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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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Ernest C. Garcia
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Department of Savings and Mortgage Lending
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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.

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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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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.

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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.

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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.

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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.

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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1297

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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.

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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

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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.

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Ernest C. Garcia
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Department of Savings and Mortgage Lending
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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.

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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1297

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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.

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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.

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Ernest C. Garcia
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Department of Savings and Mortgage Lending
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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.

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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1297

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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.

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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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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.

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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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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.

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For further information, please call: (512) 475-1297

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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.

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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1297

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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.

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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1297

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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.

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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

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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.

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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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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.

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Ernest C. Garcia
General Counsel
Department of Saving and Mortgage Lending
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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.

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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.

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Ernest C. Garcia
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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.

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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

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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.

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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1297

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) proposes amendments, 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

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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

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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.

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Leslie L. Pettijohn
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♦ ♦ ♦

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.

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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.

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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.

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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.

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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.)

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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.

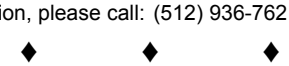
Figure: 7 TAC §84.809(b)

(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

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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

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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
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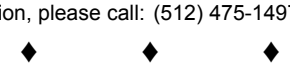
For further information, please call: (512) 475-1497



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

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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

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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

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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.

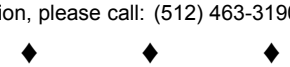
(f) Nothing herein shall prevent the Oversight Committee from adopting more stringent standards with regard to prohibited conflicts of interest.

(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

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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

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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

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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.

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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

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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

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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.

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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

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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.

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Trevor Woodruff
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