applied regardless of the source of funds; and

(B) Adequately supported with documentation such as cost reports, receipts, third party invoices for expenses, or payroll information.

(2) Timely submission of Financial Status Reports - The Grant Recipient waives the right to reimbursement of project costs incurred during the reporting period if the financial status report for that quarter is not submitted to the Institute within 30 days of the FSR due date. Waiver of reimbursement of project costs incurred during the reporting period also applies to Grant Recipients that have received advancement of Grant Award funds.

(A) For purposes of this rule, the "FSR due date" is 90 days following the end of the state fiscal quarter.

(B) The Chief Executive Officer may approve a Grant Recipient's request to defer submission of the reimbursement request for the current fiscal quarter until the next fiscal quarter if, on or before the original FSR due date, the Grant Recipient submits a written explanation for the Grant Recipient's inability to complete a timely submission of the FSR.

(C) Notwithstanding subsection (2), in the event that the Grant Recipient and Institute execute the Grant Contract after the effective date of the Grant Contract, the Chief Program Officer may approve additional time for the Grant Recipient to prepare and submit the outstanding FSR(s). The approval shall be in writing and maintained in the Institute's electronic Grants Management System. The Chief Program Officer's approval may cover more than one FSR and more than one fiscal quarter.

(D) In order to receive disbursement of grant funds, the most recently due FSR must be approved by CPRIT.

(3) Grant Progress Reports - The Institute shall review Grant Progress Reports to determine whether sufficient progress is made consistent with the scope of work and timeline set forth in the Grant Contract.

(A) The Grant Progress Reports shall be submitted at least annually, but may be required more frequently pursuant to Grant Contract terms or upon request and reasonable notice of the Institute.

(B) The annual Grant Progress Report shall be submitted within sixty (60) days after the anniversary of the effective date of the Grant Contract. The annual Grant Progress Report shall include at least the following information:

(i) An affirmative verification by the Grant Recipient of compliance with the terms and conditions of the Grant Contract;

(ii) A description of the Grant Recipient's progress made toward completing the scope of work specified by the Grant Contract, including information, data, and program metrics regarding the achievement of project goals and timelines;

(iii) The number of new jobs created and the number of jobs maintained for the preceding twelve month period as a result of Grant Award funds awarded to the Grant Recipient for the project;

(iv) An inventory of the equipment purchased for the project in the preceding twelve month period using Grant Award funds;

(v) A verification of the Grant Recipient's efforts to purchase from suppliers in this state more than 50 percent goods and services purchased for the project with grant funds;

(vi) A Historically Underutilized Businesses report;

(vii) Scholarly articles, presentations, and educational materials produced for the public addressing the project funded by the Institute;

(viii) The number of patents applied for or issued addressing discoveries resulting from the research project funded by the Institute;

(ix) A statement of the identities of the funding sources, including amounts and dates for all funding sources supporting the project;

(x) A verification of the amounts of Matching Funds dedicated to the research that is the subject of the Grant Award for the period covered by the annual report, which shall be submitted pursuant to the timeline in §703.11. In order to receive disbursement of grant funds, the most recently due verification of the amount of Matching Funds must be approved by CPRIT;

(xi) All financial information necessary to support the calculation of the Institute's share of revenues, if any, received by the Grant Recipient resulting from the project; and

(xii) A single audit determination form.

(C) Notwithstanding subsection (B), in the event that the Grant Recipient and Institute execute the Grant Contract after the effective date of the Grant Contract, the Chief Program Officer may approve additional time for the Grant Recipient to prepare and submit the

outstanding reports. The approval shall be in writing and maintained in the Institute's electronic Grants Management System. The Chief Program Officer's approval may cover more than one report and more than one fiscal quarter.

(D) In addition to annual Grant Progress Reports, a final Grant Progress Report shall be filed no more than ninety (90) days after the termination date of the Grant Contract. The final Grant Progress Report shall include a comprehensive description of the Grant Recipient's progress made toward completing the scope of work specified by the Grant Contract, as well as other information specified by the Institute.

(E) The Grant Progress Report will be evaluated by a grant manager pursuant to criteria established by the Institute. The evaluation shall be conducted under the direction of the Chief Prevention Officer, the Chief Product Development Officer, or the Chief Scientific Officer, as may be appropriate. Required financial reports associated with the Grant Progress Report will be reviewed by the Institute's financial staff. In order to receive disbursement of grant funds, the final progress report must be approved by CPRIT.

(F) If the Grant Progress Report evaluation indicates that the Grant Recipient has not demonstrated progress in accordance with the Grant Contract, then the Chief Program Officer shall notify the Chief Executive Officer and the General Counsel for further action.

(i) The Chief Program Officer shall submit written recommendations to the Chief Executive Officer and General Counsel for actions to be taken, if any, to address the issue.

(ii) The recommended action may include termination of the Grant Award pursuant to the process described in §703.14 of this chapter (relating to Termination, Extension, and Close Out of Grant Contracts).

(G) If the Grant Recipient fails to submit required financial reports associated with the Grant Progress Report, then the Institute financial staff shall notify the Chief Executive Officer and the General Counsel for further action.

(H) In order to receive disbursement of grant funds, the most recently due progress report must be approved by CPRIT.

(I) If a Grant Recipient fails to submit the Grant Progress Report within 60 days of the anniversary of the effective date of the Grant Contract, then the Institute shall not disburse any Grant Award funds as reimbursement or advancement of Grant Award funds until such time that the delinquent Grant Progress Report is approved.

(J) In addition to annual Grant Progress Reports, Product Development Grant Recipients shall submit a Grant Progress Report at the completion of specific tranches of funding specified in the Award Contract. For the purpose of this subsection, a Grant Progress Report submitted at the completion of a tranche of funding shall be known as "Tranche Grant Progress Report."

(i) The Institute may specify other required reports, if any, that are required to be submitted at the time of the Tranche Grant Progress Report.

(ii) Grant Funds for the next tranche of funding specified in the Grant Contract shall not be disbursed until the Tranche Grant Progress Report has been reviewed and approved pursuant to the process described in this section.

(4) Desk Reviews - The Institute may conduct a desk review for a Grant Award to review and compare individual source documentation and materials to summary data provided during the Financial Status Report review for compliance with financial requirements set forth in the statute, administrative rules, and the Grant Contract.

(5) Site Visits and Inspection Reviews - The Institute may conduct a scheduled site visit to a Grant Recipient's place of business to review Grant Contract compliance and Grant Award performance issues. Such site visits may be comprehensive or limited in scope.

(6) Audit Reports - The Institute shall review audit reports submitted pursuant to §703.13 of this chapter (relating to Audits and Investigations).

(A) If the audit report findings indicate action to be taken related to the Grant Award funds expended by the Grant Recipient or for the Grant Recipient's fiscal processes that may impact Grant Award expenditures, the Institute and the Grant Recipient shall develop a written plan and timeline to address identified deficiencies, including any necessary Grant Contract amendments.

(B) The written plan shall be retained by the Institute as part of the Grant Contract record.

(c) All required Grant Recipient reports and submissions described in this section shall be made via an electronic grant portal designated by the Institute, unless specifically directed to the contrary in writing by the Institute.

(d) The Institute shall document the actions taken to monitor Grant Award performance and expenditures, including the review, approvals, and necessary remedial steps, if any.

(1) To the extent that the methods described in subsection (b) of this section are applied to a sample of the Grant Recipients or Grant Awards, then the Institute shall document the Grant Contracts reviewed and the selection criteria for the sample reviewed.

(2) Records will be maintained in the electronic Grant Management System as described in §703.4 of this chapter (relating to Grants Management System).

(e) The Chief Compliance Officer shall be engaged in the Institute's Grant Award monitoring activities and shall notify the General Counsel and Oversight Committee if a Grant Recipient fails to meaningfully comply with the Grant Contract reporting requirements and deadlines, including Matching Funds requirements.

(f) The Chief Executive Officer shall report to the Oversight Committee at least annually on the progress and continued merit of each Grant Program funded by the Institute. The written report shall also be included in the Annual Public Report. The report should be presented to the Oversight Committee at the first meeting following the publication of the Annual Public Report.

(g) The Institute may rely upon third parties to conduct Grant Award monitoring services independently or in conjunction with Institute staff.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600747

Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Effective date: March 9, 2016
Proposal publication date: December 4, 2015
Proposal publication date: December 25, 2015
For further information, please call: (512) 463-3190

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The Texas Department of Insurance adopts amendments to 28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4125, 5.4134 - 5.4136, 5.4141, 5.4144, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4190; the repeal of existing 28 TAC §§5.4126 - 5.4128, 5.4142, 5.4143, and 5.4145 - 5.4149; and new 28 TAC §§5.4126, 5.4127, 5.4142, 5.4143, 5.4145, and 5.4912. These amendments, repeals, and new sections implement the funding portions of SB 900, 84th Legislature, Regular Session (2015). Amended §§5.4101, 5.4102, 5.4124, 5.4125, 5.4135, 5.4161, 5.4171, 5.4172, 5.4173, 5.4185, and 5.4187 and new §5.4912 are adopted with changes to the proposed text as published in the October 9, 2015, issue of the *Texas Register* (40 TexReg 7020). The other amendments, repeals and new sections are adopted without changes and will not be republished.

REASONED JUSTIFICATION. SB 900 changed the funding structure of the Texas Windstorm Insurance Association (association), the residual insurer of last resort for windstorm and hail insurance in the designated catastrophe area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market. The adoption of the amendments, repeals, and new sections in this order are necessary to implement the changed funding structure. These sections concern funding for losses and operating expenses in excess of the association's net premium and other revenue and amounts available in the catastrophe reserve trust fund. These sections also concern procedures for ordering premium surcharges and assessments of association member insurers under Insurance Code Chapter 2210, Subchapters B-1 and M.

Since 2009, the Insurance Code has provided that the association must pay for losses that exceed its premium and other revenue and amounts available in the catastrophe reserve trust fund with the proceeds of three classes of public securities, issued on the association's behalf by the Texas Public Finance Authority (TPFA). Statute provided for the payment of the public securities from the association's net premium and other revenue, assessments on association member insurers, premium surcharges on certain property and casualty insurance policies in the catastrophe area, or a combination thereof, depending on the class of public security. TDI adopted rules in 2011 to implement the statute and adopted new and amended rules in 2014 to implement statutory changes, including changes in the lines of insurance subject to a premium surcharge and the creation of an alternative source of payment for certain public securities.

Under SB 900, losses that are greater than the association's net premium and other revenue and amounts in the catastrophe reserve trust fund are no longer paid from the proceeds of three classes of public securities. Instead, these losses must be paid with proceeds of alternating classes of public securities and member insurer assessments, beginning with class 1 public securities and ending with class 3 assessments. All three classes of public securities are to be paid for with the association's net premium and other revenue and, if that is insufficient, with a premium surcharge on association policies. If issuing class 2 or class 3 public securities payable from these sources is not possible or the commissioner of insurance determines that issuance is financially unreasonable, TPFA may issue class 2 or class 3 public securities paid for from a contingent source: a premium surcharge on certain property and casualty policies and all association and Texas FAIR Plan Association policies insuring property located in the catastrophe area.

Sections 5.4126 - 5.4128, 5.4142, 5.4143, and 5.4145 - 5.4149 are repealed under Insurance Code §§2210.612, 2210.613, 2210.6131, 2210.6132, and 36.001. These sections were previously adopted to implement HB 3, 82nd Legislature, 1st Called Session (2011). Under HB 3 and its predecessor, HB 4409, 81st Legislature, Regular Session (2009), losses in excess of the association's net premium and other revenue were paid from the proceeds of three classes of public securities. HB 3 amended Insurance Code Chapter 2210 to include §2210.6136, which allowed the commissioner to authorize the issuance of certain class 2 public securities in the event the association's class 1 public securities were not marketable.

TDI adopted §§5.4126 - 5.4128, 5.4148 and 5.4149 to establish processes for the issuance and repayment of class 2 public securities under Insurance Code §2210.6136. Because SB 900, in addition to changing the association's funding structure, repealed Insurance Code §2210.6136, §§5.4126 - 5.4128, 5.4148 and 5.4149 are obsolete. SB 900 amended Insurance Code §2210.613 to change the payment source for class 2 public securities paid under that section from a combination of premium surcharges on certain property and casualty policies in the catastrophe area and member assessments to premium surcharges on association policies. TDI adopted §5.4143 and §§5.4145 - 5.4147 to address the deposit of amounts collected from member assessments and the handling of excess member assessment revenue. Because member assessments are no longer used to pay for public securities, these sections are obsolete. TDI repeals of §5.4142, which addressed excess obligation revenue fund amounts, because SB 900 amended Insurance Code §2210.609 to remove the obligation revenue fund. Excess funds are addressed in amended §5.4144 and replacement §5.4145.

The amendments, repeals, and new sections conform TDI rules to current law. The repealed sections implemented Insurance Code §2210.6136, which provided for an alternative source of payment for certain class 2 public securities and which SB 900 repealed. The amended, replacement, and new sections establish procedures for the approval and determination of premium surcharges on association policies and procedures for the issuance of class 2 or class 3 public securities paid from the contingent source. The amendments also contain conforming changes for clarity and agency style.

TDI accepted written comments on the proposed amendments, replacements, and repealed and new sections from October 9, 2015, to November 9, 2015, and heard testimony at a public hearing on October 28, 2015. In response to comments on the proposal, TDI has adopted changes to the proposed text in §§5.4124, 5.4125, 5.4172, 5.4185, and 5.4187. None of the changes introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

The following paragraphs explain amended 28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4125, 5.4134 - 5.4136, 5.4141, 5.4144, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4190; replacement 28 TAC §§5.4126, 5.4127, 5.4142, 5.4143, and 5.4145 and new 28 TAC §5.4912 in greater detail.

§5.4101. Applicability. The association operates under a plan of operation. Section 5.4001 contains the association's plan of operation, but over time that plan has been augmented by the adoption of other sections. Section 5.4101(a) is amended to reflect the addition or deletion of sections. Sections listed here will be part of the association's plan of operation and will control over any conflicting provision in §5.4001 of Division 3.

Section 5.4101(a) as adopted is revised from the proposed text to add two section headings and correct a third section heading in the parenthetical describing the sections listed in the applicability statement.

§5.4102. Definitions. Section 5.4102 has been amended to delete definitions relating to the implementation of Insurance Code §2210.6136, which SB 900 repealed, and to add new definitions related to implementation of the new funding structure under SB 900. New terms that are defined in this section include: "association surcharge," "association surcharge percentage," "authorized representative of the department," "class 2 payment obligation," "class 3 payment obligation," "contingent surcharge," "net investment income," and "net premium payment obligations." Existing definitions for "class 1 payment obligation," "contractual coverage amount," "net gain from operations," "net revenues," "other revenue," "premium," and "premium surcharge trust funds" have also been changed to conform to the new funding structure. The definition of "insured property" is moved from §5.4172 of Division 3 to this section. Other terms are amended nonsubstantively to conform to agency style.

§5.4121. Financing Arrangements. Insurance Code §2210.072 and §2210.612 permit the association to enter into financing arrangements directly with a market source to enable the association to pay losses or obtain public securities under Insurance Code §2210.072. Conforming changes are made to §5.4121 to reflect that under SB 900, net premium and other revenue of the association is pledged for the payment of class 1, class 2, and class 3 public securities issued under Insurance Code §§2210.612, 2210.613, and 2210.6131, respectively. The association may pay a financing arrangement with, among other sources, net premium or other revenue that is not required for payment of class 1, class 2, or class 3 payment obligations. The section is also changed to reflect that, due to the repeal of Insurance Code §2210.6136, the association will not have premium surcharge or member assessment repayment obligations.

§5.4123. Public Securities Request, Approval, and Issuance. Before public securities may be issued, Insurance Code §2210.604 requires the association to submit a request for the issuance of public securities. The commissioner must approve that request before TPFA may issue public securities on behalf of the association. Section 5.4123 is amended to delete references to existing §5.4126 (relating to Alternative for Issuing Class 2 and Class 3 Public Securities) of Division 3. Existing §5.4126 implements Insurance Code §2210.6136, which SB 900 repealed. TDI repeals and replaces §5.4126. This section is also amended to remove reinsurance proceeds from the list of information the commissioner may rely on in considering the association's request for the issuance of public securities. Reinsurance proceeds are no longer applicable in this determination because SB 900 amended Insurance Code §2210.453 to require that reinsurance attach at a point that is not less than the aggregate amount of all funding available to the association under Subchapter B-1.

§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event. Class 1 public securities may be issued before or after a catastrophic event. Conforming changes are made to §5.4124 to reflect that under SB 900, the maximum amount of pre-event class 1 public securities that TPFA may issue is changed from $1 billion to $500 million. The section is also amended to make clear that, for the purposes of determining the amount of pre-event public securities that can be issued, the Series 2014 Pre-Event Class 1 Public Securities that TPFA issued under the previous law are pre-event class 1 public securities under the new law.

Amended §5.4124(e) also clarifies when certain pre-event public security proceeds are considered depleted. Except as provided in §5.4161, the maximum amount of class 1 public securities that may be outstanding must be issued and the proceeds spent before class 1 assessments may be accessed for the same catastrophe year. Under §5.4124 as amended, public security proceeds used to pay issuance costs, establish a reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year the remaining principal is depleted to pay for a catastrophe or used to retire the public securities. The amounts of those proceeds that are considered depleted would then need to be counted in determining the amount of class 1 public securities that must be issued to reach the maximum authorized amount of outstanding class 1 public securities.

In response to a comment, amended §5.4124(e) differs from the proposed version to clarify that in that subsection, the word "proceeds" refers to "public security proceeds. "

§5.4125. Issuance of Public Securities after a Catastrophic Event. Conforming changes are made to Section 5.4125 to reflect that under SB 900, the Series 2014 Pre-Event Class 1 Public Securities that TPFA issued under the previous law are considered pre-event class 1 public securities when determining the amount of post-event class 1 public securities that may be issued. Conforming changes are also made to reflect the new funding structure under SB 900, which provides six layers of alternating public securities and assessments on association members, instead of three layers of public securities. The section is also amended to clarify that for the issuance of class 2 or class 3 public securities under Insurance Code §2210.6132, the association must make a separate request under §5.4127 of Division 3.

Amended §5.4125(d) also clarifies when certain public security proceeds are considered depleted. Except as provided in §5.4161, the maximum amount of class 1 public securities that may be outstanding must be issued and the proceeds spent before class 1 assessments may be accessed for the same catas-

trophe year. Under §5.4125 as amended, public security proceeds used to pay issuance costs, establish a reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year the remaining principal is depleted to pay for a catastrophe or used to retire the public securities. The amounts of those proceeds that are considered depleted would then need to be counted in determining the amount of class 1 public securities that must be issued to reach the maximum amount of outstanding class 1 public securities.

In response to a comment, amended §5.4125(d) differs from the proposed version to clarify that in that subsection, the word "proceeds" refers to public security proceeds.

§5.4126. Determination of the Association Surcharge Percentage. This order repeals and replaces §5.4126 (relating to Alternative for Issuing Class 2 and Class 3 Public Securities). The repealed section implemented Insurance Code §2210.6136, which SB 900 repealed.

The replacement section implements provisions in Insurance Code §§2210.612, 2210.613, and 2210.6131, which provide that class 1, class 2, and class 3 public securities may be payable from premium surcharges on association policies (association surcharges). While public securities are outstanding, the association is required to quarterly determine if its net premium and other revenue are sufficient for payment of its payment obligations for any outstanding class 1, class 2, and class 3 public securities. If the association determines its net premium and other revenue are not sufficient, it must promptly request that the commissioner approve association surcharges. The replacement section also requires the association to request an association surcharge any time, including before the public securities have been issued, if it determines its premium and revenue is not sufficient.

The replacement §5.4126 specifies the information that the association must provide to the commissioner in a request to implement an association surcharge and it allows the commissioner to independently determine that an association surcharge is necessary. The commissioner will make a surcharge determination within 10 business days. The section contemplates that the association will surcharge all association policies effective on a specified surcharge date, and not monthly as the policies renew.

§5.4127. Contingent Sources of Payment for Class 2 and Class 3 Public Securities. This order repeals and replaces §5.4127 (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharge and Member Assessments). The repealed section implemented Insurance Code §2210.6136, which SB 900 repealed.

The replacement section implements new Insurance Code §2210.6132, which SB 900 added. Insurance Code §2210.6132 provides that if the commissioner, after consultation with TPFA, determines that class 2 or class 3 public securities payable from the association's premium and association surcharges cannot be issued or it is "financially unreasonable to do so," then the commissioner must order that class 2 and class 3 public securities are payable from premium surcharges on coastal property and automobile policies (contingent surcharges). The replacement §5.4127 specifies the information the association must provide to the commissioner in order to obtain approval for the repayment of public securities from contingent surcharges.

§5.4134. Excess Public Security Proceeds. Section 5.4134 states how excess public security proceeds may be used and the conditions under which public securities may be paid before their full term. This section is amended with minor conforming and stylistic changes.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis. Section 5.4135 is amended to add the effect of depopulation under Insurance Code Chapter 2210, Subchapter O, which SB 900 added, to the list of items the association must consider when determining the amount of class 1 public securities that cannot be issued. The section is also amended to reflect TDI's current writing style guidelines, and to delete references to the association's premium surcharge and member assessment repayment obligations because these relate to the implementation of Insurance Code §2210.6136, which SB 900 repealed. The section also deletes references to reinsurance or alternative risk financing as alternatives to funding through public securities because SB 900 requires that reinsurance and alternative risk financing be used to provide funding only after all funding provided for under Subchapter B-1 of Chapter 2210 has been accessed.

§5.4136. Association Rate Filing. Section 5.4136 outlines what the association's rates must consider while public securities payable from the association's net premium and other revenue are outstanding. Conforming changes are made to this section to reflect changes SB 900 made to the association's funding structure. Under the new funding structure, class 1, class 2, or class 3 public securities may be paid from the association's net premium and other revenue. Under the pre-SB 900 funding structure, only class 1 public securities could be paid from the association's net premium and other revenue. The section is also amended to make clear that the section's requirements apply to the Series 2014 Pre-Event Class 1 Public Securities issued before the enactment of SB 900.

§5.4141. Class 1 Public Security Trust Fund. The association must deposit revenues pledged for the payment of class 1 public securities into a trust fund. Section 5.4141 is amended to conform it to changes made by SB 900 regarding this fund. SB 900 eliminated the "Obligation Revenue Fund" into which the association deposited net premium and other revenue for the payment of class 1 public securities, and created the "Class 1 Public Security Trust Fund" into which the association must deposit new premium, other revenue, and association surcharges for the payment of class 1 public securities. The section is also amended to state that the association may not use or encumber association surcharges used to pay for class 1 public securities.

§5.4142. Class 2 and Class 3 Public Security Trust Funds. This order repeals and replaces §5.4142 (relating to Excess Obligation Revenue Fund Amounts). Excess funds are addressed in amended §5.4144 and replacement §5.4145 (relating to Excess Premium Surcharge Revenue, and Excess Net Premium and Other Revenue, respectively). The replacement §5.4142 implements SB 900's amendments to Insurance Code §2210.609, which create the class 2 and class 3 public security trust funds for the deposit of the association's net premium, other revenue, and association surcharges.

§5.4143. Premium Surcharge Trust Fund. This order repeals and replaces §5.4143 (relating to Trust Fund for the Payment of Class 2 Public Securities). The repealed §5.4143 addressed the deposit of premium surcharges collected under Insurance Code §2210.613, which SB 900 amended. The replacement §5.4143 provides for the trust fund, or funds, where the association and other insurers must deposit contingent surcharges,

which may be required to pay for class 2 or class 3 public securities. This replacement section incorporates large sections of existing §5.4143, as both address the deposit of surcharges on non-association, coastal policies by insurers.

§5.4144. Excess Premium Surcharge Revenue. Conforming changes are made to Section 5.4144 to reflect that under SB 900, the association may impose association surcharges to help pay for class 1, class 2, or class 3 public securities, and the commissioner may order contingent surcharges to pay for class 2 or class 3 public securities.

§5.4145. Excess Net Premium and Other Revenue. This order repeals and replaces §5.4145 (relating to Excess Class 2 Member Assessment Revenue). The repealed §5.4145 is no longer necessary because SB 900 amended Insurance Code Chapter 2210, Subchapter M, so that insurer member assessments are used to pay for association losses directly, rather than being used to pay for public securities. The replacement §5.4145 addresses what may be done with excess net premium and other revenue because the statute does not address this directly. Under replacement §5.4145, excess net premium and other revenue collected in the public security trust funds is an association asset and may be used for any purpose authorized in Insurance Code §2210.056 or deposited in the Catastrophe Revenue Trust Fund (CRTF). The replacement section largely follows existing §5.4142 (Excess Obligation Revenue Fund Amounts), which addresses what happens to excess net premium and other revenue used to pay for class 1 public securities under pre-SB 900 law.

§5.4146. Member Assessment Trust Fund for the Repayment of Class 3 Public Securities. This order repeals, without replacing, §5.4146. This section is no longer necessary because SB 900 amended Insurance Code Chapter 2210, Subchapter M, so that insurer member assessments are used to pay for association losses directly, rather than being used to pay for public securities.

§5.4147. Excess Class 3 Member Assessment Revenue. This order repeals, without replacing, §5.4147. This section is no longer necessary because SB 900 amended Insurance Code Chapter 2210, Subchapter M, so that insurer member assessments are used to pay for association losses directly, rather than being used to pay for public securities.

§5.4148. Repayment Obligation Trust Fund for the Payment of Amounts Owed Under §5.4127. This order repeals, without replacing, §5.4148. This section is no longer necessary because it relates to the implementation of Insurance Code §2210.6136, which SB 900 repealed.

§5.4149. Excess Repayment Obligation Trust Fund Amounts. This order repeals, without replacing, §5.4149. This section is no longer necessary because it relates to the implementation of Insurance Code §2210.6136, which SB 900 repealed.

§5.4161. Member Assessments. Amendments to §5.4161 reflect changes SB 900 made to the association's funding structure. SB 900 amended the association's funding provisions to provide loss funding through six alternating layers of public securities and assessments on association member insurers. The amendments specify the information the association must provide when requesting the commissioner approve a member insurer assessment.

Section 5.4161(c) provides that if TPFA cannot issue all or any portion of the authorized amount of class 1 public securities, the association may request and the commissioner may approve the imposition of a class 1 assessment on the association's member insurance companies under Insurance Code §2210.0725. This addresses what happens if, for a catastrophe year, TPFA cannot issue all of the class 1 public securities authorized by Insurance Code §2210.072. The amendments also make clear that if the commissioner approves a class 1 assessment under subsection (c), subsequent layers of public securities and assessments must be issued and ordered as provided for in statute.

Section 5.4161(i) is revised from the text as proposed by inserting the words "Insurance Code" before a citation to "Chapter 2210." This revision is necessary to clarify which code the cited chapter is in.

§5.4171. Premium Surcharge Requirements. Amendments to this section reflect the fact that SB 900 created two distinct types of premium surcharges. One type, association surcharges, may be assessed on association policies under Insurance Code §§2210.612, 2210.613, or 2210.6131. The other type, contingent surcharges, may be assessed under Insurance Code §2210.6132 on certain property and casualty policies, and all association and Texas FAIR Plan Association policies, insuring property located in the catastrophe area. The amendments distinguish between the two types of premium surcharges.

Section 5.4171(c) as adopted is revised from the proposed text to add the words "of this section" following a reference to "subsection (a)." In addition, subsection (c) is revised from the proposed text to add a section heading in the parenthetical listing of sections cited in the subsection.

§5.4172. Premium Surcharge Definitions. Amendments to §5.4172 include new definitions to distinguish between the two distinct types of premium surcharges created by SB 900. Some definitions for terms that are used in §§5.4121 - 5.4167 of Division 3 are also moved from §5.4172 to §5.4102.

In response to a comment, the definition of "association-insured property" is amended to mean immovable property at a fixed location in a catastrophe area or corporeal movable property located in that immovable property, as designated in the association's plan of operation.

§5.4173. Determination of the Contingent Surcharge Percentage. Amendments to §5.4173 address the determination of only the contingent surcharge percentage, which the commissioner will determine if approving a contingent surcharge as authorized under Insurance Code §2210.6132. Replacement §5.4126 addresses the determination of the association surcharge percentage.

Section 5.4173(c) as adopted is revised from the proposed text to correct a reference to the section heading for §5.4188 (Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions).

§5.4181. Premiums to be Surcharged. Amendments to §5.4181 reflect that SB 900 created two distinct types of premium surcharges.

§5.4182. Method for Determining the Premium Surcharges. Section 5.4182 describes the method for determining the premium surcharges and lists the policies to which the method will apply. Amendments to this section reflect that SB 900 created two distinct types of premium surcharges and to add the method for determining the contingent surcharge.

§5.4184. Application of the Premium Surcharges. Amendments to §5.4184 reflect that SB 900 created two distinct types of premium surcharges.

The amendments also describe how association surcharges must be applied to association policies depending on whether the policies have been updated as required by newly adopted §5.4912. Under the amendments, association policies that are in effect on the surcharge date specified in the commissioner's order in §5.4126(d) and that meet the requirements of newly adopted §5.4912-and which therefore are immediately subject to any surcharge the commissioner may order under §5.4126-are subject to a premium surcharge on the date specified in the commissioner's order. Association policies that do not meet the requirements of newly adopted §5.4912 are subject to surcharge when they are issued or renewed during the surcharge period described in paragraphs (9) and (10) of §5.4126(b).

The amendments also state that only contingent surcharges are refundable; association surcharges are nonrefundable.

§5.4185. Mandatory Premium Surcharge Collection. Amendments to §5.4185 reflect that SB 900 created two distinct types of premium surcharges and remove references to repealed §5.4127. The amendments also describe how the association must collect association surcharges depending on whether association policies have been updated as required by newly adopted §5.4912. The association must collect association surcharges in full when due for policies compliant with §5.4912. For policies not yet compliant with §5.4912, the association must collect association surcharges in full no later than the effective date of the policy.

Section 5.4185 is also amended to state that failure to pay an association surcharge constitutes failure to pay premium for purposes of policy cancellation.

In response to comments, the adopted amendments in §5.4185 differ from the proposed amendments in that subsection (e) is revised to require insurers to either: 1) apply funds in a given payment to any contingent surcharges due in that payment before the insurer may apply funds in the same payment to premiums; or 2) apply funds in a given payment to any contingent surcharges due in that payment in proportion to the amount of contingent surcharges due in that payment, before the insurer may apply funds in the same payment to premiums. For example, if an insurer choosing to apply 1) above received $250 for a payment in which $250 was due for premium and $10 was due for a surcharge, the insurer would apply $10 to surcharges and $240 to premium. If that same insurer chose to apply 2), the insurer would apply $9.62 {$9.62 = (10/260) x $250} to surcharges and $240.38 {$240.38 = (250/260) x $250} to premium. This is because surcharges represent 10/260, or 1/26th of the total payment due and $9.62 is 1/26th of the total payment received.

§5.4186. Remittance of Contingent Surcharges. Amendments to §5.4186 reflect that SB 900 created two distinct types of premium surcharges and remove the section heading of repealed §5.4143, and replace it with the section heading of the replacement §5.4143.

§5.4187. Offsets. Amendments to §5.4187 reflect that SB 900 created two distinct types of premium surcharges.

In response to comments, §5.4187 is amended to allow an insurer to refund surcharges, and offset those refunded surcharges, if the insurer rescinds a policy for fraud.

§5.4188. Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges Not Subject to Commissions. Amendments to §5.4188 reflect that SB 900 created two distinct types of premium surcharges. The amendments state that the association may not increase association surcharges to pay for premium taxes or agent commissions, but that insurers may increase contingent surcharges in an amount equal to any premium or maintenance tax attributable to the contingent surcharge and owed to the comptroller.

§5.4189. Notification Requirements. Amendments to §5.4189 reflect that SB 900 created two distinct types of premium surcharges. The amendments require the association to provide a notice to policyholders receiving an association surcharge. The notice is similar to the one insurers must provide to policyholders receiving a contingent surcharge, but states that an association surcharge will not be refunded in the event of policy cancellation.

§5.4190. Annual Premium Surcharge Report. Amendments to §5.4190 reflect that SB 900 created two distinct types of premium surcharges. One of the amendments requires the association to provide TDI with an annual premium surcharge report following the end of a calendar year in which an association surcharge was in effect. This requirement is the same as the existing requirement for other insurers.

§5.4912. Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131. New §5.4912 appears in Division 10 of Subchapter E of Chapter 5, Title 28, Texas Administrative Code. The section requires the association to file new policy forms that provide that the policy is immediately subject to any surcharge the commissioner may determine under §5.4126 and the deadline by which policyholders must pay the surcharge. The declarations page must notify the policyholder of the possibility of surcharge and that failure to pay any surcharge will result in policy cancellation.

Section 5.4912(b) as adopted is revised from the proposed text to add the words "of this section" following two references to "subsection (a)."

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received written comments from the Hartford Financial Services Group, Inc., the Insurance Council of Texas (ICT), and the Texas Windstorm Insurance Association and oral comments from the Insurance Council of Texas. ICT's comments were in support of the proposal, with changes; comments from the Hartford and the association recommended changes, but did not specify support or opposition.

Comment on §5.4124 and §5.4125. A commenter suggests amending proposed §5.4124(e) and §5.4125(d) to clarify that in these subsections, the word "proceeds" refers to "public security proceeds."

Agency Response. The adopted amendments clarify §5.4124(e) and §5.4125(d) as suggested.

Comment on §5.4172. A commenter suggests amending the definition of "association-insured property" in proposed §5.4172(3) to mean "immovable property at a fixed location in a catastrophe area or corporeal movable property located in that immovable property, as designated in the association's plan of operation," to be consistent with Insurance Code §2210.004.

Agency Response. The adopted §5.4172(3) defines "association-insured property" as suggested.

Comment on §5.4184. A commenter notes that under proposed §5.4184, contingent surcharges are refundable, but that association surcharges are not. The commenter states that nothing in the statute requires that contingent surcharges be refundable

and suggests that if contingent surcharges are refundable, then association surcharges should also be refundable.

The commenter expresses concern over the fact that proposed §5.4184 requires insurers to refund contingent surcharges to policyholders after the insurer has remitted the funds to the association or the public security trust fund. Although the rules allow insurers to claim an "offset" for surcharges that were refunded to policyholders after the funds were remitted to the association, there can be cases where insurers cannot recoup these amounts through offsets. In these cases, the insurer will have to refund a policyholder from its own funds. The commenter suggests that §5.4184 either provide for insurers to remit premium surcharges as they are earned, or require the association or the applicable trust fund to make refunds to the insurer if the insurer cannot offset.

Agency Response. TDI declines to make changes to the proposed rule. While TDI agrees that under the rule as proposed and adopted there may be instances where offsets are unavailable to insurers, TDI expects unrecoverable amounts to be small. This is because these instances will involve insurers with small numbers of policies and surcharges near the end of the lifespan of the public securities.

In addition, both options the commenter suggests as solutions present problems. Requiring insurers to remit surcharges as they are earned would require insurers to calculate the earned portion of each surcharge each month. These costs are not described in the proposal's cost note. Requiring the association or trust fund to refund the insurer would give insurers a claim to funds in the public security trust fund while the public securities are outstanding, and it would impose costs on the association not contemplated in the proposed rules.

As to the refundability of surcharges, the commenter is correct that the statute does not state that contingent surcharges must be refundable. TDI amended §5.4184 to provide for refunds of premium surcharges because HB 3, 82nd Legislature, First Called Session (2011), removed a prohibition on refunds in Insurance Code §2210.613. Now that SB 900 has created two distinct types of surcharges, with association surcharges, along with net premium and other revenue, as the first source of repayment for all classes of public securities, the rules are amended so that association surcharges are collected in full when due. This process of collection is easier for the association to implement when association surcharges are nonrefundable.

Comment on §5.4185. A commenter suggests that proposed §5.4185 should be amended to provide that failure to pay contingent surcharges would also constitute failure to pay premium for purposes of policy cancellation. The commenter also states that proposed §5.4185(e), which states that all policyholder payments must be applied to surcharges, before being applied to premium, appears to contradict proposed §5.4185(b), which states that surcharges must be collected proportionately as the insurer collects premium. The commenter suggests that TDI either delete or clarify subsection (e).

Agency Response. TDI declines the commenter's first suggestion because there is no indication that the legislature intended that failure to pay contingent surcharges constitute failure to pay premium for purposes of policy cancellation. Insurance Code §2210.6132 does not include such a provision, while the statutes on association surcharges, Insurance Code §§2210.612, 2210.613, and 2210.6131, explicitly do.

In response to the commenter's second suggestion, the adopted amendments in §5.4185 differ from the proposed amendments in that subsection (e) is amended to require insurers to either: 1) apply funds in a given payment to any contingent surcharges due in that payment before the insurer may apply funds in the same payment to premiums; or 2) apply funds in a given payment to any contingent surcharges due in that payment in proportion to the amount of contingent surcharges due in that payment, before the insurer may apply funds in the same payment to premiums.

Comment on §5.4186. A commenter suggests amending proposed §5.4186 so that instead of remitting contingent surcharges "not later than the last day of the month following the month in which the corresponding written premium transaction was effective," insurers must remit monthly only the earned portion of surcharges collected during the month.

Agency Response. TDI declines to amend proposed §5.4186. In cases where surcharges are collected in full up front (because that is how premium is collected), it is not clear how earned surcharges could be remitted as collected. When surcharges are collected in full, they are still earned over the policy period. In addition, as discussed in response to comments on §5.4184, requiring insurers to remit surcharges as they are earned will require insurers to track how each surcharge is earned each month, and may impose additional costs to insurers not contemplated in the rule proposal.

Comment on §5.4187. A commenter suggests that proposed §5.4187 be amended to allow an insurer to refund contingent surcharges, and offset those refunded surcharges, if the insurer rescinds a policy for fraud.

Agency Response. Amended §5.4187 allows insurers to refund and offset contingent surcharges in instances where the policy is rescinded for fraud.

Comment on §5.4188. A commenter suggests that proposed §5.4188(d) be amended to state that contingent surcharges are not subject to premium or maintenance taxes. The commenter states that contingent surcharges are not taxable premiums under Insurance Code §221.002. Under Insurance Code §§252.003, 253.003, and 254.003, maintenance taxes are based on correctly reported gross premiums, and contingent surcharges should not be reported as gross premiums. Finally, the commenter states that because SB 900 did not originate in the Texas House of Representatives, treating the premium surcharges as part of a revenue-raising measure would be unconstitutional.

Agency Response. TDI declines to amend proposed §5.4188(d). The adopted subsection does not state or imply that contingent surcharges will be subject to premium and maintenance taxes. Instead, the rule provides a means for insurers to recoup any premium taxes due on the surcharges if the comptroller determines that the surcharges are subject to premium or maintenance taxes.

Comment. A commenter suggests amending the rules to give insurers specific instruction as to how to determine the surcharge when the insurer is unable to reasonably determine whether automobiles insured under a commercial automobile policy are garaged within the catastrophe area. The commenter clarified that garaging location may be difficult to determine when a vehicle is garaged in a ZIP code that is not completely within, or completely outside, a Tier 1 county. The commenter requested that in these situations the rules allow insurers to surcharge policies based on the insured's address.

Agency Response. TDI declines to amend the proposed rules according to this suggestion because insurers will have the same problem if the insured's address is in a split ZIP code. In addition, insurers must report rating territory for territorially rated risks under the Texas Commercial Lines Statistical Plan, so they must determine territory for risks located in ZIP codes divided by two counties. Further, this issue exists for all ZIP code-rated risks, not only commercial automobile. Finally, §5.4192 has required insurers to make this determination since it became effective on February 16, 2011.

DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES

28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4127, 5.4134 - 5.4136, 5.4141 - 5.4145, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4190

STATUTORY AUTHORITY. TDI amends 28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4125, 5.4134 - 5.4136, 5.4141, 5.4144, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4190, and replaces 28 TAC §§5.4126, 5.4127, 5.4142, 5.4143, and 5.4145. The amendments and replacement sections are adopted under Insurance Code §§2210.008, 2210.056, 2210.071, 2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, 2210.0741, 2210.0742, 2210.151, 2210.152, 2210.602, 2210.604, 2210.608 - 2210.613, 2210.6131, 2210.6132, and 36.001.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 2210.056 establishes allowable uses for the association's assets.

Section 2210.071 provides that if an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses must be paid as provided by Insurance Code Chapter 2210, Subchapter B-1. Section 2210.0715(a) requires the association to pay losses in excess of premium and other revenue from available reserves and available amounts in the catastrophe reserve trust fund. Section 2210.0715(b) provides that the proceeds of class 1 public securities issued before the date of any occurrence or series of occurrences resulting in insured losses may not be included in available reserves for the purposes of §2210.0715.

Section 2210.072 authorizes the association to use the proceeds of class 1 public securities before, on, or after an occurrence or series of occurrences and establishes $500 million as the maximum principal amount of class 1 public securities that may be issued before, on, or after an occurrence or series of occurrences to pay losses not paid under Insurance Code §2210.0715. Section 2210.072 requires that the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, be depleted before the proceeds of any securities issued after an occurrence or series of occurrences may be used, and that those proceeds count against the limit on class 1 public securities in the catastrophe year in which the proceeds must be depleted. Section 2210.0725 authorizes the association, with the approval of the commissioner, to pay for losses in a catastrophe year not paid under §2210.0715 and §2210.072 from class 1 member assessments, establishes $500 million as the maximum amount of class 1 member assessments for a catastrophe year, and provides the manner by which each member's assessment is determined.

Section 2210.073 authorizes the association to use the proceeds of class 2 public securities issued on or after the date of an occurrence or series of occurrences to pay for losses not paid under §§2210.0715, 2210.072, and 2210.0725, and establishes $250 million as the maximum principal amount of class 2 public securities. Section 2210.074 authorizes the association, with the approval of the commissioner, to pay for losses in a catastrophe year not paid under §§2210.0715, 2210.072, 2210.0725, and 2210.073 from class 2 member assessments; establishes $250 million as the maximum amount of class 2 member assessments for a catastrophe year; and provides the manner by which each member's assessment is determined.

Section 2210.0741 authorizes the association to use the proceeds of class 3 public securities issued on or after the date of an occurrence or series of occurrences to pay for losses not paid under §§2210.0715, 2210.072, 2210.0725, 2210.073, and 2210.074, and it establishes $250 million as the maximum principal amount of class 3 public securities.

Section 2210.0742 authorizes the association, with the approval of the commissioner, to pay for losses in a catastrophe year not paid under §§2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, and 2210.0741 from class 3 member assessments; establishes $250 million as the maximum amount of class 3 member assessments for a catastrophe year; and provides the manner by which each member's assessment is determined.

Section 2210.151 authorizes the commissioner to adopt the association's plan of operation by rule to provide windstorm and hail insurance coverage in the catastrophe area.

Section 2210.152 requires that the association's plan of operation provide for the efficient, economical, fair, and nondiscriminatory administration of the association and include both underwriting standards and other provisions that TDI considers necessary to implement the purposes of Insurance Code Chapter 2210.

Section 2210.602 provides that the TPFA board must establish, with the Texas Treasury Safekeeping Trust Company, dedicated public security trust funds into which premium surcharges collected under §§2210.612, 2210.613, and 2210.6131, for the purpose of paying class 1, class 2, and class 3 public securities, respectively, must be deposited.

Section 2210.604 requires commissioner approval of the association's request to TPFA to issue class 1, class 2, or class 3 public securities prior to issuance. The association must submit a cost-benefit analysis of various financing methods and funding structures with its request.

Section 2210.608 provides for how the association may use public security proceeds and excess public security proceeds.

Section 2210.609 provides that the association must pay all public security obligations from available funds and, if the association determines the funds are insufficient, it must pay these obligations and expenses in accordance with Insurance Code §§2210.612, 2210.613, and 2210.6131, as applicable. Section 2210.609 further provides that the association must deposit all premium surcharge revenues collected under §§2210.612, 2210.613, and 2210.6131 for the purpose of paying class 1, class 2, and class 3 public securities into the respective

public security trust funds dedicated for this purpose. Section 2210.609 requires the association to provide for payment of public security obligations and public security administrative expenses by irrevocably pledging revenues received from premiums, premium surcharges, and amounts on deposit in the dedicated public security trust funds and any public security reserve funds.

Section 2210.610 provides that revenues received by the association from premium surcharges collected under §§2210.612, 2210.613, and 2210.6131 may be applied only as provided by Insurance Code Chapter 2210, Subchapter M.

Section 2210.611 authorizes the association to use premium surcharges collected under §§2210.612, 2210.613, and 2210.6131 for the purpose of paying class 1, class 2, and class 3 public securities, respectively. Section 2210.611 provides that if, in any calendar year, the premium surcharge revenue collected for class 1, class 2, or class 3 public securities exceeds the amount of the public security obligations and public security administrative expenses payable in that calendar year and interest earned on those funds for each respective class, the association may use the excess to: (i) pay the applicable public security obligations for the class payable in the subsequent year; (ii) redeem or purchase outstanding public securities of the class; or (iii) make a deposit in the CRTF.

Section 2210.612 provides that the association must pay class 1 public securities issued under §2210.072 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a premium surcharge on each association policy issued under Insurance Code Chapter 2210.

Section 2210.613 provides that the association must pay class 2 public securities issued under §2210.073 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a premium surcharge on each association policy issued under Insurance Code Chapter 2210.

Section 2210.6131 provides that the association shall pay class 3 public securities issued under §2210.0741 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a catastrophe area premium surcharge to each policyholder on each association policy issued under Insurance Code Chapter 2210.

Section 2210.6132 provides that the commissioner, in consultation with the board and TPFA, may determine that the authority is unable to issue class 2 or class 3 public securities, to be payable under §2210.613 or §2210.6131, as applicable, or may determine that the issuance of class 2 or class 3 public securities payable under §2210.613 or §2210.6131 is financially unreasonable. Following either determination, the commissioner must order the issuance of class 2 or class 3 public securities to be paid by a premium surcharge assessed on certain property and casualty policies, and all association and Texas FAIR Plan Association policies, insuring property located in the catastrophe area.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

§5.4101. Applicability.

(a) This section and §§5.4102, 5.4111 - 5.4114, 5.4121, 5.4123 - 5.4127, 5.4133 - 5.4136, and 5.4141 - 5.4145 (relating to Definitions, Operation of the Catastrophe Reserve Trust Fund, Termination of the Catastrophe Reserve Trust Fund, Investments of Catastrophe Reserve Trust Fund, Duties and Responsibilities, Financing Arrangements, Public Securities Request, Approval, and Issuance, Issuance of Class 1 Public Securities before a Catastrophic Event, Issuance of Public Securities after a Catastrophic Event, Determination of the Association Surcharge Percentage, Contingent Sources of Payment for Class 2 and Class 3 Public Securities, Public Security Proceeds, Excess Public Security Proceeds, Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis, Association Rate Filings, Class 1 Public Securities Trust Fund, Class 2 and Class 3 Public Securities Trust Funds, Premium Surcharge Trust Fund, Excess Premium Surcharge Revenue, and Excess Net Premium and Other Revenue) of this division are a part of the Texas Windstorm Insurance Association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation). If a court of competent jurisdiction holds that any provision of this division is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of the sections in this division will remain in effect.

(b) Notwithstanding any provision in this subchapter, the department retains regulatory oversight of the association as required by Insurance Code Chapter 2210, including periodic examinations of the accounts, books, and records of the association, and no provision in this subchapter should be interpreted as negating or limiting the department's regulatory oversight of the association.

§5.4102. Definitions.

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

(1) Association--Texas Windstorm Insurance Association.

(2) Association program--The funding of any or all of the purposes authorized to be funded with the public securities under Insurance Code Chapter 2210, Subchapter M.

(3) Association surcharge--Premium surcharges on policyholders of association policies under Insurance Code §§2210.612, 2210.613, or 2210.6131.

(4) Association surcharge percentage--The percentage amount determined by the commissioner under §5.4127(c) or (d) of this division (relating to Determination of the Association Surcharge Percentage).

(5) Authorized representative of the department--Any officer or employee of the department, empowered to execute instructions and take other necessary actions on behalf of the department as designated in writing by the commissioner.

(6) Authorized representative of the trust company--Any officer or employee of the comptroller or the trust company who is designated in writing by the comptroller as an authorized representative.

(7) Budgeted operating expenses--All operating expenses as budgeted for and approved by the association's board of directors, excluding expenses related to catastrophic losses.

(8) Catastrophe area--A municipality, a part of a municipality, a county, or a part of a county designated by the commissioner under Insurance Code §2210.005.

(9) CRTF--Catastrophe Reserve Trust Fund. A statutorily created trust fund established with the trust company under Insurance Code Chapter 2210, Subchapter J.

(10) Catastrophic event--An occurrence or a series of occurrences in a catastrophe area resulting in insured losses and operating expenses of the association in excess of premium and other revenue of the association.

(11) Catastrophic losses--Losses resulting from a catastrophic event.

(12) Class 1 payment obligation--The contractual amount of net premium and other revenue and association surcharges that the association must deposit in the class 1 public security trust fund at specified periods for the payment of class 1 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 1 public security agreements.

(13) Class 2 payment obligation--The contractual amount of net premium and other revenue and either association surcharges or contingent surcharges that the association must deposit in the class 2 public security trust fund, or in the case of contingent surcharges, the premium surcharge trust fund, at specified periods for the payment of class 2 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 2 public security agreements.

(14) Class 3 payment obligation--The contractual amount of net premium and other revenue and either association surcharges or contingent surcharges that the association must deposit in the class 3 public security trust fund, or in the case of contingent surcharges, the premium surcharge trust fund, at specified periods for the payment of class 3 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 3 public security agreements.

(15) Class 1 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.072 and Insurance Code Chapter 2210, Subchapter M.

(16) Class 2 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.073 and Insurance Code Chapter 2210, Subchapter M.

(17) Class 3 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.0741 and Insurance Code Chapter 2210, Subchapter M.

(18) Commercial paper notes--A debt instrument that the association may issue as a financing arrangement or that TPFA may issue as any class of public security.

(19) Commissioner--The Commissioner of Insurance.

(20) Comptroller--The Comptroller of the State of Texas.

(21) Contingent surcharge--Premium surcharges on policyholders of policies that cover insured property that is located in a catastrophe area and which may be necessary as provided under Insurance Code §2210.6132.

(22) Contractual coverage amount--Minimum amount over scheduled debt service that the association is required to deposit in the applicable public security trust fund or premium surcharge trust fund, as security for the payment of debt service on the public securities, administrative expenses on public securities, or other payments the association must pay in connection with public securities.

(23) Credit agreement--An agreement described by Government Code Chapter 1371 that TPFA may enter into as authorized under Insurance Code Chapter 2210, Subchapter M.

(24) Department--The Texas Department of Insurance.

(25) Earned premium--That portion of gross premium that the association has earned because of the portion of time during which the insurance policy has been in effect.

(26) Financing arrangement--An agreement between the association and any market source under which the market source makes interest-bearing loans or provides other financial instruments to the association to enable the association to pay losses or obtain public securities under Insurance Code §2210.072.

(27) Gross premium--The amount of premium the association receives, less premium returned to policyholders for canceled or reduced policies.

(28) Insured property--Real property, or tangible or intangible personal property including automobiles, covered under an insurance policy issued by an insurer. Insured property includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy.

(29) Investment income--Income from the investment of funds.

(30) Letter of instruction--The commissioner's or authorized department representative's signed written authorization and direction to an authorized representative of the trust company.

(31) Losses--Amounts paid or expected to be paid on association insurance policy claims, including adjustment expenses, litigation expenses, other claims expenses, and other amounts that are incurred in resolving a claim for indemnification under an association insurance policy.

(32) Net gain from operations--Net income reported during a calendar year equal to the amount of all earned premium, other revenue of the association, and distributions of excess net premium and other revenue from the class 1, class 2, and class 3 public security trust funds that are in excess of: incurred losses; operating expenses; reinsurance premium; current year financial arrangement obligations; current year net premium payment obligations; and current year public security administrative expenses.

(33) Net investment income--Investment income less associated fees and expenses charged by the trust company, or others, for managing or investing the assets.

(34) Net premium--Gross premium less unearned premium. Following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations.

(35) Net premium payment obligations--Public security obligations that are paid in whole or in part from net premium and other revenue for public securities repayable under Insurance Code §§2210.612, 2210.613, and 2210.6131. The term does not include public security obligations, or the portion of public security obligations that are paid from association surcharges.

(36) Net revenues--Net premium plus other revenue, less scheduled policy claims, less budgeted operating expenses, less net premium payment obligations for that calendar year, less amounts necessary to fund or replenish any reserve fund required by a public security agreement.

(37) Operating reserve fund--Association or trust company held fund for the payment of budgeted scheduled policy claims and budgeted operating expenses.

(38) Other revenue--Revenue of the association from any source other than premium. Other revenue includes net investment

income on association assets. Other revenue does not include premium surcharges collected under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, or 2210.6132 or member assessments collected under Insurance Code §§2210.0725, 2210.074, or 2210.0742, and interest income on those amounts.

(39) Plan of operation--The association's plan of operation as adopted by the commissioner under Insurance Code §2210.151 and §2210.152.

(40) Premium--Amounts received in consideration for the issuance of association insurance coverage. The term does not include premium surcharges collected by the association under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, and 2210.6132.

(41) Premium surcharge trust fund(s)--The dedicated trust fund or funds established by TPFA and held by the trust company in which the association or insurers must deposit contingent surcharges. TPFA may establish separate trust funds or separate accounts for class 2 and class 3 contingent surcharges.

(42) Public securities--Collective reference to class 1 public securities, class 2 public securities, and class 3 public securities.

(43) Public security administrative expenses--Expenses incurred by the association, TPFA, or TPFA consultants to administer public securities issued under Insurance Code Chapter 2210, including fees for credit enhancement, paying agents, trustees, attorneys, and other professional services.

(44) Public security obligations--The principal of a public security and any premium and interest on a public security issued under Insurance Code Chapter 2210, Subchapter M, together with any amount owed under a related credit agreement.

(45) Scheduled policy claims--That portion of the association's earned premium and other revenue expected to be paid in connection with the disposition of losses that do not result from a catastrophic event.

(46) Trust company--The Texas Treasury Safekeeping Trust Company managed by the comptroller under Government Code §404.101, et seq.

(47) Trust company representative--Any individual employed by the trust company who is designated by the trust company as its authorized representative for purposes of any agreement related to the CRTF or the public securities.

(48) TPFA--The Texas Public Finance Authority.

(49) Unearned premium--That portion of gross premium that has been collected in advance for insurance that the association has not yet earned because of the unexpired portion of the time for which the insurance policy has been in effect.

§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event.

(a) The association's board of directors may request that TPFA issue class 1 public securities before a catastrophic event, if the association's board of directors determines that class 1 public security proceeds may become necessary and the commissioner approves the request.

(b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:

(1) the reason why the requested class 1 public securities may become necessary;

(2) the amount of premium and other revenue that the association expects will be available to pay loss claims in the current calendar year;

(3) reinsurance coverage that the association expects will be available to pay claims in the current calendar year;

(4) the amount in the CRTF that the association expects will be available to pay loss claims in the current calendar year;

(5) the principal amount of class 1 public securities that are authorized and available to be issued before a catastrophic event, and that are requested;

(6) the estimated amount of debt service for the public securities, including any contractual coverage amount and public security administrative expenses;

(7) the structure and terms of the public securities, including any terms that may change as a result of a catastrophic event or the use of any proceeds of class 1 public securities issued before a catastrophic event;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis);

(10) a three-year pro forma financial statement consisting of a balance sheet, income statement, and a statement of cash flow, reflecting the financial impact of issuing class 1 public securities before a catastrophic event that assumes the proceeds will be used in the event of a catastrophe; and

(11) any other relevant information requested by the commissioner.

(c) The association may make one or more requests under this section.

(d) The association may request class 1 public securities up to an aggregate principal amount not to exceed $500 million outstanding at any one time, regardless of the calendar year or years in which the securities are issued, except that class 1 public securities that are issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, and that have been depleted to pay for the association program will not continue to count against the combined $500 million aggregate limit described in this subsection. This section does not authorize the association to request class 1 public securities in an amount in excess of the catastrophe year limit prescribed in §5.4125(c) of this division (relating to Issuance of Public Securities after a Catastrophic Event).

(e) For the purposes of determining the authorized amount of class 1 public securities, public security proceeds used to pay for public security issuance costs, establish a public security reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year as, and in proportion to, the public security proceeds used to pay for losses or operating expenses, or used to pay principal on the public securities.

§5.4125. Issuance of Public Securities after a Catastrophic Event.

(a) As provided in §5.4123 of this division (relating to Public Securities Request, Approval, and Issuance) and subject to the commissioner's approval, the association's board of directors may request that TPFA issue public securities after a catastrophic event has occurred. The association's board of directors may make the request:

(1) after the catastrophic event if the association's board of directors determines that actual catastrophic losses are estimated to exceed currently available net premium, other revenue, and money in the CRTF; or

(2) before the catastrophic event if the association's board of directors determines that public security proceeds may become necessary to fund potential catastrophic losses. This paragraph does not affect the requirements for issuing public securities that are issued after a catastrophic event or the use of proceeds from public securities issued after a catastrophic event.

(b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:

(1) an estimate of the actual or potential losses and expenses from the catastrophic event;

(2) the association's current premium and other revenue;

(3) the association's current net revenues;

(4) the sources and amount of loss funding other than public securities, including:

(A) the amount of the loss paid from premium and other revenue;

(B) the amount requested from the CRTF; and

(C) amounts available from other financing arrangements and the association's obligations for other financing arrangements, including whether the amounts must be repaid from public security proceeds or from other means;

(5) the principal amount of each requested class of public securities that is authorized and available to be issued and that is requested;

(6) the estimated costs associated with each requested amount and class of public securities under this section, including any contractual coverage requirement and public security administrative expenses;

(7) the structure and terms of the public securities;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis); and

(10) any other relevant information requested by the commissioner.

(c) For each class of public securities requested under this section, the association must determine and submit as part of its request the authorized amount of public securities. This amount must be the lesser of:

(1) the statutorily authorized principal amount for that class, less any principal amount of that class of public security that was issued in the catastrophe year, less, in the case of class 1 public securities, the proceeds of class 1 public securities issued under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event), including the proceeds of any outstanding Class 1 public securities issued on or before June 1, 2015, that were not depleted to pay for the association program as of the beginning of the catastrophe year for which the class 1 public securities are requested under this section; or

(2) the amount of the estimated loss payable from proceeds of that particular class, and estimated costs including the costs associated with the issuance of that class of public security.

(d) For the purposes of determining the amount of proceeds of class 1 public securities that were not depleted as described in subsection (c)(1) of this section, public security proceeds used to pay for public security issuance costs, establish a public security reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year as, and in proportion to, the public security proceeds used to pay for losses or operating expenses, or used to pay principal on the public securities.

(e) The association must, in aggregate for each catastrophe year:

(1) impose an assessment of the statutorily authorized amount of class 1 assessments under Insurance Code §2210.0725 and §5.4161 of this division (relating to Member Assessments) before class 2 public securities may be issued; and

(2) impose an assessment of the statutorily authorized amount of class 2 assessments under Insurance Code §2210.074 and §5.4161 of this division before class 3 public securities may be issued.

(f) The association:

(1) may make one or more requests under this section;

(2) may, following a catastrophic event, request the issuance of class 1 public securities under this section, before the exhaustion of any remaining proceeds from class 1 public securities issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015;

(3) must deplete the proceeds of any outstanding class 1 public securities issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, before using the proceeds of class 1 public securities requested under this section; and

(4) may request the issuance of class 2 and class 3 public securities under this section, before the exhaustion of all class 1 or class 2 assessments, respectively.

(g) For the issuance of class 2 or class 3 public securities payable under Insurance Code §2210.6132, the association must make a separate request under §5.4127 (relating to Contingent Sources of Payment for Class 2 and Class 3 Public Securities) of this division.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis.

(a) Marketable public securities under this division are public securities that the association in consultation with TPFA determines:

(1) are consistent with state debt issuance policy requirements; and

(2) achieve the goals of the association.

(b) In determining the amount of class 1 public securities that can or cannot be issued, the association must consider:

(1) the association's current premium and net revenue;

(2) the effect of depopulation under Insurance Code Chapter 2210, Subchapter O, on anticipated net premium and other revenue and anticipated revenue from association surcharges;

(3) the estimated amount of debt service for the public securities, including any contractual coverage amount;

(4) the association's obligations for outstanding public securities, including contractual coverage requirements and public security administrative expenses;

(5) the association's obligations for other financing arrangements;

(6) any conditions precedent to issuing class 1 public security obligations contained in any applicable public security financing documents;

(7) TPFA administrative rules;

(8) applicable State of Texas debt issuance policies;

(9) administrative rules of the Office of the Attorney General of Texas that require evidence of debt service and other obligation coverage; and

(10) market conditions and requirements necessary to sell marketable public securities, including issuing classes in installments.

(c) The association may rely on the advice and analysis of TPFA, TPFA consultants, TPFA legal counsel, and third parties the association has retained for this purpose in determining market conditions and requirements under subsection (b) of this section. The association's determination may include consideration of the following factors:

(1) interest rate spreads;

(2) municipal bond ratings of the public securities;

(3) prior issuances of catastrophe-related public securities in Texas or any other state;

(4) similar financings in the market within the preceding 12 months;

(5) news or other publications relating to the association or the issuance of catastrophe-related public securities;

(6) a nationally recognized investment banking firm's confidence memorandum;

(7) legal and regulatory conditions; and

(8) any other market conditions and requirements that the association deems necessary and appropriate.

(d) As part of each request for public securities, the association must submit to the commissioner a cost-benefit analysis of the various financing methods and funding structures that are available to the association. The cost-benefit analysis must include:

(1) for public securities requested under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event):

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities, liquidity position, and other benefits associated with issuing public securities before a catastrophic event; and

(C) estimates of the monetary costs, associated benefits, and the availability of funding alternatives, such as providing financing arrangements or additional financing arrangements, that provide similar funding and at a similar layer;

(2) for public securities requested under this division following a catastrophic event:

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities and other benefits associated with issuing public securities; and

(C) the availability of alternative funding arrangements, if any, including the monetary costs and benefits associated with any available alternative funding arrangements.

§5.4161. Member Assessments.

(a) The association, with the approval of the commissioner, must assess members as provided by Insurance Code Chapter 2210.

(b) The association must provide, in the aggregate for the catastrophe year, the following information when requesting the commissioner to approve a class 1, class 2, or class 3 assessment under Insurance Code §§2210.0725, 2210.074, and 2210.0742, as applicable:

(1) the association's best estimate of the amount of losses expected to be paid as a result of the event, or series of events, that caused the need for the assessment requested;

(2) the amount of losses paid, or expected to be paid, from premium and other revenue of the association;

(3) the amount of losses paid, or expected to be paid, from available reserves of the association and available amounts in the CRTF;

(4) the amount of losses paid, or expected to be paid, from the proceeds of class 1 public securities issued, or expected to be issued;

(5) the amount of class 1 assessments previously approved and the amount of class 1 assessments now requested;

(6) in the case of a request to approve a class 2 or class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 2 public securities issued, or expected to be issued;

(7) in the case of a request to approve a class 2 or class 3 assessment, the amount of class 2 assessments previously approved and the amount of class 2 assessments now requested;

(8) in the case of a request to approve a class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 3 public securities issued, or expected to be issued;

(9) in the case of a request to approve a class 3 assessment, the amount of class 3 assessments previously approved and the amount of class 3 assessments now requested.

(c) If all or any portion of the authorized principal amount of class 1 public securities requested under §5.4124 or §5.4125 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event or Issuance of Public Securities after a Catastrophic Event, respectively) cannot be issued based on the factors described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis), the association may request and the commissioner may approve the imposition of class 1 assessments as provided in this section.

(d) In its request to the commissioner to approve the imposition of assessments under subsection (c) of this section, the association must submit the following information:

(1) the information required by subsection (b) of this section;

(2) information based on the analyses described in §5.4135 of this division;

(3) the amount of class 1 public securities that can be issued;

(4) the amount of class 1 public securities that cannot be issued; and

(5) the specific reasons, market conditions, and requirements that prevent TPFA from issuing all or any portion of the authorized principal amount of class 1 public securities. The association may rely on information and advice provided by TPFA, TPFA consultants, TPFA legal counsel, and third parties retained by the association for this purpose.

(f) The association must request the issuance of the statutorily authorized principal amount of class 1 public securities before the association may request the commissioner approve a class 1 assessment under Insurance Code §2210.0725.

(g) The association must request the issuance of the statutorily authorized principal amount of class 2 public securities before the association may request the commissioner approve a class 2 assessment under Insurance Code §2210.074.

(h) The association must request the issuance of the statutorily authorized principal amount of class 3 public securities before the association may request the commissioner approve a class 3 assessment under Insurance Code §2210.0742.

(i) If the commissioner approves the imposition of assessments under subsection (c) of this section, any class 2 and class 3 public securities must be issued as provided by Insurance Code Chapter 2210 and these rules.

(j) This section and §§5.4162 - 5.4167 of this division (relating to Amount of Assessment; Notice of Assessment; Payment of Assessment; Failure to Pay Assessment; Contest After Payment of Assessment; and Inability to Pay Assessment by Reason of Insolvency, respectively) are a part of the association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

§5.4171. Premium Surcharge Requirements.

(a) The association may be required to assess a premium surcharge under Insurance Code §§2210.612, 2210.613, or 2210.6131 on all policyholders of policies that cover association-insured property.

(b) Following a catastrophic event, insurers may be required to assess a premium surcharge under Insurance Code §2210.6132 on all policyholders of policies that cover insured property that is located in a catastrophe area, including automobiles principally garaged in the catastrophe area. This requirement applies to property and casualty insurers, the association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association (TAIPA) policies, affiliated surplus lines insurers, and includes property and casualty policies independently procured from affiliated insurers.

(c) For premium surcharges described in subsection (a) of this section, this section and §§5.4172, 5.4173, 5.4181, 5.4182, 5.4184 - 5.4192 of this division (relating to Premium Surcharge Definitions, Determination of the Contingent Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent Surcharges, Offsets, Association Surcharges Not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) apply to all policies written by the association.

(d) Contingent surcharges described in subsection (b) of this section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division only apply to policies written for the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)), other private passenger automobile liability, private passenger automobile physical damage; commercial automobile no fault (PIP), other commercial automobile liability, and commercial automobile physical damage.

(e) This section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division do not apply to:

(1) a farm mutual insurance company operating under Insurance Code Chapter 911;

(2) a nonaffiliated county mutual fire insurance company described by Insurance Code §912.310 that is writing exclusively industrial fire insurance policies as described by Insurance Code §912.310(a)(2);

(3) a mutual insurance company or a statewide mutual assessment company engaged in business under Chapter 12 or 13, Title 78, Revised Statutes, respectively, before those chapters' repeal by §18, Chapter 40, Acts of the 41st Legislature, First Called Session (1929), as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, Second Called Session (1929), that retains the rights and privileges under the repealed law to the extent provided by those sections; and

(4) premium and policies issued by an affiliated surplus lines insurer that a federal agency or court of competent jurisdiction determines to be exempt from a premium surcharge under Insurance Code Chapter 2210.

§5.4172. Premium Surcharge Definitions.

The following words and terms when used in §§5.4171, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division (relating to Premium Surcharge Requirements, Determination of the Contingent Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent Surcharges, Offsets, Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) will have the following meanings unless the context clearly indicates otherwise:

(1) Affiliated insurer--An insurer that is an affiliate, as described by Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas. Affiliated insurer includes an insurer not authorized to engage in the business of property or casualty insurance in the State of Texas.

(2) Affiliated surplus lines insurer--An eligible surplus lines insurer that is an affiliate, as described by Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas.

(3) Association-insured property--Immovable property at a fixed location in a catastrophe area or corporeal movable property located in that immovable property covered under an insurance policy issued by the association.

(4) Contingent surcharge percentage--The percentage amount set by the commissioner under §5.4173(c) of this division.

(5) Exposure--The basic unit of risk that is used by an insurer to determine the insured's premium.

(6) Insurer--Each property and casualty insurer authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of the insurer, as described by Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property or casualty insurance in the State of Texas, the association, and the Texas FAIR Plan Association. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

(7) Residential property insurance--Insurance against loss to real or tangible personal property at a fixed location, including through a homeowners insurance policy, a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

§5.4173. Determination of the Contingent Surcharge Percentage.

(a) If the commissioner orders public securities to be paid under Insurance Code §2210.6132, the association must submit a written request to the commissioner to approve a contingent surcharge on policyholders with insured property in the catastrophe area as authorized under Insurance Code §2210.6132. The association's request must specify, for each applicable class of public securities:

(1) the total amount of the class 2 and class 3 public security obligations and estimated amount of the class 2 and class 3 public security administrative expenses, including any required contractual coverage amount, provided in the TPFA notice; and

(2) the date on which the contingent surcharge is to commence and the date the contingent surcharge for the noticed amount is to end.

(b) While public securities repayable under Insurance Code §2210.6132 are outstanding, the association must submit a written request described under subsection (a) of this section on an annual basis. The commissioner must receive a request described by this subsection no later than 195 days before the date the association requests the contingent surcharge to commence.

(c) On approval by the commissioner, each insurer must assess a contingent surcharge in a percentage amount set by the commissioner to the insurer's policyholders. The contingent surcharge percentage must be applied to the premium attributable to insured property located in the catastrophe area on policies that become effective, or on multiyear policies that become effective or have an anniversary date, during the premium surcharge period when the contingent surcharge percentage will be in effect, as specified in §§5.4181, 5.4182, and 5.4184 - 5.4188 of this division (relating to Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent Surcharges, Offsets, and Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions, respectively). The premium surcharge date specified by the commissioner must be at least 180 days after the date the commissioner issues the order under Insurance Code §2210.6132(b).

(d) This section is part of the association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

§5.4185. Mandatory Premium Surcharge Collection.

(a) Insurers may not pay the surcharges instead of surcharging their policyholders; however, an insurer may remit a surcharge prior to collecting the surcharge from its policyholder.

(b) Insurers must collect the contingent surcharges proportionately as the insurer collects the premium.

(c) The association must collect the association surcharge in full when due for policies compliant with §5.4912 (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131) of Division 10 of this subchapter. For policies not yet compliant with §5.4912, the association must collect association surcharges in full no later than the effective date of the policy.

(d) Under Insurance Code §§2210.612(d), 2210.613(d), and 2210.6131(d), the failure of a policyholder to pay the association surcharge constitutes failure to pay premium for the purposes of policy cancellation.

(e) Before insurers may apply funds in a given payment to premiums, they must either:

(1) apply funds in the payment to any contingent surcharges due in that payment; or

(2) apply funds in the payment to any contingent surcharges due in that payment in proportion to the amount of contingent surcharges due in that payment.

§5.4187. Offsets.

(a) An insurer may credit a contingent surcharge amount on its next remission to the association if the insurer has already remitted the amount to the association for:

(1) the portion of the surcharge the insurer was not able to collect from the policyholder, if the policy was canceled or expired;

(2) the portion of the surcharge remitted to the association, or deposited directly in the premium surcharge trust fund, that was later refunded to the policyholder as a result of a rescission, midterm cancellation, or midterm policy change, as described in §5.4184 of this division (relating to Application of Premium Surcharges); or

(3) the portion of a surcharge remitted to the association, or deposited directly in the premium surcharge trust fund or funds, in excess of a deposit premium as described in §5.4184 of this division.

(b) An agent may not offset payment of a contingent surcharge or an association surcharge to the insurer for any reason; however, a surplus lines agent allowed by an affiliated surplus lines insurer to remit contingent surcharges to the association on its behalf under §5.4186(a) of this division (relating to Remittance of Contingent Surcharges), may offset as provided in this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600751
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: March 9, 2016
Proposal publication date: October 9, 2015
For further information, please call: (512) 676-6584

♦ ♦ ♦

28 TAC §§5.4126 - 5.4128, 5.4142, 5.4143, 5.4145 - 5.4149

Statutory Authority. TDI repeals 28 TAC §§5.4126 - 5.4128, 5.4142, 5.4143, and 5.4145 - 5.4149. The sections are repealed under Insurance Code §§2210.612, 2210.613, 2210.6131, 2210.6132, and 36.001.

Section 2210.612 provides that the association must pay class 1 public securities issued under §2210.072 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a premium surcharge on each association policy issued under Insurance Code Chapter 2210.

Section 2210.613 provides that the association must pay class 2 public securities issued under §2210.073 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a premium surcharge on each association policy issued under Insurance Code Chapter 2210.

Section 2210.6131 provides that the association shall pay class 3 public securities issued under §2210.0741 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a catastrophe area premium surcharge to each policyholder on each association policy issued under Insurance Code Chapter 2210.

Section 2210.6132 provides that the commissioner, in consultation with the board and TPFA, may determine that the authority is unable to issue class 2 or class 3 public securities, to be payable under §2210.613 or §2210.6131, as applicable, or may determine that the issuance of class 2 or class 3 public securities payable under §2210.613 or §2210.6131 is financially unreasonable. Following either determination, the commissioner must order the issuance of class 2 or class 3 public securities to be paid by a premium surcharge assessed on certain property and casualty policies, and all association and Texas FAIR Plan Association policies, insuring property located in the catastrophe area.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600750
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: March 9, 2016
Proposal publication date: October 9, 2015
For further information, please call: (512) 676-6584

♦ ♦ ♦

DIVISION 10. ELIGIBILITY AND FORMS

28 TAC §5.4912

STATUTORY AUTHORITY. TDI adopts new 28 TAC §5.4912 under Insurance Code §§2210.003, 2210.008 and 36.001.

Section 2210.003(13) defines association policies and forms as being approved by TDI.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

§5.4912. Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131.

(a) Not later than the 15th day after the effective date of this section, the association must file with the department policy forms that provide:

(1) that the policy is immediately subject to any surcharge the commissioner may determine under §5.4126 (relating to Determination of the Association Surcharge Percentage) of Division 3 of this subchapter;

(2) that the policyholder has 120 days from the date the policyholder receives the notice described in §5.4189(b) (relating to Notification Requirements) of Division 3 of this subchapter to pay the surcharge; and

(3) on the declarations page, a conspicuous notice in at least 12-point bolded font that the policy may be subject to an immediate premium surcharge, and that failure to pay will result in cancellation.

(b) The association must issue only policies that comply with subsection (a) of this section not later than 60 days after the department approves the policy forms filed under subsection (a) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600752
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: March 9, 2016
Proposal publication date: October 9, 2015
For further information, please call: (512) 676-6584

♦ ♦ ♦

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 104. GENERAL PROVISIONS--RULEMAKING

28 TAC §104.1

The Texas Department of Insurance, Division of Workers' Compensation (division) adopts amendments to 28 TAC §104.1, concerning contents of rulemaking petitions. Section 104.1 is adopted without changes to the proposed text published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8867). There was not a request for public hearing submitted to the division.

In accordance with Government Code §2001.033, the division's reasoned justification for the sections is set out in this order, which includes the preamble. The following paragraphs include a detailed section by section description and reasoned justification for all amendments to §104.1.

The Texas Department of Insurance, Division of Workers' Compensation (division) adopts amendments to §104.1, concerning contents of rulemaking petitions, to implement House Bill (HB) 763, 84th Legislature, Regular Session (2015). HB 763 amended Government Code §2001.021 by defining an interested person, for purposes of §2001.021, as a resident of Texas, a business entity located in Texas, a Texas governmental subdivision, or a public or private organization located in Texas that is not a state agency. If a state agency requires a signed petition, HB 763 also amended Government Code §2001.021 to require 51 percent of the total number of signatures be from Texas residents.

Section 104.1 addresses Contents of Rulemaking Petitions. The division amended §104.1(a) by deleting "any person" and adding "an interested person under Government Code, §2001.021(d)." The amendment is necessary to implement HB 763 and align the division's rules regarding contents of rulemaking petitions with statutory changes provided in Government Code §2001.021. The division amended §104.1(a) by deleting "these rules" and adding "the Texas Administrative Code, Title 28, Part 2." The non-substantive amendment is necessary to specify the rules that may be petitioned to the division for change and to ensure the section conforms to current agency style. The division also made a non-substantive correction to punctuation in §104.1(a) by deleting the comma separating the words "letter" and "that."

The division amended §104.1(a)(7) by deleting "the petitioner's signature." This amendment lessens the burden to the public for submitting rulemaking petitions in accordance with the right to do so described in Government Code §2001.021(a). Section 104.1(a)(7) was also amended to add "a statement that the petitioner is an interested person under Government Code, §2001.021(d)." The amendment is necessary to implement HB 763 by asking the petitioner to confirm they are a resident of Texas, a business entity located in Texas, a Texas governmental subdivision, or a public or private organization located in Texas that is not a state agency. The amendment helps to ensure the requirements set out under Government Code, §2001.021(d) are met.

The division amended §104.1(c) by deleting "executive director of the commission" and adding "commissioner." The division amended §104.1(c) by deleting the phrase "[c]opies of the petition will be forwarded to each commissioner." These amendments are necessary to reflect the current organizational structure of the division. The division also amended §104.1(c) by deleting "or" and adding "or by email to rulecomments@tdi.texas.gov" to specify the email address interested persons must use if submitting a rulemaking petition by electronic means. This amendment makes it easier for interested persons to submit rulemaking petitions and encourages public participation in the rulemaking process.

The division amended §104.1(d) to reflect a change in the agency's name by deleting "commission" and adding "division."

The division amended the Chapter 104 heading, the §104.1 title, §104.1(a), and §104.1(d) to delete the term "rule-making" and add the term "rulemaking" for consistency with current agency style.

The division did not receive any comments on the proposed amendments to §104.1.

The amendments are adopted under the authority of Labor Code §402.061, concerning adoption of rules; Labor Code §402.00111, concerning the relationship between commissioner of insurance and commissioner of workers' compensation; separation of authority; rulemaking; Government Code §2001.021, concerning petitions for adoption of rules; and Labor Code §401.021, concerning application of other acts.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary for the implementation and administration of the Texas Workers' Compensation Act.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Government Code §2001.021(b) provides that a state agency shall prescribe the form for a petition by rule and the procedure for its submission, consideration, and disposition.

Labor Code §401.021 states, in part, that a proceeding, hearing, judicial review, or enforcement of a commissioner order, decision, or rule is governed by Government Code Chapter 2001, Subchapter B.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600792
Marisa Lopez Wagley
Acting General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: March 10, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 804-4703

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 156. INVESTIGATIONS

37 TAC §156.1

The Texas Board of Criminal Justice adopts amendments to §156.1, concerning Investigations of Allegations of Abuse, Neglect, or Exploitation of an Elderly or Disabled Offender, without

changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9608).

The adopted amendments are necessary to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Human Resources Code §48.301 and Texas Government Code §492.013.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600830
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: March 13, 2016
Proposal publication date: December 25, 2015
For further information, please call: (936) 437-6700

♦ ♦ ♦

CHAPTER 195. PAROLE

37 TAC §195.71

The Texas Board of Criminal Justice adopts amendments to §195.71, concerning drug and alcohol testing of offenders under supervision of the Texas Department of Criminal Justice Parole Division, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9608).

The adopted amendments are necessary to consolidate all drug and alcohol testing information for offenders under supervision of the Texas Department of Criminal Justice Parole Division into one rule.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013 and §508.184.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600831
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: March 13, 2016
Proposal publication date: December 25, 2015
For further information, please call: (936) 437-6700

♦ ♦ ♦

37 TAC §§195.72 - 195.78

The Texas Board of Criminal Justice adopts the repeal of §§195.72 - 195.78, concerning drug and alcohol testing of offenders under supervision of the Texas Department of Criminal Justice Parole Division, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9609).

The repeals are necessary to eliminate unnecessary rules as the language for each of these rules has been consolidated into 37 Texas Administrative Code §195.71.

No comments were received regarding the proposed repeals.

The repeals are adopted under Texas Government Code §492.013 and §508.184.

Cross Reference to Statutes: None.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600832
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: March 13, 2016
Proposal publication date: December 25, 2015
For further information, please call: (936) 437-6700

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 107. DIVISION FOR REHABILITATION SERVICES

SUBCHAPTER D. COMPREHENSIVE REHABILITATION SERVICES

40 TAC §107.705, §107.714

The Texas Health and Human Services Commission (HHSC) on behalf of the Department of Assistive and Rehabilitative Services (DARS) adopts amendments to §107.705, concerning Definitions, and new §107.714, concerning Consumer (Client) Participation. The amendment to §107.705 is adopted without changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7968) and will not be republished. New §107.714 is adopted with changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7968). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

House Bill 2463, 84th Legislature, Regular Session, 2015, the DARS Sunset Bill addressed the agency's Comprehensive Rehabilitation Services (CRS) Program, adding statutory authority for the program, currently operated by rule only. The bill also

required DARS to adopt rules for the program, which include requirements for client participation in the costs of the comprehensive rehabilitation services. The CRS program currently includes a client participation requirement addressed in program policy and contractor standards referred to as consumer participation. DARS is promulgating new rules for the existing CRS consumer participation requirements.

Client participation is a monthly contribution the client (consumer) may be required to pay for participation in the CRS Program. The consumer's contribution is based on 200 percent of the current United States Health and Human Services Poverty Guidelines, and information about the consumer's income, family status, and economic need. The consumer's contribution must not exceed the cost of the goods and services provided by CRS.

SECTION-BY-SECTION SUMMARY

DARS adopts the amendments to §107.705, Definitions, by adding definitions of "basic living requirements," "consumer participation," "liquid assets," "net monthly income," "provider," and "third-party payer."

DARS adopts new §107.714, Consumer participation, which explains the following changes:

Section 107.714(a) states that consumer participation is a monthly contribution the consumer may be required to pay toward CRS goods and services and that it applies to consumers in active services, as well as those on the interest list who are both eligible and receiving services.

Section 107.714(b) states that the consumer participation only applies when the CRS consumer's liquid assets exceed the current basic living requirements (BLR) established by DARS.

Section 107.714(b)(1), (2), (3), and (4) state the criteria on which the BLR calculations are based.

Section 107.714(c) states that CRS Program calculates the amount of the consumer participation regardless of the availability of private insurance or other third-party payer reimbursements and that obligation for payment of any deductible, co-payment, or coinsurance is limited to the monthly cost share amount.

Section 107.714(d)(1), (2), and (3) state what the consumer participation calculation will take into account.

Section 107.714(e) states that the consumer participation must not exceed the cost of the goods and services provided by the CRS Program and that it is applied only in months that billable goods and services are provided.

Section 107.714(f) states that the consumer participation is paid to the service provider by the consumer directly.

Section 107.714(g) states that the consumer participation will be deducted from the amount paid to the service provider by the CRS Program and must be reflected in the service authorization given to the provider by the CRS Program.

Section 107.714(h) states that the consumer may choose not to disclose financial information, but doing so may result in the presumption that the consumer has adequate resources to participate fully in the cost of CRS goods and services.

Section 107.714(i)(1) and (2) state that consumer participation does not apply when the consumer is eligible for Supplemental Security Income or Social Security Disability Income and to certain services specified.

Section 107.714(j) states that DARS management may waive the consumer participation when the consumer's participation towards the cost of services would prevent the consumer from receiving a necessary service.

Section 107.714(k) states that the consumer participation must be reviewed annually by the CRS Program.

Section 107.714(l) states that to the extent that the consumer is entitled to insurance-payment for services or receives payment for services from other governmental programs, third-party payers, or other private sources, DARS funds must not be used to pay for the services.

Section 107.714(m)(1), (2), and (3) state the actions that may be taken by a consumer, consumer's representative, or a court appointed guardian or representative who disagrees with the calculated consumer participation amount.

Section 107.714(n) states how information about CRS consumer participation procedures and BLR used to administer the CRS Program may be obtained.

COMMENTS:

DARS did not receive any comments regarding the proposed sections during the comment period; however, DARS is recommending adoption of §107.714 with an editorial change. Section 107.714(b)(3) includes duplicative wording for "consumer participation" and DARS will remove the duplication with this adoption.

STATUTORY AUTHORITY

The adopted amendment and new rule are authorized by the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The amendment and new rule are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

§107.714. Consumer (Client) Participation.

(a) The consumer (client) participation is a monthly contribution the consumer (client) may be required to pay for participation in the Comprehensive Rehabilitation Services (CRS) Program. Consumer participation applies to consumers in active services, as well as those on the interest list who are both eligible and receiving services.

(b) The consumer participation is required only for CRS consumers when the consumer's liquid assets exceed the basic living requirement (BLR) level calculated by the CRS Program, and consequently require the consumer to contribute an amount equal to this excess toward the cost of the goods and services provided by the CRS Program. The BLR calculation is based on:

(1) 200 percent of current U. S. Department of Health and Human Services Poverty Guidelines;

(2) DARS BLR tables for the current fiscal year;

(3) DARS policies relating to consumer participation and BLR; and

(4) information regarding the consumer's income, family status, and economic need.

(c) The CRS Program calculates the amount of the consumer participation owed by the consumer for the goods and services that are provided, regardless of the availability of private insurance or other third-party payer reimbursements. The consumer's obligation for payment of any deductible, co-payment, or coinsurance is limited to the monthly consumer participation amount.

(d) The consumer participation calculation will take into account:

(1) the net monthly income and liquid assets of the consumer and the consumer's spouse, parents, or legal guardian or conservator;

(2) allowable expenses, such as monthly home mortgage or rental payments, prescribed diets and medicines used by the consumer, debts imposed by court order; and

(3) family size.

(e) The consumer participation must not exceed the cost of the services provided by the CRS Program in a given month, and it is applied only in months that billable goods and services are provided by the CRS Program.

(f) The consumer participation must be paid to the service provider by the consumer directly.

(g) The consumer participation will be deducted from the amount paid to the service provider by the CRS Program and must be reflected in the service authorization given to the provider by the CRS Program.

(h) The consumer may choose not to disclose financial information, but doing so may result in the presumption that the consumer has adequate resources to participate fully in the cost of CRS goods and services.

(i) The consumer participation does not apply:

(1) when the consumer is eligible for Supplemental Security Income or Social Security Disability Income.

(2) to certain services, including:

(A) assessments for determining eligibility;

(B) assessments for determining rehabilitation needs, including associated maintenance and transportation;

(C) rehabilitation counseling and guidance and referral for other services;

(D) personal assistance services; and

(E) any auxiliary aid or service that a consumer with a disability requires to participate in the CRS Program.

(j) DARS management may waive the consumer participation when the consumer's participation towards the cost of services would prevent the consumer from receiving a necessary service.

(k) The consumer participation must be reviewed annually by the CRS Program.

(l) To the extent that the consumer is entitled to insurance-payment for services or receives payment for services from other governmental programs, third-party payers, or other private sources, DARS funds must not be used to pay for the services.

(m) If the consumer, consumer's representative, or a court appointed guardian or representative disagrees with the calculated consumer participation amount, they can:

(1) request a review by DARS;

(2) contact the DARS Inquiries Line at 1-800-628-5115 for help resolving a problem or concern; or

(3) file a formal complaint with DARS as noted in §107.715 of this chapter (relating to Complaint Resolution Process).

(n) Information about CRS consumer participation procedures and BLR used to administer the CRS Program are available on the DARS website and for viewing at DARS, 4800 North Lamar Boulevard, Austin, Texas, between 8:00 a.m. and 5:00 p.m. on business days.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600827
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: March 13, 2016
Proposal publication date: November 13, 2015
For further information, please call: (512) 424-4050

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

DIVISION 1. INVESTIGATIONS

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), new §§700.451, 700.453, 700.455, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.469, 700.471, 700.473, 700.475, 700.477, 700.479, and 700.481; amendments to §§700.506, 700.507, 700.511, and 700.513; and the repeal of §§700.501, 700.502, 700.503, 700.504, and 700.510 in Chapter 700, Child Protective Services (CPS). New §§700.453, 700.455, and 700.469 are adopted with changes to the proposed text published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7980). New §§700.451, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.471, 700.473, 700.475, 700.477, 700.479, and 700.481; amendments to §§700.506, 700.507, 700.511, and 700.513; and the repeal of §§700.501, 700.502, 700.503, 700.504, and 700.510 are adopted without changes to the proposed text and will not be republished.

The justification of the revisions is to update the rules where they are no longer accurate. Many of the rules in this division have not been revised since the mid-nineties. Other rules need updates to reflect work CPS has undertaken to streamline investigations policy and practice to support better case outcomes, or to comply with legislation passed during the 2015 legislative session. Another purpose of the revisions is to further define and update CPS's current abuse and neglect definitions in order to better

train CPS staff on investigating reports of abuse and neglect, provide clarification to the public on the meaning of the statutory definitions of abuse and neglect applied by CPS in reaching dispositions, and to eliminate ambiguity in interpreting the statutory definitions and current rules. Except for the four changes discussed below, the overarching aim is to explain and amplify, but not alter, current interpretation and practice. The policy and practice shifts that are included in the rule are:

(1) New §700.459 and §700.461 which provide further clarification concerning the definitions of human trafficking that were added to Texas Family Code §261.001 by Senate Bill (SB) 24, 82nd Texas Legislature, Regular Session (2011), in order to train caseworkers and inform the public on how CPS investigates reports of labor and sex trafficking involving children.

(2) New §700.455 and §700.465 related to prenatal alcohol and controlled substance exposure which provide clarity on the type of evidence needed to support a "reason-to-believe" (or confirmed) finding for physical abuse versus the type of evidence needed to support a "reason-to-believe" (or confirmed) finding for neglect.

(3) New §700.473 regarding dispositioning cases in which DFPS took conservatorship of a child with a severe emotional disturbance in order to obtain mental health care for the child, and the exclusion of a disposition in these types of cases from DFPS's central registry of child abuse and neglect, which is based on a statutory change to Texas Family Code §261.001 and §261.002 from SB 1889, 84th Texas Legislature, Regular Session (2015). SB 1889 requires DFPS to adopt rules to prohibit the inclusion in the registry when certain circumstances exist, as described in the rule, and to establish guidelines for reviewing records already in the registry which meet the same criteria.

(4) New §700.475 regarding exposure to domestic violence which relates to implementing clarification on what constitutes abuse and neglect in the context of domestic violence based on recommendations from the report developed by the Task Force to Address the Relationship Between Domestic Violence and Child Abuse and Neglect. HHSC established this Task Force, as directed by SB 434, 82nd Texas Legislature, Regular Session (2011), to develop a report with policy recommendations and comprehensive statewide best practice guidelines for CPS and other entities when investigating cases of abuse and neglect that also involve domestic violence. CPS was a participant in the Task Force and has committed to achieving the agreed-upon recommendations from the Task Force. The rule related to domestic violence restates and implements pertinent guidelines from that effort.

A summary of the rules follows:

New §700.451 clarifies that terms and corresponding definitions used within Division 1 of Subchapter E of this chapter (relating to Investigations) augment and further explain existing definitions in Chapter 101 and §261.001 of the Texas Family Code.

New §700.453: (1) reiterates the statutory definitions of emotional abuse from Texas Family Code §261.001(1); (2) defines and clarifies what constitutes "mental and emotional injury" and "observable and material impairment" when CPS investigates reports of emotional abuse; and (3) clarifies when a person's use of a controlled substance will result in a reason to believe finding for emotional abuse due to "mental or emotional injury" to the child caused by the use.

New §700.455: (1) reiterates the statutory definitions of physical abuse from Texas Family Code §261.001(1) and provides definitions and clarifications for terms used in the statutory definitions as well as this rule; (2) further defines and clarifies what constitutes "physical injury that results in substantial harm to the child" and "genuine threat of substantial harm from physical injury" when a child has not necessarily been physically injured; and (3) clarifies when a pregnant woman's use of alcohol or a controlled substance will result in a reason to believe finding for physical abuse of the infant.

New §700.457: (1) reiterates the statutory definitions of sexual abuse from Texas Family Code §261.001(1) and provides definitions and clarification for terms and phrases used in the statutory definitions as well as this rule; and (2) clarifies what constitutes "sexual conduct harmful to a child's mental, emotional or physical welfare" when CPS investigates reports of sexual abuse.

New §700.459: (1) reiterates the statutory definitions of labor trafficking from Texas Family Code §261.001(1); and (2) clarifies what is considered child labor trafficking for purposes of a CPS investigation by expanding upon the core elements of labor trafficking, explaining the factors CPS evaluates to determine if a child is being trafficked for purposes of labor, and elaborating on the types of situations CPS would not consider to be labor trafficking.

New §700.461: (1) reiterates the statutory definitions of sex trafficking from Texas Family Code §261.001(1); and (2) clarifies what is considered child sex trafficking for purposes of a CPS investigation by expanding upon the core elements of sex trafficking and explaining the factors CPS evaluates to determine if a child is being trafficked for purposes of sex.

New §700.463: (1) reiterates the statutory definition of abandonment, a type of neglect, from Texas Family Code §261.001(4); and (2) provides definitions for terms used in this rule as well as in Texas Family Code §261.001(4)(A) to further clarify what constitutes abandonment.

New §700.465: (1) reiterates the statutory definitions of neglectful supervision, a type of neglect, from Texas Family Code §261.001(4); (2) defines and further clarifies what constitutes "substantial risk" to a child when CPS investigates reports of neglectful supervision; and (3) clarifies the factors CPS considers to determine if a pregnant mother's use of alcohol or a controlled substance will result in a reason to believe finding for neglectful supervision because it endangered the physical or emotional well-being of the infant.

New §700.467: (1) reiterates the statutory definition of medical neglect, a type of neglect, from Texas Family Code §261.001(4); (2) defines and further clarifies what constitutes "substantial risk" and "observable and material impairment" to a child when CPS investigates reports of medical neglect; (3) explains the factors CPS considers to determine if a child has been medically neglected; (4) clarifies when CPS does and does not investigate a parent's refusal to administer or consent to psychological or psychiatric treatment or medication for a child; and (5) clarifies that a parent is not responsible for medical neglect if the lack of medical treatment is because of the parent's legitimately held religious belief.

New §700.469: (1) reiterates the statutory definition of physical neglect, a type of neglect, from Texas Family Code §261.001(4); (2) defines and further clarifies what constitutes "substantial risk," "observable and material impairment," and "relief services" when CPS investigates reports of physical neglect; and (3)

elaborates on the various factors CPS will consider to determine if a person is responsible for physically neglecting a child. This section was modified slightly to renumber subsections.

New §700.471 reiterates the statutory definition of refusal to assume parental responsibility, a type of neglect, from Texas Family Code §261.001(4).

New §700.473: (1) prohibits DFPS from including in the state's central registry a finding of abuse or neglect against a person when DFPS is named managing conservator of the person's child with a severe emotional disturbance only to obtain mental health care for the child, if the person has exhausted all reasonable means available to obtain the needed services; (2) defines "severe emotional disturbance;" both by reference to statute and with guidance for interpreting the definition; (3) outlines the factors DFPS will consider when determining whether a person's refusal to permit a child to remain in or return to the home is based solely on the person's inability to obtain mental health services for the child; and (4) directs DFPS to review records in the central registry and remove the names of persons who were included because DFPS assumed conservatorship of their child solely to provide mental health care to the child.

New §700.475 provides clarification on when victims and perpetrators of domestic violence are investigated as alleged perpetrators of abuse and/or neglect.

New §700.477 defines various terms used in the division that are not already defined elsewhere, as well as terms used in Chapters 101 and 261 of the Texas Family Code. Certain terms and definitions that were previously in rules being repealed have also been incorporated into this new rule.

New §700.479: clarifies (1) the responsibilities of DFPS when reports of child abuse or neglect are received, including when DFPS is able to receive reports; (2) DFPS's role in assisting the public in understanding when to make a report and which protective interventions are available; and (3) how DFPS may respond to reports that do not involve allegations of abuse or neglect or risk of abuse or neglect.

New §700.481 clarifies the types of allegations DFPS *does not* classify as reports of abuse or neglect. Certain terms and definitions that were previously in §700.503 are incorporated into this new rule.

Section 700.501 is repealed. The terms and definitions in this rule have been rewritten and incorporated into new §§700.453, 700.455, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.469, 700.471, 700.473, 700.475, and 700.477.

Section 700.502 is repealed. The terms and definitions from this rule have been incorporated into new §700.477, except for terms such as affinity, consanguinity, serious physical abuse, and serious sexual abuse, which have been entirely deleted as they are not used in this division.

Section 700.503 is repealed. The terms and definitions from this rule have been included in new §700.481, except for "reasonable physical discipline" which has been redefined and included in new §700.455. In addition, paragraph (1) of this rule, concerning DFPS's responsibility in assisting the public in understanding what to report and available protective interventions as well as how DFPS handles reports that do not involve child abuse or neglect or risk of abuse or neglect, has been rewritten and incorporated into subsection (b) of new §700.479.

Section 700.504 is repealed and the content is incorporated into subsection (a) of new §700.479.

The amendment to §700.506 include (1) deleting the requirement that initial notification to law enforcement of reports of child abuse or neglect be given by DFPS orally or through facsimile and instead allowing initial notification to be provided through a manner agreed upon by DFPS and the appropriate law enforcement agency; (2) clarifying that reports submitted electronically are considered written notification for purposes of this rule; and (3) updating the agency name to DFPS.

The amendment to §700.507 include (1) updating the rule to reflect that administrative closures are not limited to preliminary investigations; (2) ensuring that language used herein concerning who is considered a person responsible for the care of the child as well as language concerning protective actions of a person responsible is consistent with language in policy and safety assessment tools that will be implemented for use by caseworkers to determine when DFPS intervention in the family is necessary; (3) deleting language that is duplicative of other rules within this division; (4) renumbering subsection (c); and (5) updating the agency's name.

Section §700.510 is repealed because the information is contained in or has been superseded by §700.507.

The amendment to §700.511 includes (1) adding new subsection (a) to clarify that DFPS is required to assign a disposition to each allegation and to further clarify the purpose of assigning a disposition to each allegation; (2) updating the references to §700.507; and (3) amending the definition of ruled out in new subsection (c) to clarify that when allegation dispositions are a mixture of "ruled-out" and "administrative closure," the overall disposition will be "ruled-out."

The amendment to §700.513 include (1) deleting subsection (a)(1)(A) that requires DFPS to notify each alleged victim who was interviewed during an investigation of the results of the investigation as the rule already requires that notification be given to the person responsible for the care of the child and there is a presumption that the child will be notified of the results through that individual; (2) updating the rule to clarify that any person with primary or legal responsibility for the alleged victim, and not just the parent, is entitled to notification of the results of an abuse and neglect investigation; (3) updating the rule to clarify that when an investigation is administratively closed because the report was referred for investigation to another authorized entity, DFPS must not provide notification to anyone; (4) renumbering parts of subsections (a) and (b); and (5) updating the agency name.

The sections will function by ensuring that the rules regarding investigations are consistent with current policy and practice; by helping better instruct CPS staff on investigation reports of abuse and neglect; and by ensuring that the public will gain a better understanding of what constitutes the different types of child abuse and neglect that DFPS investigates as well as a better understanding of the factors DFPS considers when determining if a child is a victim of a specific type of abuse or neglect.

During the public comment period, DFPS received comments from the Texas Council on Family Violence (TCFV). A summary of the comments and DFPS's responses follows:

Comment concerning §700.453: TCFV suggested amending subsection (b)(1) to state that while it is not necessary for a medical or mental health professional to diagnose a child as

suffering from a mental or emotional injury for purposes of emotional abuse, CPS must consult with external professional collaterals that have witnessed and validated behaviors in the children that are detailed in subsection (b)(2) concerning observable and material impairment to the child. TCFV further suggested clarifying that when the mental or emotional injury involves exposure to domestic violence, CPS will consult with professional collaterals that have documented expertise or training in the dynamics of domestic violence, whenever possible. TCFV's suggestion stems from the need to ensure that the rules are consistent with other policy and practice guidance being developed collaboratively between DFPS, TCFV, and other key stakeholders.

Response: DFPS agrees, and is adopting the section with the suggested changes.

Comment concerning §700.455: TCFV suggested changing "choking" to "strangling" in subsection (b)(2) concerning acts or attempted acts that constitute a "genuine threat of substantial harm from physical injury" for purposes of physical abuse. According to TCFV, "choking" generally connotes having an object lodged in one's throat, whereas "strangling," which is now codified in Texas Penal Code §22.01(2)(B), refers to "intentionally, knowingly, or, recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth."

Response: DFPS agrees, and is adopting the section with the suggested changes.

Comment concerning §700.475: TCFV acknowledged and thanked DFPS, and specifically CPS, for their hard work and collaborative spirit in developing §700.475 regarding abuse and neglect in the context of domestic violence. TCFV appreciated the effective language established in §700.475 and believe that it will lead to increased clarity for CPS investigation staff in shifting the focus of investigations involving domestic violence to the perpetrators of that domestic violence. TCFV noted that this rule operationalized much of the collaborative work between CPS, TCFV, and domestic violence providers and constitutes one of the first statewide steps taken to codify and clarify for CPS investigation staff what qualifies as abuse and neglect in the context of domestic violence. TCFV further stated that the rule exemplifies the guiding principles and recommendations established in the SB 434 (Texas 82nd Regular Legislative Session, 2011) Task Force to Address the Relationship between Domestic Violence and Child Abuse and Neglect Report submitted to the Legislature on September 1, 2012.

Response: DFPS appreciates TCFV's comments and support. No changes are necessary based on this comment.

40 TAC §§700.451, 700.453, 700.455, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.469, 700.471, 700.473, 700.475, 700.477, 700.479, 700.481, 700.506, 700.507, 700.511, 700.513

The new sections and 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; HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections and amendments also implement Texas Family Code §261.001, 261.002, as amended by SB 1889 in the 84th Texas legislature, and §261.105.

§700.453. What is emotional abuse?

(a) Emotional abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(2) Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning; or

(3) The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in mental or emotional injury to a child.

(b) In this section, the following terms have the following meanings:

(1) "Mental or emotional injury" means:

(A) That a child of any age experiences significant or serious negative effects on intellectual or psychological development or functioning. Although the child does not have to experience physical injury or be diagnosed by a medical or mental health professional in order for CPS to determine that the child suffers from a mental or emotional injury, when assessing the child, CPS must consult with professional collaterals outside of CPS that have witnessed and validated that the child is exhibiting behaviors indicative of observable and material impairment as specified in subsection (b)(2) of this section. When the mental or emotional injury involves exposure to domestic violence, CPS will consult with professional collaterals that have documented expertise or training in the dynamics of domestic violence, whenever possible.

(B) For purposes of subsection (a)(3) of this section, "mental or emotional injury" resulting from a person's current use of a controlled substance includes a child of any age experiencing interference with normal psychological development, functioning, or emotional or mental stability, as evidenced by an observable and substantial change in behavior, emotional response, or cognition, directly related to the person's current use of a controlled substance.

(2) "Observable and material impairment" means discernible and substantial damage or deterioration to a child's emotional, social, and cognitive development. It may include but is not limited to depression; anxiety; panic attacks; suicide attempts; compulsive and obsessive behaviors; acting out or exhibiting chronic or acute aggressive behavior directed toward self or others; withdrawal from normal routine and relationships; memory lapse; decreased concentration; difficulty or inability to make decisions; or a substantial and observable change in behavior, emotional response, or cognition.

§700.455. What is physical abuse?

(a) Physical abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury

to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(2) Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(3) The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical injury to a child; or

(4) Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code.

(b) In this section, the following terms have the following meanings:

(1) "Accident" means an unforeseen, unexpected, or unplanned act or event that occurs unintentionally and causes or threatens physical injury despite exercising the care and diligence that a reasonable and prudent person would exercise under similar circumstances to avoid the risk of injury.

(2) "Genuine threat of substantial harm from physical injury" means declaring or exhibiting the intent or determination to inflict real and significant physical injury or damage to a child. The declaration or exhibition does not require actual physical contact or injury. It includes but is not limited to the following acts or attempt to commit the following acts: strangling as defined in §22.01(b)(2)(B), Penal Code; suffocating; shaking; hitting a child on the head; hitting, kicking, or punching a child's body parts or organs; throwing a child; throwing an object at a child; stabbing; shooting; or otherwise committing a violent act against a child.

(3) "Guardian" has the same definition as specified in §700.477(d) of this title (relating to What do the following additional terms mean?).

(4) "Managing or possessory conservator" has the same definition as specified in §700.477(f) of this title.

(5) "Parent" has the same definition as specified in §700.477(g) of this title.

(6) "Physical injury that results in substantial harm to the child" means real and significant physical injury or damage to a child that includes but is not limited to:

(A) Any of the following, if caused by an action of the alleged perpetrator directed toward the alleged victim: substantial or frequent skin bruising; substantial cuts, welts, lacerations, or pinch marks; skull or other bone fractures; damage to cartilage; brain damage; subdural hematoma; soft tissue swelling; impairment of or injury to any bodily organ or function; any other internal injury otherwise not specified; permanent or temporary disfigurement; burns; scalds; wounds, including puncture wounds; bite marks; causing or permitting a child to consume or inhale a poisonous or noxious substance that has the capacity to interfere with normal physiological functions; exposing a child to dangerous chemicals; starvation; concussions; dislocations; sprains; subjecting a child to Munchausen syndrome by proxy or a fictitious illness by proxy if the incident is confirmed by medical personnel; death; or any other cruel act that causes pain or suffering to the child.

(B) Any of the following conditions that occur in an infant under the age of one because of the pregnant mother's use of alcohol or a controlled substance that was not lawfully prescribed by a medical practitioner, was lawfully prescribed as a result of the mother seeking out multiple health care providers as a means of exceeding ordinary dosages, or was not being used in accordance with a lawfully issued prescription, if the mother knew or reasonably should have known she was pregnant:

(i) A physician's written diagnosis of physical manifestations of Fetal Alcohol Syndrome or Fetal Alcohol Effect, which includes Alcohol-Related Birth Defects and Alcohol Related Neurodevelopmental Disorder;

(ii) A physician's written opinion that the newborn was harmed from in utero exposure to alcohol or a controlled substance; or

(iii) A physician's diagnosis of Neonatal Abstinence Syndrome.

(C) Any of the following physical injuries to a child of any age caused by a person's use of a controlled substance other than prenatal use: illness; interference with normal physiological functions or motor coordination; or any other physical harm directly related to the person's current use, manufacture, or possession of the controlled substance.

(7) "Reasonable discipline" means discipline that is reasonable in manner and moderate in degree; does not constitute cruelty, reckless behavior, or grossly negligent behavior; and is administered for purposes of restraining or correcting the child. It shall not include an act that is likely to cause or causes injury more serious than transient pain or minor temporary marks. The age, size, and condition of the child; the location of the injury; and the frequency or recurrence of injuries shall be considered when determining whether the discipline is reasonable and moderate.

(8) "...reasonable effort to prevent..." means actions that a person responsible for a child's care, custody, or welfare would have taken to protect a child from abuse the person knew or reasonably should have known was occurring. It is not required for that person to have directly perpetrated the abuse.

(9) "Substantial risk" means a real and significant possibility or likelihood.

§700.469. What is physical neglect?

(a) Physical neglect is a subset of the statutory definitions of neglect that appear in Texas Family Code §261.001(4) and includes the following act or omission by a person: the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused.

(b) In this section, the following terms have the following meanings:

(1) "...necessary to sustain the life or health of the child ...." is a condition of the statutory definition of physical neglect and is met if the failure to provide food, clothing, or shelter results in an observable and material impairment to the child's growth, development, or functioning, or in a substantial risk of such an observable and material impairment. For purposes of this paragraph, the following terms have the following meanings:

(A) "Observable and material impairment" means discernible and substantial damage or deterioration to the child's health or physical condition. It may include but is not limited to malnourishment; sudden or extreme weight loss; serious skin conditions or skin breakdown; serious illness or other serious medical conditions; or any other serious physical harm to the child as a direct result of the physical neglect.

(B) "Substantial risk" has the same definition as specified in §700.455(b)(9) of this title (relating to What is physical abuse?).

(2) "Relief services" means both public and private services, including but not limited to services provided through the government, community agencies, volunteer organizations, relatives, friends, neighbors, etc., that are intended to improve the overall well-being and physical condition of the family. The services must be affordable, reasonable, readily available, and appropriate to meet the needs of the family. Nothing in this subsection shall be interpreted to require that the relief services be provided by Child Protective Services.

(c) Evidence of physical neglect may include but is not limited to the following if they endanger the life or health of the child: unsound or decaying walls, ceiling, floors, or stairways; ineffective or faulty heating, cooling, or ventilation systems; inadequate, faulty, or broken plumbing including contaminated water; broken windows, mirrors or other glass; dangerous sleeping arrangements; the existence of dangerous bacteria or germs; nonexistent or ineffective waste disposal; dangerous food storage; fecal contamination or excessive animal feces throughout the house; untreated infestations such as fleas, roaches, or rodents; significant and uncontrolled mildew and mold; dirt buildup that is likely to cause bacteria and viruses in the dwelling; and hazardous junk material or appliances left unsecured and within easy access to the child.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2016.

TRD-201600699
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: April 15, 2016
Proposal publication date: November 13, 2015
For further information, please call: (512) 438-4358

♦ ♦ ♦

40 TAC §§700.501 - 700.504, 700.510

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 Texas Family Code §261.001 and Texas Government Code §411.114.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2016.

TRD-201600700
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: April 15, 2016
Proposal publication date: November 13, 2015
For further information, please call: (512) 438-4358

♦ ♦ ♦

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 206. MANAGEMENT

SUBCHAPTER E. ADVISORY COMMITTEES

43 TAC §§206.93 - 206.95

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 206, Management, Subchapter E, Advisory Committees, §206.93, Advisory Committee Operations and Procedures, and adopts new §206.94, Household Goods Rules Advisory Committee (HGRAC), and new §206.95, Motor Vehicle License Advisory Committee (MVLAC), without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8746). The rules will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

Amendments are adopted to §206.93, Advisory Committee Operations and Procedures, to remove inapplicable language regarding reimbursement of expenses, and to remove language relating to the applicability of certain laws, policies and ethical standards of conduct. Adopted new §206.94, Household Goods Rules Advisory Committee (HGRAC), and adopted new §206.95, Motor Vehicle License Advisory Committee (MVLAC), are added to state the purpose and tasks of the committees, and to indicate respective end dates.

COMMENTS

The department received one written comment from Danny Langfield, Executive Director of the Texas Independent Automobile Dealers Association, in favor of §206.95.

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2110; and Transportation Code, §643.155 and §1001.031.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600755

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: March 9, 2016
Proposal publication date: December 4, 2015
For further information, please call: (512) 465-5665

♦ ♦ ♦

CHAPTER 210. CONTRACT MANAGEMENT

SUBCHAPTER A. PURCHASE CONTRACTS

43 TAC §210.3

The Texas Department of Motor Vehicles (department) adopts Chapter 210, Contract Management, Subchapter A, Purchase Contracts, new §210.3, Enhanced Contract Monitoring Program, without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8747). The rule will not be republished.

EXPLANATION OF ADOPTED NEW SECTION

New §210.3, is adopted to implement Senate Bill 20, 84th Legislature, Regular Session, 2015, to include a procedure for the department to use in identifying contracts that require enhanced contract or performance monitoring. Senate Bill 20 requires each state agency to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring, and to submit information on the contract to its governing body.

COMMENTS

No comments on the proposed new section were received.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE

Government Code, §2261.253.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600753
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: March 9, 2016
Proposal publication date: December 4, 2015
For further information, please call: (512) 465-5665

♦ ♦ ♦

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.3

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 217, Vehicle Titles and Registration, Subchapter A, §217.3, Motor Vehicle Titles, without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8748). The rule will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments are adopted to address the consequences of Senate Bill 449, 84th Legislature, Regular Session, 2015, which added autocycles to those items that are considered to be motor vehicles. The amendments also clarify the titling requirements of certain house trailer-type vehicles and assembled vehicles. More specifically, the adopted amendments to §217.3 add autocycles to the definition of motorcycle for the purposes of obtaining a Texas title. Additionally, amendments are adopted regarding house trailer-type vehicles including changes to clarify size required to register, and clarify the eligibility of certain house trailer-type vehicles for Texas title under Transportation Code, Chapter 501.

Adopted amendments clarify language regarding assembled vehicles, including assembled vehicles that have never been issued title in any jurisdiction; creation of vehicles from different vehicle classes, and vehicles that are not eligible for Texas title; information required to be submitted to establish the vehicle's identification number, and adds language providing provisions for assembled vehicles which have previously been titled. Additional adopted amendments provide methods for establishing the model year for assembled vehicles and noting remarks to be placed on titles for reconstructed vehicles or assembled replica vehicles, and clarifies assembled vehicles that are not eligible for Texas title.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the laws of this state; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 501, 502, 548, and §504.501.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600754

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: March 9, 2016
Proposal publication date: December 4, 2015
For further information, please call: (512) 465-5665

♦ ♦ ♦

Review Of Agency Rules

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.55 concerning Disposal of Surplus Agricultural Goods and Agricultural Personal Property. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §151.55.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, *Sharon.Howell@tdcj.texas.gov.* Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201600829
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: February 22, 2016

♦ ♦ ♦

Texas Board of Professional Engineers

Title 22, Part 6

The Texas Board of Professional Engineers will review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 22, Part 6, Chapter 131, Organization and Administration.

This review is conducted pursuant to §2001.039 of the Texas Government Code.

In conducting its review, the Board will determine whether the reasons for each rule continue to exist. The rule review will also determine whether each rule reflects current legal and policy considerations, reflects current procedures of the Board, or is obsolete.

Any comments pertaining to this notice may be submitted within the next 30 days to David Howell, Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741 or sent by email to *rules@engineers.texas.gov.* Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-201600854
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: February 22, 2016

♦ ♦ ♦

The Texas Board of Professional Engineers will review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 22, Part 6, Chapter 133, Licensing.

This review is conducted pursuant to §2001.039 of the Texas Government Code.

In conducting its review, the Board will determine whether the reasons for each rule continue to exist. The rule review will also determine whether each rule is reflects current legal and policy considerations, reflects current procedures of the Board, or is obsolete.

Any comments pertaining to this notice may be submitted within the next 30 days to David Howell, Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741 or sent by email to *rules@engineers.texas.gov.* Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-201600855
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: February 22, 2016

♦ ♦ ♦

The Texas Board of Professional Engineers will review and consider for readoption, revision, or repeal Texas Administrative Code, Title 22, Part 6, Chapter 135, Firm Registration.

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review, the Board will determine whether the reasons for each rule continue to exist. The rule review will also determine whether each rule is obsolete, reflects current legal and policy considerations, and reflects current procedures of the Board.

Any comments pertaining to this notice may be submitted within the next 30 days to David Howell, Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741 or sent by email to *rules@engineers.texas.gov.* Any proposed changes to the rules as a result of this review will be published in the Proposed

Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-201600856
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: February 22, 2016

♦ ♦ ♦

The Texas Board of Professional Engineers will review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 22, Part 6, Chapter 137, Compliance and Professionalism.

This review is conducted pursuant to §2001.039 of the Texas Government Code.

In conducting its review, the Board will determine whether the reasons for each rule continue to exist. The rule review will also determine whether each rule reflects current legal and policy considerations, reflects current procedures of the Board, or is obsolete.

Any comments pertaining to this notice may be submitted within the next 30 days to David Howell, Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741 or sent by email to *rules@engineers.texas.gov.* Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-201600857
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: February 22, 2016

♦ ♦ ♦

The Texas Board of Professional Engineers will review and consider for readoption, revision, or repeal Texas Administrative Code, Title 22, Part 6, Chapter 139, Enforcement.

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review, the Board will determine whether the reasons for each rule continue to exist. The rule review will also determine whether each rule is obsolete, reflects current legal and policy considerations, and reflects current procedures of the Board.

Any comments pertaining to this notice may be submitted within the next 30 days to David Howell, Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741 or sent by email to *rules@engineers.texas.gov.* Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

TRD-201600858
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: February 22, 2016

♦ ♦ ♦

Adopted Rule Reviews

Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas (the commission), the Texas Department of Banking has completed review of Texas Administrative Code, Title 7, Part 2, Chapter 35 (Check Verification Entities), in its entirety, specifically Subchapter A (§35.1); Subchapter B (§§35.11 - 35.17); Subchapter C (§35.31); Subchapter D (§§35.51 - 35.59); and Subchapter E (§35.71 and §35.72).

Notice of the review of Chapter 35 was published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8345). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 35 continue to exist. However, the commission has determined that certain revisions and amendments may be appropriate and necessary. Proposed amendments and revisions to Chapter 35, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

Accordingly, the commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 35 in accordance with the requirements of the Government Code, §2001.039.

TRD-201600761
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: February 19, 2016

♦ ♦ ♦

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 84, concerning Motor Vehicle Installment Sales. Chapter 84 contains Subchapter A, concerning General Provisions (§§84.101 - 84.105); Subchapter B, concerning Retail Installment Contract (§§84.201 - 84.205); Subchapter C, concerning Insurance and Debt Cancellation Agreements (§§84.301 - 84.308); Subchapter D, concerning Acquisition of Contract or Balance (§84.401); Subchapter E, concerning Holder's Rights, Duties, and Limitations (§§84.501, 84.503, and 84.504); Subchapter F, concerning Licensing (§§84.601 - 84.616); Subchapter G, concerning Examinations (§§84.702 - 84.709); and Subchapter H, concerning Retail Installment Sales Contract Provisions (§§84.801 - 84.809). The rule review was conducted pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC Part 5, Chapter 84 was published in the *Texas Register* as required on January 15, 2016 (41 TexReg 637). 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 Office of Consumer Credit Commissioner, the agency that administers these rules, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing rule changes to Chapter 84, as published elsewhere in this issue of the *Texas Register*.

Subject to the concurrently proposed rule changes to Chapter 84, 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 84.

TRD-201600796

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 19, 2016

♦ ♦ ♦

Employees Retirement System of Texas

Title 34, Part 4

Pursuant to the notice of the proposed rule review that was published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2577), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 61, Terms and Phrases, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rule in Chapter 61 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rule in 34 TAC Chapter 61 continues to exist, and therefore, the Board readopts Chapter 61 with the amendment as published in the January 8, 2016 issue of the *Texas Register* (41 TexReg 432) and adopted by the Board at its February 23, 2016 meeting. This completes ERS' review of 34 TAC Chapter 61, Terms and Phrases.

TRD-201600878
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: February 23, 2016

♦ ♦ ♦

Pursuant to the notice of the proposed rule review that was published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2577), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 63, Board of Trustees, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 63 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 63 continues to exist, and therefore, the Board readopts Chapter 63 with the amendments as published in the January 8, 2016 issue of the *Texas Register* (41 TexReg 433) and adopted by the Board at its February 23, 2016 meeting. This completes ERS' review of 34 TAC Chapter 63, Board of Trustees.

TRD-201600879
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: February 23, 2016

♦ ♦ ♦

Pursuant to the notice of the proposed rule review that was published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2577), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 65, Executive Director, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 65 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 65 continues to exist, and therefore, the Board readopts Chapter 65 with the amendments as published in the January 8, 2016 issue of the *Texas Register* (41 TexReg 434) and adopted by the Board at its February 23, 2016 meeting. This completes ERS' review of 34 TAC Chapter 65, Executive Director.

TRD-201600880
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: February 23, 2016

♦ ♦ ♦

Pursuant to the notice of the proposed rule review that was published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2578), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 85, Flexible Benefits, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 85 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 85 continues to exist, and therefore, the Board readopts Chapter 85 with the amendments as published in the January 8, 2016 issue of the *Texas Register* (41 TexReg 435) and adopted by the Board at its February 23, 2016 meeting. This completes ERS' review of 34 TAC Chapter 85, Flexible Benefits.

TRD-201600881
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: February 23, 2016

♦ ♦ ♦

Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy re-adopts the review of Chapter 283 (§§283.1 - 283.11), concerning Licensing Requirements for Pharmacists, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8667).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-201600771
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Filed: February 19, 2016

♦ ♦ ♦

The Texas State Board of Pharmacy re-adopts the review of Chapter 291, Subchapter B (§§291.31 - 291.35), concerning Community Pharmacy (Class A), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the November 27, 2015, issue of the *Texas Register* (40 TexReg 8667).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-201600772
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Filed: February 19, 2016

♦ ♦ ♦

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 §84.201(d)(2)(B)(iii)

TERM - # OF MONTHS	ADD-ON RATES PER $100.00 PER ANNUM			
	$7.50	$10.00	$12.50	$15.00
1	18.0000%	18.0000%	18.0000%	18.0000%
2	18.0000%	18.0000%	18.0000%	19.9452%
3	18.0000%	18.0000%	18.6541%	22.3624%
4	18.0000%	18.0000%	19.8374%	23.7670%
5	18.0000%	18.0000%	20.5996%	24.6655%
6	18.0000%	18.0000%	21.1215%	25.2754%
7	18.0000%	18.0000%	21.4935%	25.7054%
8	18.0000%	18.0000%	21.7659%	26.0160%
9	18.0000%	18.0000%	21.9688%	26.2435%
10	18.0000%	18.0000%	22.1215%	26.4109%
11	18.0000%	18.0000%	22.2367%	26.5338%
12	18.0000%	18.0000%	22.3232%	26.6226%
13	18.0000%	18.0338%	22.3875%	26.6849%
14	18.0000%	18.0812%	22.4340%	26.7265%
15	18.0000%	18.1171%	22.4664%	26.7513%
16	18.0000%	18.1435%	22.4872%	26.7626%
17	18.0000%	18.1621%	22.4985%	26.7628%
18	18.0000%	18.1743%	22.5020%	26.7540%
19	18.0000%	18.1809%	22.4988%	26.7375%
20	18.0000%	18.1830%	22.4901%	26.7148%
21	18.0000%	18.1811%	22.4768%	26.6867%
22	18.0000%	18.1758%	22.4594%	26.6542%
23	18.0000%	18.1677%	22.4387%	26.6178%
24	18.0000%	18.1570%	22.4150%	26.5783%
25	18.0000%	18.1442%	22.3889%	26.5360%
26	18.0000%	18.1294%	22.3605%	26.4915%
27	18.0000%	18.1130%	22.3304%	26.4449%
28	18.0000%	18.0952%	22.2986%	26.3968%
29	18.0000%	18.0761%	22.2654%	26.3472%
30	18.0000%	18.0559%	22.2311%	26.2964%
31	18.0000%	18.0347%	22.1957%	26.2446%
32	18.0000%	18.0126%	22.1594%	26.1920%
33	18.0000%	18.0000%	22.1224%	26.1387%
34	18.0000%	18.0000%	22.0847%	26.0848%
35	18.0000%	18.0000%	22.0464%	26.0305%
36	18.0000%	18.0000%	22.0077%	25.9759%
37	18.0000%	18.0000%	21.9686%	25.9210%
38	18.0000%	18.0000%	21.9292%	25.8659%
39	18.0000%	18.0000%	21.8895%	25.8106%
40	18.0000%	18.0000%	21.8496%	25.7553%
41	18.0000%	18.0000%	21.8095%	25.7000%
42	18.0000%	18.0000%	21.7693%	25.6447%
43	18.0000%	18.0000%	21.7290%	25.5894%
44	18.0000%	18.0000%	21.6886%	25.5343%
45	18.0000%	18.0000%	21.6483%	25.4793%
46	18.0000%	18.0000%	21.6079%	25.4245%
47	18.0000%	18.0000%	21.5679%	25.3699%
48	18.0000%	18.0000%	21.5273%	25.3155%
49	18.0000%	18.0000%	21.4871%	25.2613%
50	18.0000%	18.0000%	21.4469%	25.2074%

TERM - # OF MONTHS	ADD-ON RATES PER $100.00 PER ANNUM								
	$7.50		$10.00		$12.50		$15.00		
51	18.0000%		18.0000%		21.4069%		25.1537%		
52	18.0000%		18.0000%		21.3670%		25.1003%		
53	18.0000%		18.0000%		21.3272%		25.0473%		
54	18.0000%		18.0000%		21.2876%		24.9945%		
55	18.0000%		18.0000%		21.2481%		24.9420%		
56	18.0000%		18.0000%		21.2088%		24.8898%		
57	18.0000%		18.0000%		21.1696%		24.8380%		
58	18.0000%		18.0000%		21.1307%		24.7865%		
59	18.0000%		18.0000%		21.0919%		24.7354%		
60	18.0000%		18.0000%		21.0533%		24.6845%		
61	18.0000%		18.0000%		21.0149%		~~[26.6341%]~~		24.6341%
62	18.0000%		18.0000%		20.9767%		24.5839%		
63	18.0000%		18.0000%		20.9387%		24.5342%		
64	18.0000%		18.0000%		20.9009%		24.4847%		
65	18.0000%		18.0000%		20.8633%		24.4357%		
66	18.0000%		18.0000%		20.8259%		24.3870%		
67	18.0000%		18.0000%		20.7888%		24.3386%		
68	18.0000%		18.0000%		20.7518%		24.2906%		
69	18.0000%		18.0000%		20.7151%		24.2430%		
70	18.0000%		18.0000%		20.6786%		24.1957%		
71	18.0000%		18.0000%		20.6423%		24.1488%		
72	18.0000%		18.0000%		20.6063%		24.1022%		
73	18.0000%		18.0000%		20.5705%		24.0559%		
74	18.0000%		18.0000%		20.5349%		24.0101%		
75	18.0000%		18.0000%		20.4995%		23.9645%		
76	18.0000%		18.0000%		20.4643%		23.9194%		
77	18.0000%		18.0000%		20.4294%		23.8745%		
78	18.0000%		18.0000%		20.3947%		23.8300%		
79	18.0000%		18.0000%		20.3602%		23.7859%		
80	18.0000%		18.0000%		20.3259%		23.7421%		
81	18.0000%		18.0000%		20.2919%		23.6986%		
82	18.0000%		18.0000%		20.2581%		23.6555%		
83	18.0000%		18.0000%		20.2245%		23.6127%		
84	18.0000%		18.0000%		20.1911%		23.5702%		

Figure: 7 TAC §84.809(b)

MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT

(Optional: DATE _____)

BUYER _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____

SELLER/CREDITOR _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____

The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your." This contract may be transferred by the Seller.

PROMISE TO PAY

The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

MOTOR VEHICLE IDENTIFICATION

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	☐ New ☐ Demonstrator ☐ Factory Official/Executive ☐ Used	USE FOR WHICH PURCHASED ☐ PERSONAL, FAMILY OR HOUSEHOLD ☐ BUSINESS OR COMMERCIAL ☐ AGRICULTURAL

Trade-in: Year_____ Make_____ Model_____ VIN_____ License No._____

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.	**Total Sale Price** The total cost of my purchase on credit, including down payment of $_____
%	$	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the motor vehicle being purchased.

Late Charge: [**Sum of the periodic balances method:**] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment. [**Scheduled installment earnings or true daily earnings method:**] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

Prepayment: [**True daily earnings method:**] If I pay all that I owe early, I will not have to pay a penalty. [**Sum of the periodic balances or scheduled installment earnings method:**] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.

Additional information: I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] $_____(1)

2. Downpayment =
[*If netting add*: (if negative, enter "0" and see Line 4.A. below)]
Gross trade-in $_____
- payoff by Seller $_____
= net trade-in $_____
[*If not netting add*: (if negative enter "0" and see Line 4.A. below)]
+ cash $_____
+ Mfrs. Rebate $_____
+ other (describe) _____ $_____
Total downpayment $_____(2)

3. Unpaid balance of cash price (1 minus 2) $_____(3)

4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
   A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____ $_____
   B. Cost of physical damage insurance paid to insurance company $_____
   C. Cost of optional coverages with physical damage insurance paid to insurance company $_____
   D. Cost of optional credit insurance paid to insurance company or companies $_____
      Life
      Disability
   E. Debt cancellation agreement fee paid to the Seller $_____
   F. Official fees paid to government agencies $_____
   G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)] $_____
   H. Sales tax [*Optional addition*: (if not included in cash price)] $_____
   I. Other taxes [*Optional addition*: (if not included in cash price)] $_____
   J. Government license and registration fees $_____
   K. Government certificate of title fee $_____
   L. Government vehicle inspection fees $_____
      to state $_____ to inspection station $_____
   M. Deputy service fee paid to dealer $_____
   N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. [*Option to insert Spanish translation of disclosure here.*]** $_____
   O. Other charges (Seller must identify who is paid and describe purpose)
      to_____for_____ $_____
      to_____for_____ $_____
      to_____for_____
      $_____
   Total other charges and amounts paid to others on my behalf $_____(4)

5. **Amount Financed** (3 + 4) $_____(5)

[*Optional caption*: Seller will pay taxes, title fee, license and registration fees, and part of the inspection fee to government agencies. Seller will retain the documentary fee and the deputy service fee. Seller may also retain part or all of the inspection fee, insurance, service contracts, and other charges.]

[***Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions. Under item 4, a creditor may add a line for "other insurance paid to insurance company."***]

DEFERRED DOWNPAYMENT(S)	
AMOUNT	DATE DUE

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. The maximum deductible is $_____. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[***Note: The following optional provisions are included for creditors who finance physical damage insurance. Creditors who do not routinely finance physical damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.***]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	___	☐$_____
Comprehensive	___	☐$_____
Fire, Theft, and Combined Additional Coverage	___	☐$_____
Other	___	☐$_____

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. [***Note: Alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.808(12).***]

☐$_____ Towing and Labor Costs Reimbursement ☐$_____ Rental Reimbursement

☐$_____ Other:_____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES AND DEBT CANCELLATION AGREEMENT

Optional insurance coverages and debt cancellation agreement. The granting of credit will not be dependent on the purchase of either the insurance coverages or the debt cancellation agreement described below. It will not be provided unless I sign and agree to pay the extra cost. [***At creditor's option, the following may be added:***] The credit approval process will not be affected by whether or not I buy these insurance coverages or the debt cancellation agreement. [*Note: If this form is used for commercial transactions, a creditor has the option to bold the language in the preceding paragraph.*]

Coverage	Term in Months	Premium or Fee
GAP*	_____	☐ $_____
Invol. Unemployment	_____	☐ $_____
Debt cancellation agreement**	_____	$_____
Liability Insurance	_____	☐ $_____

$_____ per person $_____ property damage
$_____ per accident

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

**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. I can cancel the debt cancellation agreement without charge for a period of 30 days from the date of this contract, or for the period stated in the debt cancellation agreement, whichever period ends later.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. A debt cancellation agreement is not insurance and is regulated by the Office of Consumer Credit Commissioner.

For the premiums or fees included above, I want the related optional coverages and debt cancellation agreement.

Buyer's Signature: _____ Date: _____

[***Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.***]

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. [***At creditor's option, the following may be added:***] My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

☐Credit Life, one buyer $_____ ☐Credit Life, both buyers $_____ Term _____
☐Credit Disability, one buyer $_____ ☐Credit Disability, both buyers $_____ Term _____

[***Optional additional sentence for balloon payment contracts:***] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first ____ payments and does not cover the last scheduled payment. [***Optional additional language for true daily earnings method contracts:***] Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.
Buyer's Signature: _____ Date: _____
Co-Buyer's Signature: _____ Date: _____

[***Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.***]

LIABILITY INSURANCE

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

_____Buyer _____Co-Buyer

HOW YOU FIGURE THE FINANCE CHARGE

[**Regular transaction using sum of the periodic balances method:**] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A_2: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00 per year. This rate is not the same as the Annual Percentage Rate. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of $____ per $100.00 per year. This rate is not the same as the Annual Percentage Rate.

[**True daily earnings method:**] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A_2: Sales Tax Advance) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges.

[**Scheduled installment earnings method:**] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A_2: Sales Tax Advance) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

CONSUMER WARNING

[Scheduled Installment Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.

[True Daily Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.

BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT

(OPTION A: **If the buyer's signature is dated)** I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION B: **If the buyer's signature is not dated)** I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)

(OPTION C: **If the buyer's signature is not dated)** I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION D: **If the buyer's signature is dated or not dated)** I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.

Buyer	Date	Seller	Date
Co-Buyer	Date		

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT.

OCCC NOTICE. For questions or complaints about this contract, contact (insert name of creditor) at (insert creditor's phone number and, at creditor's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to this contract. If a complaint or question cannot be resolved by contacting the creditor, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

OTHER TERMS AND CONDITIONS

[Sum of the periodic balances method and scheduled installment earnings method:] HOW YOU CALCULATE MY FINANCE CHARGE REFUND IF I PREPAY If I prepay in full, I may be entitled to a refund of part of the Finance Charge. **[Sum of the periodic balances method:]** You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than $1.00.) (Additional Option for heavy commercial vehicle: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than $1.00.) **[Scheduled installment earnings method:]** You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional clause for sales tax advance: You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of $25 (or $150 for a heavy commercial vehicle) to the earned finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than $1.00.) (Optional clause for deferred sales tax: You will figure my refund by deducting earned finance charges from the total Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance subject to a finance charge as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the contract rate shown on the contract. You will also add the acquisition cost of $25 (or $150 for a heavy commercial vehicle) to the earned finance charge, so long as the total of the earned finance charge and the acquisition cost does not exceed the total Finance Charge disclosed in the contract. I will not get a refund if it is less than $1.00.) **[Flexible contract forms designed to accommodate alternative methods:]** You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater

than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than $1.00.

HOW YOU WILL APPLY MY PAYMENTS [**True daily earnings method:**] You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. anything else I owe under this agreement.

HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY [**True daily earnings method:**] You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

INTEREST AFTER MATURITY [**Scheduled installment earnings or sum of the periodic balances method:**] If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

SPECIAL PROVISIONS FOR BALLOON PAYMENT CONTRACTS A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

(Paying the balloon payment under Texas Finance Code §348.123(a)) I can pay all I owe when the balloon payment is due and keep my motor vehicle.

(Option A: Refinancing the balloon payment) If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b)(iii)) I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

AGREEMENT TO KEEP MOTOR VEHICLE INSURED I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle. The insurer must be authorized to do business in Texas. (Optional Provisions: The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage. The maximum deductible is $_____.)

YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

PHYSICAL DAMAGE INSURANCE PROCEEDS I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES [**True daily earnings method:**] If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. [**Scheduled installment earnings method or sum of the periodic balances:**] If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

APPLICATION OF CREDITS Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

TRANSFER OF RIGHTS You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

SECURITY INTEREST To secure all I owe on this contract and all my promises in it, I give you a security interest in:

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

USE AND TRANSFER OF THE MOTOR VEHICLE I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of $25 ($50 for a heavy

commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

CARE OF THE MOTOR VEHICLE I agree to keep the motor vehicle free from all liens and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.

DEFAULT I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

LATE CHARGE I will pay you a late charge as agreed to in this contract when it accrues.

REPOSSESSION If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

MY RIGHT TO REDEEM If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

DISPOSITION OF THE MOTOR VEHICLE If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. If you sell the motor vehicle in a public or private sale, you will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title.

COLLECTION COSTS If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

CANCELLATION OF OPTIONAL INSURANCE AND SERVICE CONTRACTS This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

YOUR RIGHT TO DEMAND PAYMENT IN FULL If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

IF YOU DEMAND I PAY ALL I OWE [**Sum of the periodic balances method or scheduled installment earnings method**:] If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

SERVICING AND COLLECTION CONTACT You may try to contact me at any mailing address, e-mail address, or phone number I give you, as the law allows. You may try to contact me in writing (including mail, e-mail, and text messages) and by phone (including prerecorded or artificial voice messages and automatic telephone dialing systems).

RETURNED CHECK FEE I agree to pay you a fee of up to $30 for a returned check. You can add the fee to the amount I owe or collect it separately.

INTEGRATION AND SEVERABILITY CLAUSE This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle. If any part of this contract is not valid, all other parts stay valid.

LEGAL LIMITATIONS ON YOUR RIGHTS If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts.

APPLICABLE LAW Federal law and Texas law apply to this contract.

SELLER'S DISCLAIMER OF WARRANTIES Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.

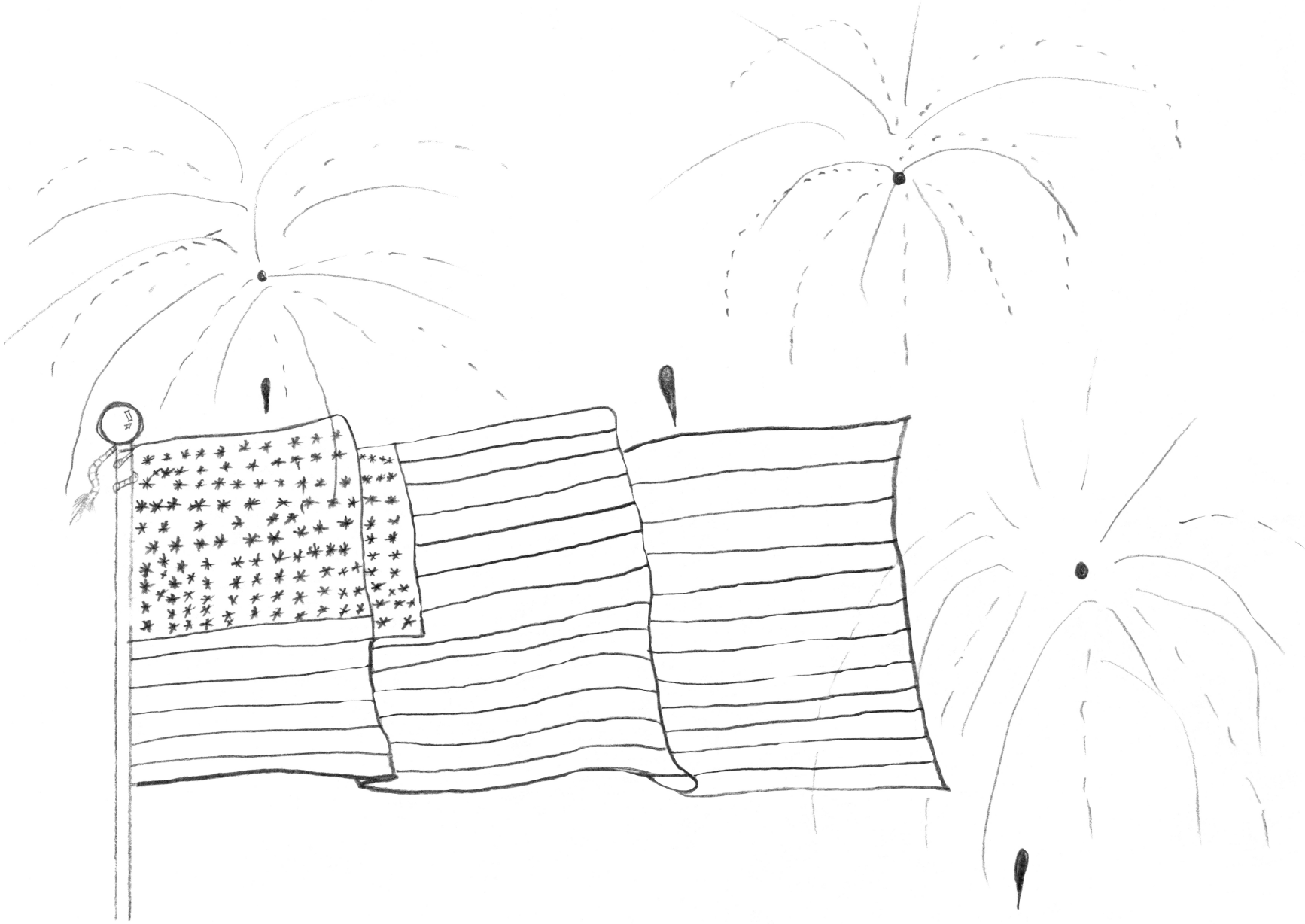
NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)

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

In this box only, the word "you" refers to the Buyer.

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
Spanish Translation:

Guía para compradors de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health & Safety Code. Before the State may settle a judicial enforcement action under 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 judgment if the comments disclose facts or considerations that include that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health & Safety Code.

Case Title and Court: *State of Texas v. Magnum Blue Ribbon Feeds, Inc.;* Cause No. D-1-GV-13-001396, in the 201st Judicial District Court, Travis County, Texas.

Nature of the Defendant's Operations: Magnum Blue Ribbon Feeds, Inc., operated a plant near the City of Hereford that mined and processed calcium carbonate for use as an animal feed supplement. The State's suit alleges that Defendant violated its permit-by-rule for air emissions by failing to control dust emission from plant roads and work area, and by producing emissions with greater than 20% opacity. The State also alleges that dust emissions from the facility caused a nuisance to residents in the City of Hereford.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction orders Defendant to cease operating until it obtains a New Source Review Permit, and to pay the State of Texas civil penalties of $130,000 and $40,000 in attorney's fees.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Mark A. Steinbach, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201600749
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: February 18, 2016

♦ ♦ ♦

Cancer Prevention and Research Institute of Texas

Request for Applications R-17.1-ETRA

Early Translational Research Awards

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for applications for research projects addressing critically important needs related to the diagnosis, prevention, and/or treatment of cancer. The objective of this award is to "bridge the gap" between promising new discoveries achieved in the research laboratory and commercial development by funding advancement toward IND clearance or investigational device exemption approval for the therapeutic, device, or diagnostic assay through activities up to and including preclinical proof-of-principle data that demonstrate applicability to the planned clinical scenario. The work funded under this RFA must be deemed sufficiently robust such that successful completion would result in identification of a "lead" compound, assay, or device that, as a next stage, could be taken into full development in compliance with ICH Guidelines and US regulatory guidance documents and regulations.

The goal of awards made in response to this RFA is to fund innovative cancer research from target identification to "lead candidate" stage, according to a defined Target Product Profile, that projects a clear path to full commercial development. This award allows the opportunity to develop proof-of-principle data necessary to bring promising cancer research projects to lead stage in preparation for full commercial development according to FDA regulations. Funding may be provided for intermediate steps according to established milestones (often referred to as "stage gates") consistent with those utilized by pharmaceutical/biotechnology therapeutic, diagnostic, and/or device companies for "target identification to lead" development (i.e., achievement of planned Target Product Profile [Draft Package Insert]) prior to full development activities.

Applicants may request a maximum of $1,000,000 in total costs over a period of 1 to 3 years.

Applications will be accepted beginning at 7:00 a.m. Central Time on Monday, March 21, 2016, through 3:00 p.m. Central Time on Thursday, May 19, 2016. Only applications submitted via the CPRIT Application Receipt System (www.CPRITGrants.org) portal will be considered eligible for evaluation. CPRIT will not accept late applications or applications that are not submitted via the portal. A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us.

TRD-201600883
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: February 23, 2016

♦ ♦ ♦

Request for Applications R-17.1-IIRA

Individual Investigator Research Awards

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for the Individual Investigator Research Awards grant mechanism for innovative research projects addressing critically important questions that will significantly advance knowledge of the causes, prevention, and/or treatment of cancer. The goal of awards made in response to this RFA is to fund exceptionally innovative research projects with great potential impact that are directed by a single investigator. Areas of interest include laboratory research, population-based research, translational studies, and/or clin-

ical investigations. CPRIT encourages applications that seek new fundamental knowledge about cancer and cancer development, as well as those attempting to develop state-of-the-art technologies, tools, and/or resources for cancer research, including those with potential commercialization opportunities. This award allows experienced or early career-stage cancer researchers the opportunity to explore new methods and approaches for investigating a question of importance that has been inadequately addressed or for which there may be an absence of an established paradigm or technical framework. CPRIT will look with special favor on new approaches to be taken or new areas of investigation to be explored by established investigators and on supporting the research programs of the most promising investigators at the beginning of their research careers. The degree of relevance to cancer research will be an important criterion for evaluation of projects for funding by CPRIT. Only one IIRA, IIRACB, IIRACCA, or IIRAP application per cycle is allowed.

The maximum amount that may be requested by applicants is $300,000 in total costs per year for up to 3 years for research.

Applications will be accepted beginning at 7:00 a.m. Central Time on Monday, March 21, 2016, through 3:00 p.m. Central Time on Thursday, May 19, 2016. Only applications submitted via the CPRIT Application Receipt System (www.CPRITGrants.org) portal will be considered eligible for evaluation. CPRIT will not accept late applications or applications that are not submitted via the portal. A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us.

TRD-201600884
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: February 23, 2016

♦ ♦ ♦

Request for Applications R-17.1-IIRACB

Individual Investigator Research Awards for Computational Biology

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for the Individual Investigator Research Awards for Computational Biology for mathematical or computational research projects addressing questions that will advance our knowledge in any aspect of cancer. Applications may address any topic or issue related to cancer causation, identification of populations at risk, prevention, early progression, early detection, treatment, or outcomes. For example, research may address data analysis of cellular pathways, microarrays, cellular imaging, cancer imaging, or genomic, proteomic, and metabolomic databases. It may address descriptive mathematical models of cancer, as well as mechanistic models of cellular processes and interactions. Finally, it may also use artificial intelligence approaches to build new tools for mining cancer research and treatment databases. Partnering of computational scientists with cancer biologists or oncologists is highly recommended; a truly interdisciplinary team that addresses models that could become simulations of structure or pathway functional relationships and changes of these relationships over the disease progression is highly recommended. Successful applicants should be working in a research environment capable of supporting potentially high-impact studies in computational biology, biostatistics, and/or mathematics. Only one IIRA, IIRACB, IIRACCA, or IIRAP application per cycle is allowed.

Applicants may request a maximum of $300,000 per year for a period of up to 3 years.

Applications will be accepted beginning at 7:00 a.m. Central Time on Monday, March 21, 2016, through 3:00 p.m. Central Time on Thursday, May 19, 2016. Only applications submitted via the CPRIT Application Receipt System (www.CPRITGrants.org) portal will be considered eligible for evaluation. CPRIT will not accept late applications or applications that are not submitted via the portal. A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us.

TRD-201600885
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: February 23, 2016

♦ ♦ ♦

Request for Applications R-17.1-IIRACCA

Individual Investigator Research Awards for Cancer in Children and Adolescents

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for the Individual Investigator Research Awards for Cancer in Children and Adolescents grant mechanism for innovative research projects addressing questions that will advance our knowledge of the causes, prevention, progression, detection, or treatment of cancer in children and adolescents. Applications may address any topic related to these areas as well as projects dealing with the causes or amelioration of late effects of cancer treatment. Laboratory, clinical, or population-based studies are all acceptable. CPRIT expects the outcome of the research to reduce the incidence, morbidity, or mortality from cancer in children and/or adolescents in the near or long term. Applications that seek to apply or develop state-of-the-art approaches, technologies, tools, treatments, and/or resources are encouraged, particularly those with potential for commercialization. Successful applicants should be working in a research environment capable of supporting potentially high-impact studies. Only one IIRA, IIRACCA, IIRACB, or IIRAP application per cycle is allowed.

Applicants may request a maximum of $300,000 per year for a period of up to 4 years. Applicants that plan on conducting a clinical trial as part of the project may request up to $500,000 in total costs per year for up to 4 years.

Applications will be accepted beginning at 7:00 a.m. Central Time on Monday, March 21, 2016, through 3:00 p.m. Central Time on Thursday, May 19, 2016. Only applications submitted via the CPRIT Application Receipt System (www.CPRITGrants.org) portal will be considered eligible for evaluation. CPRIT will not accept late applications or applications that are not submitted via the portal. A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us.

TRD-201600886
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: February 23, 2016

♦ ♦ ♦

Request for Applications R-17.1-IIRAP

Individual Investigator Research Awards for Prevention and Early Detection

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for the Individual Investigator Research Awards for Prevention and Early Detection grant mechanism for innovative research projects addressing questions that will advance our knowledge of the causes, prevention, early-stage progression, and/or early detection of cancer. Applications may address any

topic or issue related to cancer causation, prevention, early progression, or early detection. Research may be laboratory-, clinical-, or population-based and may include behavioral/intervention, dissemination, or health services/outcomes research to reduce cancer incidence or promote early detection. CPRIT expects the outcomes of activities supported by this mechanism to reduce the burden of cancer in the near or long term. CPRIT encourages applications that seek to apply or develop state-of-the-art technologies, tools, and/or resources for prevention or early detection of cancer, including those with potential commercialization opportunities. Successful applicants should be working in a research environment capable of supporting potentially high-impact studies. Only one IIRA, IIRACB, IIRACCA, or IIRAP application per cycle is allowed.

The maximum amount that may be requested by applicants is up to of $300,000 per year for laboratory and clinical research; and up to $500,000 per year for population-based research in total costs per year for up to 3 years for research.

Applications will be accepted beginning at 7:00 a.m. Central Time on Monday, March 21, 2016, through 3:00 p.m. Central Time on Thursday, May 19, 2016. Only applications submitted via the CPRIT Application Receipt System (www.CPRITGrants.org) portal will be considered eligible for evaluation. CPRIT will not accept late applications or applications that are not submitted via the portal. A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us.

TRD-201600887
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: February 23, 2016

♦ ♦ ♦

Request for Applications R-17.1-RTA

Research Training Awards

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from eligible organizations for the integrated institutional research training programs to support promising individuals who seek specialized training in the area of cancer research. The goals of the Research Training Awards are to attract outstanding predoctoral (Ph.D. or M.D./Ph.D.) and postdoctoral trainees committed to pursuing a career in basic, population-based, translational, or clinical cancer research; to expand the skills and expertise of trainees to promote the next generation of investigators and leaders in cancer research; to position most trainees for independent research careers; and to support the development of high-quality, innovative, and creative research that, if successful, could provide the basis for a significant impact on cancer prevention, detection, and/or treatment. Successful applicant institutions are expected to provide trainees with broad access to research opportunities across disciplinary and departmental lines and to maintain high standards for intellectual rigor and creativity. Institutions may submit only one new or renewal application under this RFA during this funding cycle. An exception will be made for institution submitting applications for cancer prevention training; in this case, institutions may submit one prevention training program application and one additional application in another aspect of cancer research

The maximum amount that may be requested by applicants is $800,000 in total costs per year for up to five years.

Applications will be accepted beginning at 7:00 a.m. Central Time on Monday, March 21, 2016, through 3:00 p.m. Central Time on Thursday, May 19, 2016. Only applications submitted via the CPRIT Application Receipt System (www.CPRITGrants.org) portal will be considered eligible for evaluation. CPRIT will not accept late applications or applications that are not submitted via the portal. A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us.

TRD-201600882
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Filed: February 23, 2016

♦ ♦ ♦

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 02/29/16 - 03/06/16 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 02/29/16 - 03/06/16 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/16 - 03/31/16 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/16 - 03/31/16 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-201600862
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 23, 2016

♦ ♦ ♦

Texas Council for Developmental Disabilities

Request for Proposals: Public Policy Fellows

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for up to two organizations that will each hire a TCDD Public Policy Fellow and support the Fellow to develop a deep understanding of policy affecting people with developmental disabilities.

The purpose of offering funding for projects described in this Request for Proposals (RFP) is to increase the number of policy professionals in Texas who have the requisite skills, knowledge and experience to engage in policy activities so that people with developmental disabilities have greater control over their own lives.

TCDD has approved funding up to $67,500 per organization, per year, for up to two years. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal match-

ing funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained at *www.DDSuite.org.* More information about TCDD may be obtained through TCDD's website at *www.tcdd.texas.gov.* All questions pertaining to this RFP should be directed in writing to Danny Fikac, Planning Specialist, via email at *Danny.Fikac@tcdd.texas.gov.* Mr. Fikac may also be reached by telephone at (512) 437-5415.

Deadline: Proposals must be submitted through *www.DDSuite.org* by May 9, 2016. Proposals will not be accepted after the due date.

TRD-201600871
Beth Stalvey
Executive Director
Texas Council for Developmental Disabilities
Filed: February 23, 2016

♦ ♦ ♦

Education Service Center, Region 6

Notice of Regular Meeting of the Education Service Center, Region 6 Board of Directors

Notice is hereby given that on the 25th day of February, 2016, the Board of Directors of the Education Service Center, Region 6 will hold a Board of Directors at 11:00 a.m. at the Education Service Center Building in Huntsville, Texas.

Under the authority of *Texas Government Code, §§551.001 - 551.146,* the Board, during the course of the meeting covered by this notice, may enter into closed or executive session for any of the following reasons:

§551.084: For the purpose of excluding any witness or witnesses from a hearing during examination of another witness.

§551.071: For the purpose of a private consultation with the Board's attorney on any or all subjects or matters authorized by law.

§551.072: For the purpose of discussing the purchase, lease or value of real property.

§551.073: For the purpose of considering a negotiated contract for a prospective gift or donation.

§551.074: For the purpose of considering the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear complaints of charges against a public officer or employee.

§551.082: For the purpose of considering discipline of a public school child or children or to hear a complaint by an employee against another employee if the complaint or charge directly results in a need for a hearing.

§551.076: To consider the deployment, or specific occasions for implementation, or security personnel, or devices.

§551.083: For the purpose of considering the standards, guidelines, terms or conditions the Board will follow, or will instruct its representatives to follow, in consultation with representatives of employee groups in connection with consultation agreements provided for by *Section 13.901 of the Texas Education Code.*

§551.075: To receive information from employees or to ask questions of employees.

All final votes, actions, or decisions shall be taken or made in open session.

TRD-201600860
Michael Holland
Executive Director
Education Service Center, Region 6
Filed: February 22, 2016

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is April 4, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 4, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Brian K. Carroll dba Artesian Springs, LLC; DOCKET NUMBER: 2015-1593-PWS-E; IDENTIFIER: RN101261659; LOCATION: Newton, Newton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(3)(A)(ii), by failing to collect repeat distribution total coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to conduct repeat coliform monitoring; and 30 TAC §290.109(c)(2)(F), (f)(5), and (7) and Texas Health and Safety Code, §341.033(d), by failing to collect five routine distribution coliform samples, the month following a total coliform-positive sample result; PENALTY: $918; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: City of Angus; DOCKET NUMBER: 2015-1523-MWD-E; IDENTIFIER: RN102806734; LOCATION: City of Angus, Navarro County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ00011864001, Effluent Limitations and Monitoring Re-

quirements Numbers 1, 3, and 6, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ00011864001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0011864001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2014; and 30 TAC §305.125(1) and (17) and §319.7(a)(4) and TPDES Permit Number WQ0011864001, Monitoring and Reporting Requirements Number 1, by failing to submit a complete quarterly effluent monitoring results as specified in the permit; PENALTY: $9,880; Supplemental Environmental Project offset amount of $9,880; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of China; DOCKET NUMBER: 2015-1562-MWD-E; IDENTIFIER: RN101721686; LOCATION: China, Jefferson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012104001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(17) and §319.1, and TPDES Permit Number WQ0012104001, Monitoring and Reporting Requirements Number 1, by failing to include all effluent monitoring results on the discharge monitoring report; and 30 TAC §§305.125(1) and (11)(A), 319.4, and 319.5(b), and TPDES Permit Number WQ0012104001, Monitoring and Reporting Requirements Numbers 1 and 3.a., by failing to collect and analyze samples at the required frequency; PENALTY: $6,525; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: City of Clyde; DOCKET NUMBER: 2015-1805-PWS-E; IDENTIFIER: RN101410751; LOCATION: Clyde, Callahan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter (mg/L) for total trihalomethanes based on the locational running annual average; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for the calendar year 2014; and 30 TAC §290.110(b)(4) and (f)(6) and THSC, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.5 mg/L chloramine throughout the distribution system in more than 5.0% of the samples collected each month, for any two consecutive months; PENALTY: $690; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Falfurrias; DOCKET NUMBER: 2015-1700-PWS-E; IDENTIFIER: RN101179869; LOCATION: Falfurrias, Brooks County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.050 milligrams per liter for selenium, based on the running annual average; PENALTY: $345; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: City of Lorena; DOCKET NUMBER: 2015-1631-PWS-E; IDENTIFIER: RN101428563; LOCATION: Lorena, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $575; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: City of Odessa; DOCKET NUMBER: 2015-1598-MWD-E; IDENTIFIER: RN101614261; LOCATION: Odessa, Midland County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010238002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010238002, Monitoring and Reporting Requirements Number 1 and Biomonitoring Requirements Number 3.b(3), by failing to timely submit the 48-Hour Acute Freshwater biomonitoring discharge monitoring report for the quarterly monitoring period ending June 30, 2015, by July 20, 2015; PENALTY: $22,112; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(8) COMPANY: City of White Settlement; DOCKET NUMBER: 2015-1604-PWS-E; IDENTIFIER: RN101390292; LOCATION: White Settlement, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 15 picoCuries per liter for gross alpha particle activity, based on the running annual average; PENALTY: $306; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Eagle Railcar Services, L.P.; DOCKET NUMBER: 2015-1635-AIR-E; IDENTIFIER: RN102955150; LOCATION: Elkhart, Anderson County; TYPE OF FACILITY: railcar maintenance and repair terminal; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O2069, Special Terms and Conditions (STC) Number 8, by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; and 30 TAC §§101.20(2), 113.960, 122.143(4), and 122.145(1)(C), 40 Code of Federal Regulations (CFR) §63.3920(a)(1)(iii), THSC, §382.085(b), and FOP Number O2069, STC Number 4, by failing to timely submit a semiannual compliance report for 40 CFR Part 63, Subpart MMMM; PENALTY: $5,438; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: IDEAL BUSINESS, INCORPORATED dba Quick Mart; DOCKET NUMBER: 2015-1797-PST-E; IDENTIFIER: RN102031473; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; 30 TAC §115.241(b)(1) and (4) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit written notification of intent to decommission the Stage II vapor recovery equipment at least 30 calendar days prior to

the beginning of any decommissioning activity, and failing to notify in writing the TCEQ regional office no later than ten calendar days after completion of all decommissioning activity; 30 TAC §115.241(b)(3) and THSC, §382.085(b), by failing to perform and complete all decommissioning activities; and 30 TAC §334.48(b), by failing to ensure the UST system is operated, maintained, and managed in a manner that will prevent releases of regulated substances; PENALTY: $7,701; ENFORCEMENT COORDINATOR: Catherine Grutsch, (512) 239-2607; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: KAMIL ENTERPRISES INCORPORATED dba Mega Royal Mart; DOCKET NUMBER: 2015-1627-PST-E; IDENTIFIER: RN100647742; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $8,250; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Key Energy Services, LLC; DOCKET NUMBER: 2015-1731-PWS-E; IDENTIFIER: RN101057545; LOCATION: Odessa, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level for microbial contaminants for the month of August 2015; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect all required repeat distribution total coliform samples within 24 hours of being notified of a total coliform-positive sample result; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Report to the executive director each quarter by the tenth day of the month following the end of each quarter for the second quarter of 2015; PENALTY: $807; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(13) COMPANY: Lake Lavon Baptist Encampment; DOCKET NUMBER: 2015-0086-MWD-E; IDENTIFIER: RN101512424; LOCATION: Princeton, Collin County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30.350(d) and (j), and §305.125(1), and TCEQ Permit Number WQ0014192001, Special Provisions Number 2, by failing to employ or contract one or more licensed wastewater treatment facility operators holding the appropriate level of license to operate a wastewater treatment facility a minimum of five days per week; 30 TAC §305.125(1) and (5) and §319.5(a), TCEQ Permit Number WQ0014192001, Special Provisions Number 4, by failing to collect effluent samples from the sampling points described in the permit; 30 TAC §305.125(1) and (5) and §319.4, and TCEQ Permit Number WQ0014192001, Effluent Limitations and Monitoring Requirements B, by failing to collect and analyze effluent samples for each permitted parameter; 30 TAC §305.125(1) and (5) and §319.11(d), and TCEQ Permit Number WQ0014192001, Operational Requirements Number 5, by failing to provide an effluent flow measuring device; and TWC, §5.702 and 30 TAC §21.4, by failing to pay all Consolidated Water Quality Fees and associated late fees for TCEQ Financial Administration Account Number 23005216 Fiscal Year 2015; PENALTY: $13,912; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: PESHAWAR INCORPORATED dba Super Stop 4; DOCKET NUMBER: 2015-1503-PST-E; IDENTIFIER: RN103001798; LOCATION: Vidor, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.50(d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and failing to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: $14,772; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Shawn Sharafi dba Country Living Apartments and Farzanh Mozafrian dba Country Living Apartments; DOCKET NUMBER: 2015-1749-PWS-E; IDENTIFIER: RN101223824; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(1)(A) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level for microbial contaminants; and 30 TAC §290.122(c)(2)(A) and (f), by failing to timely provide public notification to the executive director regarding the failure to conduct routine coliform monitoring; PENALTY: $466; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Spring Meadow Mobile Home Park, LLC; DOCKET NUMBER: 2015-1666-PWS-E; IDENTIFIER: RN102316783; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: $240; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(17) COMPANY: Tri-Star Sheldon, Incorporated dba Cheers One Stop N More; DOCKET NUMBER: 2015-1586-PST-E; IDENTIFIER: RN101773208; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month and, failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,629; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: TXI Operations, LP; DOCKET NUMBER: 2015-1396-AIR-E; IDENTIFIER: RN100217199; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: cement manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Federal Operating Permit (FOP) Number O1077, Special Terms and Conditions Number 12, New Source Review Permit Numbers 1360A and PSDTX632M1, Special Conditions Number 3.A.(1), and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the permitted nitrogen oxides emissions limit; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1077, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $22,688; Supplemental Environmental Project offset amount of $9,075; ENFORCEMENT

COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201600865
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 23, 2016

♦ ♦ ♦

Enforcement Orders

An agreed order was entered regarding City of Whiteface, Docket No. 2012-2596-MWD-E on February 17, 2016 assessing $25,262 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of The Colony, Docket No. 2013-1363-MWD-E on February 17, 2016 assessing $39,750 in administrative penalties with $7,950 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INC., Docket No. 2013-1998-MLM-E on February 17, 2016 assessing $21,768 in administrative penalties with $4,352 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, 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 BRUNSON'S INVESTMENT, LLC dba Brunson Pump Service, Docket No. 2014-0757-MLM-E on February 17, 2016 assessing $9,001 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Amherst, Docket No. 2014-1058-MWD-E on February 17, 2016 assessing $15,939 in administrative penalties with $3,187 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, 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 Blue Ridge West Municipal Utility District, Docket No. 2014-1151-MWD-E on February 17, 2016 assessing $16,313 in administrative penalties with $3,262 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Texas, Inc., Docket No. 2014-1143-MWD-E on February 17, 2016 assessing $14,875 in administrative penalties with $2,975 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Regency Field Services LLC fka Eagle Rock Field Services, L.P., Docket No. 2014-1173-AIR-E on February 17, 2016 assessing $39,420 in administrative penalties with $7,883 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 North Texas Municipal Water District, Docket No. 2014-1440-WQ-E on February 17, 2016 assessing $15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEUTZE PROPERTIES, LTD. dba Mr. Cartender 2, dba Mr. Cartender 5, dba Peter Rabbits 125, and Peter Rabbits Fast Foods 109, Docket No. 2014-1621-PST-E on February 17, 2016 assessing $45,105 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, 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 Lucky Texan #1 LLC, Docket No. 2014-1800-PST-E on February 17, 2016 assessing $23,513 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Yantis, Docket No. 2015-0100-MWD-E on February 17, 2016 assessing $27,550 in administrative penalties with $5,510 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2601, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CRESCENT NJK CORPORATION dba Grapevine Cleaners, Docket No. 2015-0147-MLM-E on February 17, 2016 assessing $10,953 in administrative penalties with $2,190 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding N. H. L. Group, L.L.C. dba Quick Food Mart 2, Docket No. 2015-0378-PST-E on February 17, 2016 assessing $26,356 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Com-

mission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Telle A. Albiter dba Little All Star Daycare and Mayolo Albiter dba Little All Star Daycare, Docket No. 2015-0533-PWS-E on February 17, 2016 assessing $3,099 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTG Gas Processing, L.P., Docket No. 2015-0654-AIR-E on February 17, 2016 assessing $52,500 in administrative penalties with $10,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Nguyen, Enforcement Coordinator at (512) 239-6160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leif A. Zars dba TRADEWINDS MANAGEMENT, LLC dba SOUTHERN TRADEWINDS LIMITED PARTNERSHIP, Docket No. 2015-0696-PWS-E on February 17, 2016 assessing $1,820 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Wanda Thompson, Docket No. 2015-0719-MLM-E on February 17, 2016 assessing $4,139 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pflugerville, Docket No. 2015-0770-WQ-E on February 17, 2016 assessing $5,775 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Odfjell Terminals (Houston) Inc., Docket No. 2015-0827-AIR-E on February 17, 2016 assessing $34,485 in administrative penalties with $6,897 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McWane, Inc., Docket No. 2015-0895-IWD-E on February 17, 2016 assessing $28,800 in administrative penalties with $5,760 deferred.

Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2527, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kashi Enterprises, Inc. dba Rudys Store 10, Docket No. 2015-0977-PST-E on February 17, 2016 assessing $7,875 in administrative penalties with $1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bonnie Crider dba Criders Frio River Resort, Docket No. 2015-1008-PWS-E on February 17, 2016 assessing $630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rogers, Docket No. 2015-1039-PWS-E on February 17, 2016 assessing $172 in administrative penalties with $172 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-6155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Trinidad, Docket No. 2015-1189-PWS-E on February 17, 2016 assessing $554 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, 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 GLENDALE WATER SUPPLY CORPORATION, Docket No. 2015-1198-PWS-E on February 17, 2016 assessing $172 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Laguna Madre Water District, Docket No. 2015-1236-PWS-E on February 17, 2016 assessing $1,992 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trinity Tank Car, Inc., Docket No. 2015-1274-AIR-E on February 17, 2016 assessing $112,500 in administrative penalties with $22,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Kingsley Coppinger, Enforcement Coordinator at (512) 239-6581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201600890
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 24, 2016

♦ ♦ ♦

Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application Number 40287

Application. The Gainsborough Corporation, 5207 Kiam Street, Houston, Texas 77007, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40287, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, Gainsborough Waste (GW) Transfer Station will be located at 950 McCarty Street, approximately 2,600 feet south of Interstate Highway 10, 77029, in Harris County. The Applicant is requesting authorization to transfer, process, and recycle non-putrescible municipal solid waste which includes construction and demolition debris and rubbish from municipal and commercial activities, which will be processed for recyclable materials. The registration application is available for viewing and copying at the Pleasantville Library, 1520 Gellhorn Drive, Houston, Texas 77029, and may be viewed online at www.earthcon.com/statepermits.html. The following website which provides an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.769965&lng=-95.28893&zoom=12&type=r. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments. Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www10.tceq.state.tx.us/epic/ecmnts/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from Gainsborough Corporation at the address stated above or by calling Mr. W. Noble Carl, III, President, The Gainsborough Corporation at (713) 785-8051.

TRD-201600888
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 24, 2016

♦ ♦ ♦

Notice of Correction to Agreed Order Number 13

In the January 8, 2016, issue of the *Texas Register* (41 TexReg 525), the Texas Commission on Environmental Quality published notice of Agreed Orders, specifically item Number 13, for D. TRAN, INCORPORATED dba Manns Cheveron 2. The reference to company should be corrected to read: D. TRAN, INCORPORATED dba Manns Chevron 2.

For questions concerning this error, please contact Candy Garrett at (512) 239-1456.

TRD-201600866
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 23, 2016

♦ ♦ ♦

Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 101 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 101, General Air Quality Rules, §101.1 and §101.10, and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking would incorporate the EPA's latest finalized definition of volatile organic compounds, align the lead reporting threshold with the EPA's Annual Emissions Reporting Rule (AERR), change the distance from the shoreline to 9.0 nautical miles for applicable offshore sources to report an emissions inventory, and revise terminology and definitions for clarity or consistency with the EPA's AERR.

The commission will hold a public hearing on this proposal in Austin on March 29, 2016, at 10:00 a.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/*. File size restric-

tions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-040-101-AI. The comment period closes on April 4, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Kathy Pendleton, P.E., Air Quality Division, at (512) 239-1936.

TRD-201600790
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 19, 2016

♦ ♦ ♦

Notice of Public Meeting

AMENDED NOTICE OF APPLICATION AND PRELIMINARY DECISION FOR AN AIR QUALITY PERMIT

PROPOSED AIR QUALITY PERMIT NUMBERS: 121917 AND PSDTX1422

APPLICATION AND PRELIMINARY DECISION. Southern Power Company, PO Box 2641, Birmingham, AL 35202-2641, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit 121917 and Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX1422, which would authorize construction of the Jackson County Generating Facility at the property which is south of Lundquist Road at the intersection of Texas County Road 710 and Lundquist Road, Ganado, Jackson County, Texas 77962. This application was submitted to the TCEQ on July 14, 2014. The proposed facility will emit the following air contaminants in a significant amount: organic compounds, carbon monoxide, nitrogen oxides, and particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less. In addition, the facility will emit the following air contaminants: sulfur dioxide and sulfuric acid.

The degree of PSD increment predicted to be consumed by the proposed facility and other increment-consuming sources in the area is as follows:

PM_{10}

Maximum Averaging Time	Maximum Increment Consumed (µg/m³)	Allowable Increment (µg/m³)
24-hour	7.9	30
Annual	1.5	17

$PM_{2.5}$

Maximum Averaging Time	Maximum Increment Consumed (µg/m³)	Allowable Increment (µg/m³)
24-hour	8	9
Annual	1.5	4

The executive director has determined that the emissions of air contaminants from the proposed facility which are subject to PSD review will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis, will be available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi regional office, and at and the Jackson County Memorial Library, 411 North Wells Street, Edna, Jackson County, Texas, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, NRC Building Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas.

INFORMATION AVAILABLE ONLINE. These documents are accessible through the Commission's Web site at www.tceq.texas.gov/goto/cid: the executive director's preliminary decision which includes the draft permit, the executive director's preliminary determination summary, the air quality analysis, and, once available, the executive director's response to comments and the final decision on this application. Access the Commissioners' Integrated Database (CID) using the above link and enter the permit number for this application. The public location mentioned above the Jackson County Memorial Library provides public access to the internet. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. *http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.101111&lng=-96.51&zoom=13&type=r.*

PUBLIC COMMENT / PUBLIC MEETING. You may submit additional written public comments within 30 days of the date of newspaper publication of this notice in the manner set forth in the AGENCY CONTACTS AND INFORMATION paragraph below. *A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the*

Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. **A written response to all formal comments will be prepared by the Executive Director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address.** *Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.*

The Public Meeting is to be held:

Tuesday, March 22, 2016 at 7:00 PM

Ganado High School Cafeteria

501 West Devers Avenue

Ganado, Texas 77962

OPPORTUNITY FOR A CONTESTED CASE HEARING. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. **A person who may be affected by emissions of air contaminants from the facility is entitled to request a hearing. A contested case hearing request must include the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" (4) a specific description of how you would be adversely affected by the application and air emissions from the facility in a way not common to the general public; (5) the location and distance of your property relative to the facility; and (6) a description of how you use the property which may be impacted by the facility. If the request is made by a group or association, one or more members who have standing to request a hearing and the interests the group or association seeks to protect must also be identified. You may also submit your proposed adjustments to the application/permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing within 30 days following this notice to the Office of the Chief Clerk, at the address provided in the information section below.**

A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decisions on the application. Further, the Commission will only grant a hearing on issues submitted by you or others during the public comment period that have not been withdrawn. Issues that are not submitted in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. If a timely contested case hearing request is not received or if all timely contested case hearing requests are withdrawn, the executive director may issue final approval of the application. The response to comments, along with the executive director's decision on the application will be mailed to everyone who submitted public comments or is on a mailing list for this application, and will be posted electronically to the CID. If any timely hearing requests are received and not withdrawn, the executive director will not issue final approval of the permit and will forward the application and requests to the Commissioners for their consideration at a scheduled commission meeting.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the Public Education Program toll free at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040.

Further information may also be obtained from Southern Power Company at the address stated above or by calling Ms. Kelli McCullough, Environmental Engineer at (205) 257-6720.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least one week prior to the meeting.

Amended Notice Issuance Date: February 10, 2016

TRD-201600742
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 17, 2016

♦ ♦ ♦

Notice of Public Meeting

Seven Total Maximum Daily Loads for Indicator Bacteria in Lake Houston, East Fork San Jacinto River, West Fork San Jacinto River, and Crystal Creek Watersheds

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment Seven Total Maximum Daily Loads (TMDLs) for Indicator Bacteria in Lake Houston, East Fork San Jacinto River, West Fork San Jacinto River, and Crystal Creek in Montgomery, San Jacinto, Grimes, Harris, Liberty, and Walker counties.

The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDLs for indicator bacteria in seven assessment units in Segments 1002, 1003, 1004 and 1004D in Montgomery, San Jacinto, Grimes, Harris, Liberty, and Walker counties, and the decision to join the implementation efforts of an approved, adjacent Implementation Plan (I-Plan).

A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses. The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDLs. The commission requests comments on each of the major components of the TMDLs: problem definition, endpoint identification, source analysis, seasonal variation, linkage between sources and receiving waters, margin of safety, pollutant loading allocation, public participation, and implementation and reasonable assurances.

The Coordination Committee for this project petitioned to join the implementation efforts of the Bacteria Implementation Group (BIG), which has an approved I-Plan in a large area adjacent to these watersheds. On September 9, 2015, the BIG members voted unanimously to accept the addition of the TMDLs for Lake Houston, East Fork San Jacinto River, West Fork San Jacinto River, and Crystal Creek to

the area covered by the BIG I-Plan. The commission also requests comments on the decision to join the efforts of this existing I-Plan.

After the public comment period, the TCEQ may revise the draft TMDLs, if appropriate. The final TMDLs will then be considered by the commission for adoption. The commission will also consider approving the decision to join the existing BIG I-Plan. Upon adoption of the TMDLs by the commission, the final TMDLs and a response to all comments received will be made available on the TCEQ website. The TMDLs will then be submitted to the United States Environmental Protection Agency (EPA) Region 6 office for final action by the EPA. Upon approval by the EPA, the TMDLs will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting for the draft TMDLs will be held at 6:00 p.m. on Thursday, March 17, 2016 at the San Jacinto River Authority, 1577 Dam Site Road, 3rd floor, Conroe, Texas 77304.

At this meeting, individuals have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written comments on the draft TMDLs and the decision to join the existing BIG I-Plan should be submitted to Jason Leifester, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-1414. Comments may be submitted electronically to www1.tceq.texas.gov/rules/ecomments/ by midnight on April 4, 2016, and should reference the *Seven Total Maximum Daily Loads for Indicator Bacteria in Lake Houston, East Fork San Jacinto River, West Fork San Jacinto River, and Crystal Creek Watersheds.*

For further information regarding the draft TMDLs and the decision to join the existing BIG I-Plan, please contact Jason Leifester at (512) 239-6457 or jason.leifester@tceq.texas.gov. Copies of the draft TMDLs will be available and can be obtained via the commission's website at: www.tceq.texas.gov/waterquality/tmdl/tmdlnews.html or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-201600794
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 19, 2016

♦ ♦ ♦

Notice of Water Quality Application

The following notice was issued on January 14, 2016.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (10) DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Fort Bend County Municipal Utility District No 133 has applied to the Texas Commission on Environmental Quality for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0014514001 to authorize the addition of an Interim II phase at a daily average flow not to exceed 640,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,360,000 gallons per day. The facility is located at 23527 1/2 Bellaire Boulevard, approximately 3,300 feet southwest of the intersection of Canal Road and Bellaire Boulevard and approximately 6,000 feet southwest of the intersection of Farm-to-Market Road 1093 and Canal Road in Fort Bend, County, Texas 77469.

TRD-201600889
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 24, 2016

♦ ♦ ♦

Texas Facilities Commission

Request for Proposals #303-6-20547

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-6-20547. TFC seeks a five (5) or ten (10) year lease of approximately 26,354 square feet space that consists of 26,159 square feet of office space and 195 square feet of outdoor employee lounge area space in Denton County, Texas.

The deadline for questions is March 15, 2016, and the deadline for proposals is March 22, 2016, at 3:00 p.m. The award date is April 20, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=122907.*

TRD-201600859
Kay Molina
General Counsel
Texas Facilities Commission
Filed: February 22, 2016

♦ ♦ ♦

Request for Proposals #303-6-20549

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-6-20549. TFC seeks a five (5) or ten (10) year lease of approximately 16,717 square feet of space that consists of 16,522 square feet of office space and 195 square feet of outdoor employee lounge area space in Midland or Odessa, Texas.

The deadline for questions is March 15, 2016, and the deadline for proposals is March 29, 2016, at 3:00 p.m. The award date is April 20, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=122900.*

TRD-201600840
Kay Molina
General Counsel
Texas Facilities Commission
Filed: February 22, 2016

♦ ♦ ♦

Department of Family and Protective Services

Additional Information Regarding 40 Texas Administrative Code §748.7

Department of Family and Protective Services (DFPS) adds the following groups and associations to the list of groups and associations who submitted public comment generally in opposition to 40 Texas Administrative Code §748.7 as proposed in the November 13, 2015, issue of the *Texas Register* (40 TexReg 8009), and as subsequently adopted in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1493): Daughters of Charity, Texas Unitarian Universalist Justice Ministry, Texas Affiliate of the National Alliance on Mental Illness, Hospitality House, Presbyterian Church USA, Children's Defense Fund of Texas, Education Austin, Workers Defense Project, Texas Association Against Sexual Assault, American Gateways, and Texas Indigenous Council.

TRD-201600873
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Filed: February 23, 2016

♦ ♦ ♦

Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment to the Home and Community based-Services Program (HCS) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2018. This notice amends the previous notice posted on February 12, 2016. The proposed effective date for the amendment is September 1, 2015, with no changes to cost neutrality.

This amendment request proposes to make the following changes:

Appendix C-1/C-3 Dental Treatment and Appendix J - The General Appropriations Act (House Bill 1), 84th Regular Session, 2015 adds additional funds to increase the service limit for dental treatment from $1,000 during an individual plan of care (IPC) year to $2,000 during an IPC year. The service limit will be increased for Waiver Years 3, 4 and 5.

Appendix C-1/C-3 Prescribed Drugs (Extended State Plan Service) and Appendix J - Prescribed Drugs (Extended State Plan Service) The waiver is being changed to clarify eligibility for prescription drugs through the HCS waiver program. As a result of the transition from the fee-for-service delivery method to the managed care delivery method, effective September 1, 2014, individuals in the waiver who are enrolled in managed care for their acute care services receive unlimited prescription medications through managed care and therefore do not qualify for prescriptions through the waiver. Dual eligible individuals are excluded from enrollment into managed care and, thus, are still eligible for prescription medications through the waiver if they exhaust non-HCS waiver resources first (such as the Medicare Prescription Drug Plan and the Texas Medicaid State Plan resources). The acute versus waiver dollars for prescriptions will be revised to better reflect the source of funding for prescription costs.

The HCS waiver provides services and supports to persons with intellectual disabilities who live in their own homes or family homes, or in community settings such as small group homes. To be eligible for the waiver, individuals must meet financial eligibility criteria as well as level of care for admission to an intermediate care facility for individuals with intellectual disabilities.

An individual may obtain a free copy of the proposed waiver amendment, including the HCS settings transition plan, or may ask questions, request additional information, or submit comments regarding this amendment or the HCS settings transition plan, by contacting Jacqueline Pernell by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711-3247, phone (512) 428-1931, fax (512) 730-7477, or by email at *TX_Medicaid_Waivers@hhsc.state.tx.us*.

TRD-201600826
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 19, 2016

♦ ♦ ♦

Public Notice

Individuals with Intellectual and Developmental Disabilities Stakeholder Forum

On March 9, 2016, from 10:00 a.m. to noon at the Health and Human Services Commission (HHSC) Brown-Heatly Building, Public Hearing Room, 4900 North Lamar Blvd., Austin, TX 78751, HHSC is holding a public meeting to ask people with intellectual and developmental disabilities (IDD), their legally authorized representatives (LARs), and families to give input on a pilot program to use a managed care model to provide services for people with IDD.

There will be an opportunity to attend the forum in person, to call into the forum, to submit comments through a webinar feature, and to watch the forum through webcast. The webcast link will be available once the agenda is posted.

HHSC is hosting this forum in partnership with Leavitt Partners and Sellers Dorsey, two national healthcare consulting firms.

We ask stakeholders to share this information with individuals, their LARs, and families.

Contact: To ask questions about the forum or about the public comment process, contact IDDPilot@leavittpartners.com.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services, including translation, should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201600901
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 24, 2016

♦ ♦ ♦

Public Notice - Health and Human Services System Transition Plan

(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 report cited in this notice is not included in the print version of the Texas Register. The report is available in the on-line version of the March 4, 2016, issue of the Texas Register.)

Pursuant to the direction of Senate Bill 200, 84th Legislature, Regular Session, 2015, the Health and Human Services System Transition Plan is presented in the March 2016 Report to the Transition Legislative Oversight Committee.

TRD-201600913
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: February 24, 2016

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Public Comment Period on the Amended 2016 State of Texas Consolidated Plan: One-Year Action Plan

The Texas Department of Housing and Community Affairs ("TDHCA") announces the opening of a 30-day public comment period for the Amended 2016 State of Texas Consolidated Plan: One-Year Action Plan ("the Plan"). The public comment period begins Monday, March 7, 2016, and continues until 6:00 p.m. Austin Local Time on Tuesday, April 5, 2016.

TDHCA, Texas Department of Agriculture ("TDA"), and Texas Department of State Health Services ("DSHS") prepared the Amended 2016 State of Texas Consolidated Plan: One-Year Action Plan ("the Plan") in accordance with 24 CFR §91.320. TDHCA coordinates the preparation of the State of Texas Consolidated Plan documents. The Plan covers the State's administration of the Community Development Block Grant Program ("CDBG") by TDA, the Housing Opportunities for Persons with AIDS Program ("HOPWA") by DSHS, and the Emergency Solutions Grant ("ESG") Program and the HOME Investment Partnerships ("HOME") Program by TDHCA.

The Plan reflects the intended uses of funds received by the State of Texas from HUD for Program Year 2016. The Program Year begins on February 1, 2016, and ends on January 31, 2017. The Plan also illustrates the State's strategies in addressing the priority needs and specific goals and objectives identified in the 2015-2019 State of Texas Consolidated Plan.

Based on updated HUD guidance, TDHCA has amended the Plan to change allocations amounts for all programs from estimated to final 2016 allocations; update the HOME Method of Distribution; update the definition of Chronically Homeless for ESG; and to add contingency provision language to the Citizen Participation Plan for estimated and actual allocation amounts for future years.

The public comment period for the Plan will be open from Monday, March 7, 2016, through Tuesday, April 5, 2016. Anyone may submit comments on the Plan in written form. Written comments concerning the Plan may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-0070. Comments must be received no later than Tuesday, April 5, 2016 at 6:00 p.m. Austin Local Time.

TRD-201600903
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 24, 2016

♦ ♦ ♦

Notice of Public Hearing - Multifamily Housing Revenue Bonds (Garden City Apartments)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Shepard-Acres Homes Neighborhood Library, 8501 West Montgomery Road, Houston, Texas 77088 at 6:00 p.m. on March 15, 2016. The hearing is regarding an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $17,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Steele Texas LIHTC LLC, a Colorado limited liability company, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring and rehabilitating a multifamily housing development. The housing development is described as follows: an approximately 252-unit multifamily housing development located at 9601 West Montgomery Road, Houston, Harris County, Texas 77088 (the "Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or shannon.roth@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

http://www.tdhca.state.tx.us/multifamily/communities.htm

TRD-201600902
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 24, 2016

♦ ♦ ♦

Re-Release of the Notice of Funding Availability (NOFA) for the "2016 Amy Young Barrier Removal Program"

I. Source of Funds.

The Amy Young Barrier Removal Program is funded through the Housing Trust Fund which was established by the 72nd Legislature, Senate Bill 546, Texas Government Code, §2306.201, to create affordable housing for low- and very low-income households. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA) Summary.

The Texas Department of Housing and Community Affairs (the "Department") announces the availability of $1,614,647 of State of Texas Housing Trust Funds for Fiscal Year 2016 for the Amy Young Barrier Removal ("AYBR") Program, originally released on September 14, 2015, and re-released with minor amendments on October 26, 2015 and February 26, 2016. The Department also announces the upcoming availability of $1.52M of State of Texas Housing Trust Funds for Fiscal Year 2017 for the AYBR Program, to be released on May 1, 2016. Funds are available through the Department's first-come, first-served online Reservation System. Additional funds may be added to this NOFA from loan repayments, interest earnings and deobligations from prior years.

The AYBR Program provides one-time grants of up to $20,000 to Persons with Disabilities in a household qualified as earning 80% or less of the applicable Area Median Family Income. Grants are for home modifications that increase accessibility, eliminate life-threatening hazards and correct unsafe conditions.

To be able to reserve AYBR Program funds on behalf of an eligible Person with Disabilities, nonprofit organizations, units of local government, councils of government, local mental health authorities, and public housing authorities must apply to be a Program Administrator and execute an AYBR Program Reservation System Agreement.

III. Additional Information.

The amended 2016 AYBR Program NOFA is posted on the Department's website at http://www.tdhca.state.tx.us/htf/single-family/amy-young.htm. Questions regarding the AYBR Program NOFA may be addressed to Diana Velez at (512) 475-4828 or *diana.velez@tdhca.state.tx.us.*

TRD-201600904
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 24, 2016

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for incorporation in the State of Texas by NEW HORIZON INSURANCE COMPANY, a domestic fire and/or casualty company. 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, MC 305-2C, Austin, Texas 78701.

TRD-201600891
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: February 24, 2016

♦ ♦ ♦

Lavaca Regional Water Planning Group (Region P)

Notice of Public Meeting - Regional Water Planning

SUBJECT: Notice of Public Meeting to Receive Input on Issues that should be Addressed or Provisions that should be Included in the Regional or State Water Plan for the Fifth Cycle of Regional Water Planning

NOTICE IS HEREBY GIVEN that the Lavaca Regional Water Planning Group (LRWPG), (Region P) is seeking input from the public on the scope of planning activities to be considered during the Fifth Cycle of Regional Water Planning.

The Public Meeting will be held in conjunction with the upcoming regular Region P Planning Group Meeting, to be held in the meeting room of the Lavaca-Navidad River Authority Office Building located at 4631 FM 3131, approximately 7 miles southeast of Edna, Jackson County, Texas at **1:30 p.m, Monday, March 21, 2016.** Written and oral comments (not to exceed five (5) minutes per speaker) regarding the scope of activities to be considered during the Fifth Cycle of Regional Water Planning will be accepted at this meeting.

The Lavaca Regional Water Planning Group (Region P) includes all or part of Jackson, Lavaca and Wharton County.

For additional information, please contact Patrick Brzozowski, Lavaca-Navidad River Authority, c/o Region P, P.O. Box 429, Edna, Texas 77957 or (361) 782-5229, *pbrzozowski@lnra.org.* All written comments are due to LRWPG - Region P no later than Monday, March 21, 2016 by 5:00 p.m.

TRD-201600783
Karen Gregory
Deputy General Manager
Lavaca Regional Water Planning Group (Region P)
Filed: February 19, 2016

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 1797 "Cashword Multiplier"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1797 is "CASHWORD MULTIPLIER". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1797 shall be $10.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1797.

A. Display Printing - That area of the Scratch 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 Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch 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: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BLACKENED SQUARE SYMBOL, 1X SYMBOL, 2X SYMBOL, 3X SYMBOL, 4X SYMBOL, 5X SYMBOL and 10X 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. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1797 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
▓ SYMBOL	
1X SYMBOL	TIMES1
2X SYMBOL	TIMES2
3X SYMBOL	TIMES3
4X SYMBOL	TIMES4
5X SYMBOL	TIMES5
10X SYMBOL	TIMES10

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00, $60.00, $80.00, $100, $150, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $10,000 or $250,000.

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 Scratch Ticket number and the

ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1797), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1797-0000001-001.

K. Pack - A Pack of the "CASHWORD MULTIPLIER" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch 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. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "CASHWORD MULTIPLIER" Scratch Ticket Game No. 1797.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch 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 Scratch Ticket. A prize winner in the "CASHWORD MULTIPLIER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 312 (three hundred twelve) possible Play Symbols. The player must scratch all the YOUR 20 LETTERS. Then the player must scratch all of the letters found in GAME 1, GAME 2 and GAME 3 that exactly match the YOUR 20 LETTERS. If a player has scratched at least 3 complete WORDS within a GAME, the player wins the prize found in the corresponding PRIZE LEGEND. Each GAME is played separately. WORDS revealed in one GAME cannot be combined with WORDS revealed from another GAME. Only one prize paid per GAME. Only letters within the same GAME that are matched with the YOUR 20 LETTERS can be used to form a complete WORD. In each GAME, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS to be considered a complete WORD. WORDS revealed in a diagonal sequence are not considered valid WORDS. WORDS within WORDS are not eligible for a prize. A complete WORD must contain at least three letters. GAME 1 and GAME 2 can win by revealing 3 to 9 complete WORDS on each GAME. GAME 3 can win by revealing 3 to 7 complete WORDS. MULTIPLIER BONUS: If a player reveals a 2X, 3X, 4X, 5X or 10X Symbol, then the player multiplies the total prize won in GAMES 1, 2 and 3 by that amount. Revealing a 1X Symbol does not multiply winnings in any GAME. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 312 (three hundred twelve) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch 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; Crossword and Bingo games do not typically have Play Symbol captions;

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 Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch 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 Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 312 (three hundred twelve) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 312 (three hundred twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 312 (three hundred twelve) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch 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-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch 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 Scratch 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 Scratch Ticket. In the event a de-

fective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. Each grid from GAME 1 and GAME 2 will contain exactly the same number of letters.

C. Each grid from GAME 1 and GAME 2 will contain exactly the same number of words.

D. No matching words on a Ticket.

E. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.1.

F. All words will contain a minimum of 3 letters.

G. All words will contain a maximum of 9 letters.

H. No consonant will appear more than nine (9) times, and no vowel will appear more than fourteen (14) times in GAME 1 and GAME 2.

I. No consonant will appear more than seven (7) times, no vowel will appear more than ten (10) times in GAME 3.

J. No matching Play Symbols in the YOUR 20 LETTERS play area.

K. There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are considered to be A, E, I, O, U.

L. At least fifteen (15) of the letters in the YOUR 20 LETTERS play area will open at least one letter in the GAME 1 and GAME 2 (11x11) and GAME 3 (7x7) crossword grids combinations.

M. The presence or absence of any letter or combination of letters in the YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

N. Words from the TEXAS REJECTED WORD LIST v.2.2 will not appear horizontally in the YOUR 20 LETTERS play area when read left to right or right to left.

O. On Non-Winning Tickets, there will be at least two (2) completed words in GAME 1 and GAME 2.

P. GAME 1 and GAME 2 will not have more than nine (9) complete words per grid.

Q. GAME 3 will not have more than seven (7) complete words.

R. MULTIPLIER BONUS: The BONUS Play Symbols of "2X" (TIMES 2), "3X" (TIMES 3), "4X" (TIMES 4), "5X" (TIMES 5) and "10X" (TIMES 10) will only be used on winning tickets as dictated by the prize structure.

S. MULTIPLIER BONUS: Tickets that do not win in the "MULTIPLIER BONUS" play area will display the "1X" (TIMES 1) BONUS Play Symbol.

T. MULTIPLIER BONUS: Revealing a "1X" (TIMES 1) BONUS Play Symbol does not multiply winnings in any GAME.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASHWORD MULTIPLIER" Scratch Ticket Game prize of $10.00, $20.00, $30.00, $50.00, $60.00, $80.00, $100, $150, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $60.00, $80.00, $100, $150, $200 or $500 Scratch Ticket Game. 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 "CASHWORD MULTIPLIER" Scratch Ticket Game prize of $1,000, $10,000 or $250,000, the claimant must sign the winning Scratch 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 Scratch 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 "CASHWORD MULTIPLIER" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "CASHWORD MULTIPLIER" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "CASHWORD MULTIPLIER" Scratch Ticket 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 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch 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 Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch 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 Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 12,000,000 Scratch Tickets in Scratch Ticket Game No. 1797. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1797 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	1,440,000	8.33
$20	840,000	14.29
$30	480,000	25.00
$50	320,000	37.50
$60	63,000	190.48
$80	45,000	266.67
$100	80,000	150.00
$150	6,000	2,000.00
$200	10,000	1,200.00
$500	1,000	12,000.00
$1,000	1,200	10,000.00
$10,000	67	179,104.48
$250,000	7	1,714,285.71

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.65. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1797 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1797, the State Lottery Act (Texas Government Code, Chap-

ter 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-201600872
Bob Biard
General Counsel
Texas Lottery Commission
Filed: February 23, 2016

♦ ♦ ♦

Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking proposals from qualified organizations with demonstrated competence, knowledge, qualifications, successful performance, and reasonable fees to provide fiscal monitoring services for the workforce development programs administered in the Panhandle Workforce Development Area (PWDA). The purpose of this solicitation is to enable PRPC to evaluate and select an entity capable of performing these services and to enter into negotiation for a contract at a fair and reasonable price.

Interested proposers may obtain a copy of the solicitation packet by contacting Leslie Hardin, at (806) 372-3381 / (800) 477-4562 or *lhardin@theprpc.org*. The proposals must be submitted to PRPC no later than March 18, 2016.

TRD-201600744
Leslie Hardin
WFD Contracts Coordinator
Panhandle Regional Planning Commission
Filed: February 17, 2016

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on February 16, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of Lee Goodman, Trustee for the Moffett Twin Oaks Mobile Home Property Trust and Legend Bank for Sale, Transfer, or Merger of Facilities and Certificate Rights in Angelina County, Docket Number 45620.

The Application: Lee Goodman, Trustee for the Moffett Twin Oaks Mobile Home Property Trust and Legend Bank filed an application for approval of a transaction in which Legend Bank will acquire all of Lee Goodman's sewer utility facilities and certificated service area under sewer Certificate of Convenience and Necessity No. 20568 in Angelina County. The total area being requested includes approximately 95 acres and serves 88 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45620.

TRD-201600799
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 19, 2016

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on February 17, 2016, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Ann. §39.154 and §39.158 (West 2008 & Supp. 2015) (PURA).

Docket Style and Number: Application of South Plains Wind Energy II, LLC for Approval Pursuant to Public Utility Regulatory Act §39.154 and §39.158, Docket Number 45629.

The Application: South Plains Wind Energy II, LLC (South Plains II) filed an application for approval of the issuance of passive equity interests in South Plains II to two entities, MidAmerican Wind Tax Equity Holdings, LLC and CitiCorp North America, Inc. (collectively, Investors), each of whom possess equity ownership interests in other Texas electric generation facilities. South Plains II is developing and constructing a 300 MW wind powered electricity generation project located in Floyd County (the project). The project will be interconnected to the Electric Reliability Council of Texas (ERCOT) through facilities owned by Sharyland Utilities, L.P. The total combined generation ownership of South Plains II, Investors, and their respective affiliates exceeds one percent of the total electricity offered for sale in ERCOT.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45629.

TRD-201600800
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 19, 2016

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on February 19, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of Mitchell County Utility Company and Corix Utilities (Texas), Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Mitchell County Docket Number 45639.

The Application: Mitchell County Utility Company (Mitchell County) and Corix Utilities (Texas) Inc. (Corix) filed an application for sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Mitchell County. Specifically, Corix seeks approval to acquire all of the water system assets of Mitchell County held under water Certificate of Convenience and Necessity (CCN) No. 11126.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as

an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45639.

TRD-201600861
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 23, 2016

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on February 17, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of Charles Branch dba Doucette Water System and Lakeside Water Supply and Thomas and Danasa Rawls for Sale, Transfer, or Merger of Facilities and Certificate Rights in Tyler County; Docket Number 45627.

The Application: Charles Branch dba Doucette Water System and Lakeside Water Supply (Doucette WS and Lakeside WS), and Thomas and Danasa Rawls filed an application for sale, transfer, or merger of facilities and certificate rights in Tyler County. Thomas and Danasa Rawls seek approval to acquire all of the water system assets of Doucette WS and Lakeside WS held under water Certificate of Convenience and Necessity No. 12001.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45627.

TRD-201600864
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 23, 2016

♦ ♦ ♦

Notice of Petition for True-Up of 2013 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on February 17, 2016, for true-up of 2013 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of ETEX Telephone Cooperative, Inc. for True-Up of 2013 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 45630.

The Application: ETEX Telephone Cooperative, Inc. (ETEX) filed a true-up report in accordance with Findings of Fact Nos. 21-25 of the final Order in Docket No. 41598. In Docket No. 41598 the commission approved ETEX's application to recover funds from the TUSF and ordered a true-up of the FUSF revenue changes. This application addresses ETEX's final and actual FUSF impact for 2013.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45630.

TRD-201600802
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 19, 2016

♦ ♦ ♦

Sam Houston State University

Notice of Intent to Seek Consulting Services

In compliance with the provisions of Texas Government Code, Chapter 2254, Sam Houston State University (SHSU) in Huntsville, Texas, solicits Request for Proposals (RFP) for a consultant for the university's Affirmative Action Plans. The President of SHSU has made a fact finding that the consulting services are necessary and SHSU does not have the in-house expertise to complete the Affirmative Action Plans. Pursuant to Texas Government Code 2254.029(b), notice is given that the consulting services sought in this solicitation relate to services previously provided by Biddle Consulting Group, Inc., 193 Blue Ravine Road, Suite 270, Folsom, CA 95630, and that SHSU intends to award the contract for the solicited consulting services to Biddle Consulting Group, Inc., unless an offer of better value is received. The chosen consulting firm will consult from the consultant's offices. The firm will work with Human Resources to complete Affirmative Action Plans. The firm will provide a fee for each year based on a three year relationship.

The chosen consulting firm will be responsible for the following:

1) Assembly of applicable salary and demographic data;

2) Preparation of annual policy statement for President's signature;

3) Identification of potential problem areas and recommended actions;

4) Preparation of organizational profile;

5) Job group analysis preparation;

6) Placement goals preparation; and

7) Preparation of action-oriented programs.

Selection criteria will be based on the best value which will be determined by the university, and cover such areas as procedural approach to scope of work, experience with preparation of Affirmative Action Plans, qualifications of consultants who will prepare the plan, price, and how well the proposer followed the RFP instructions.

Persons interested in a copy of RFP 753-16-005JEB should contact Jeremy Barrett, eProcurement Systems Specialist, Sam Houston State University, Procurement Office at (936) 294-4669 or *jeb037@shsu.edu* to request a copy.

The closing date for receipt of offers is April 4, 2016. The date of award is anticipated to be on or before April 19, 2016

TRD-201600914

Renee Starns
Executive Director, Procurement and Business Services
Sam Houston State University
Filed: February 24, 2016

♦ ♦ ♦

Texas Department of Transportation

Notice of Renewal - Private Consulting Services

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation (TxDOT) publishes this notice of renewal for the private consulting services contract, #83-4XXPA001, with Ames & Gough Insurance/Risk Management, Inc. This contract for a total amount of $1,000,000 was entered into April 4, 2014, with an expiration date of March 15, 2016. The terms of the contract provide for the extension of the contract no more than two times for periods of one year each. This option is being exercised for the first extension for a one year period.

The consultant provides insurance advisory services to assist TxDOT in evaluating and determining the appropriate types and levels of insurance coverage required in connection with the development, financing, construction, operation, or maintenance of TxDOT transportation projects using nontraditional delivery methods. Nontraditional delivery methods are delivery methods other than the design-bid-build delivery method, and include, but are not limited to, Comprehensive Development Agreements (CDA) and Design-Build Contracts (DB).

TRD-201600929
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 24, 2016

♦ ♦ ♦

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website: www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html.

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PILOT.

TRD-201600863
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 23, 2016

♦ ♦ ♦

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.

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.

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 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 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, 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 *Texas Register* is available in an .html version as well as a .pdf 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 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
1 TAC §91.1…….....950 *(P)*

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday. Subscription cost is $382 annually for first-class mail delivery and $259 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844
Fax: (518) 487-3584
E-mail: customer.support@lexisnexis.com
Website: www.lexisnexis.com/printcdsc

LexisNexis®
It's how you know™